



The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



E

Item 8 of the Provisional Agenda

FIFTH SESSION OF THE GOVERNING BODY

Muscat, Oman, 24-28 September 2013

REPORT OF THE *AD HOC* ADVISORY TECHNICAL COMMITTEE ON THE STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL SYSTEM

Note by the Secretary

1. This document contains the Report of the Fourth Meeting of the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System, held from 6 to 7 November 2012 in Rome, Italy. It is contained in *Annex A* to this document.
2. The Report was published online on the Treaty website and circulated to the National Focal Points through a notification. The Report is accompanied by a cover note summarizing the major outcomes of the meeting.
3. The Committee agreed to have a resumed session which was held on 12 April 2013 in Rome, Italy. The report of the resumed meeting is contained in *Annex B* to this document.
4. The Report of the resumed meeting was also published on the Treaty website and circulated to the National Focal Points through a notification. The Report is accompanied by a cover note summarizing the major outcomes of the meeting.

I. FOURTH MEETING OF THE AD HOC ADVISORY TECHNICAL COMMITTEE ON THE STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL SYSTEM

1. At its Fourth Meeting in November 2012, the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System:
 - a) suggested that the Secretariat provide an update on the development of and progress with the implementation of technology support to the Multilateral System to the Governing Body at its next Session;
 - b) requested the Secretariat to continue monitoring and participating in the relevant processes related to the Nagoya Protocol and the Convention on Biological Diversity;
 - c) restated that the scope of the Treaty is all PGRFA, and that the Governing Body, therefore, has the mandate and authority to decide and carry out work on all matters within this scope, including any further work on access and benefit-sharing for PGRFA;
 - d) requested the Secretariat to follow the process of development of implementation guidelines to the *Principles on the Management of Intellectual Assets of the Consultative Group on International Agricultural Research*;
 - e) as regards the updating of the SMTA and the options for reflecting clarifications to the SMTA, agreed to suspend the discussion so that members could consult within their regional groups prior to resuming the discussions and make proposals for addressing the clarifications to the SMTA;¹
 - f) with regard to possible model provisions that may be inserted in national access and benefit-sharing legislation to create space for the operation of the Multilateral System, it proposed a text for consideration and further recommendation to interested Contracting Parties by the Governing Body;
 - g) with regard to the issue of fees for germplasm distribution, it examined whether the “minimal cost involved” as referred to in Article 12.3(b) of the Treaty may be considered as including the transaction costs of germplasm distribution and the cost of producing and conserving germplasm, and concluded that the factors involved in calculating fees should be limited as far as possible, thus to cover only mailing or shipping costs and not germplasm producing and conservation costs; the Committee further recommended that the issue of unreasonable requests in terms of scope or quantity of germplasm could be considered by the Governing Body at its next Session.
2. The Report of the Fourth Meeting of the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System is contained in ***Annex A*** to this document.

II. RESUMED MEETING OF THE AD HOC ADVISORY TECHNICAL COMMITTEE ON THE STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL SYSTEM

3. At its Fourth Meeting in November 2012, the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System (Committee) had considered, among other agenda items, options for reflecting clarifications or interpretation of the Standard Material Transfer Agreement (SMTA). In the light of the need for more consultations within regional groups regarding the options, the Committee had agreed to suspend the meeting and resume it at a later date.

4. At the resumed meeting of 12 April 2013, the Committee:
 - a) considered the option of incorporating all the clarifications or interpretations into the text of the SMTA, either into the main text or in the footnotes (Option 1); examined the proposed clarifications to and interpretations of the text of the SMTA, including its footnotes; developed the text of Option 1, as in *Appendix 1* to the Report;

 - b) considered the option of reflecting the clarifications or interpretations in explanatory notes accompanying the SMTA (Option 2); examined the text of the explanatory notes and revised it, keeping in brackets text where there was not agreement within the Committee as to the content; developed the revised text of the explanatory notes to the SMTA, as in *Appendix 2* to the Report; proposed, in addition to Options 1 and 2, an Option 3 according to which clarifications to or interpretations of the SMTA could go in a Schedule to the SMTA; developed the text of Option 3, as in *Appendix 3* to the Report.

5. The Report of the Resumed Fourth Meeting of the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System is contained in *Annex B* to this document.

ANNEX A

FOURTH MEETING OF THE <i>AD HOC</i> ADVISORY TECHNICAL COMMITTEE ON THE STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL SYSTEM
Rome, Italy, 6 – 7 November 2012
REPORT

Introduction

1. The Fourth Meeting of the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System was held at the FAO Headquarters in **Rome, Italy, from 6 to 7 November 2012**. The list of participants is contained in *Appendix 3* to this Report.

Agenda Item 1. Opening of the meeting and election of the Co-Chairpersons

2. Mr Shakeel Bhatti, Secretary of the Governing Body, welcomed the members of the Committee and the observers to the meeting. He recalled that this was the only Committee that was being convened twice in the current biennium, thus affirming the relevance of its work to the implementation of the Multilateral System and the SMTA. Mr Bhatti recalled the developments in the course of the year, particularly the rescheduling of the second meeting of the Intergovernmental Committee on the Nagoya Protocol, which had led to the rescheduling of the third meeting of this Committee and the resulting short lapse of time that occurred between the previous meeting and the present one. He acknowledged the efforts which members of the Committee had made to consult in the short time available in their regions and to attend the meeting, and thanked them for their efforts. He informed the Committee of positive developments in FAO relevant to the Treaty, namely that a new Director, Mr Clayton Campanhola, had arrived to head the FAO Plant Production and Protection Division, in which the Treaty is hosted, and welcomed Mr Campanhola.

3. Mr Clayton Campanhola, Director, Plant Production and Protection Division, FAO, briefed the participants about the new strategic planning process of FAO in 2012, which would produce a reduction and re-focusing of the strategic objectives towards more measurable activities and a result-based management framework. He expressed the hope that the connection of the Treaty to this process would be optimized, in particular to contribute with its programmes and activities to the pursuit of sustainable agriculture. Mr Campanhola highlighted the importance of expanding the list of crops and forages in *Annex I* of the Treaty for the fostering of local production and the availability of quality seeds to smallholder farmers. In his views, the Treaty is also particularly relevant to the broader FAO strategic objectives in the areas of norms and standard-setting, as well as action plans related to preventing natural resources degradation, biodiversity policy, and enhancing resilience to climate change.

4. The meeting agreed that Messrs. Fernando Latorre García (Europe Region) and Eng Siang Lim (Asia Region) should continue to act as Co-Chairpersons to guide the proceedings of the meeting.

Agenda Item 2. Adoption of the agenda

5. The meeting adopted its agenda, as given in *Appendix 1* to this Report.
6. The Committee recommended that, should it further be reconvened by the Governing Body, in light of concerns raised about the short lapse of time between the previous meeting and the present one, there should be an interval of at least eight months between any of its meetings, in order to allow for more time for the Secretariat to collate a significant number of issues for its consideration. This would also allow for adequate preparations within the Regions ahead of each meeting for the consideration of those issues.

Agenda Item 3. Report on the implementation of the SMTA and the Multilateral System

7. Mr Kent Nnadozie, Senior Treaty Officer, FAO, reported on the implementation of the Multilateral System, and highlighted the progress that had taken place in the operation of the Multilateral System since the last meeting of the Committee in July 2012. He reported that the Secretariat had been working on improving the operations of the Multilateral System, in particular on the information technology systems that support it. He highlighted the progress made in the functioning of *Easy SMTA*, the voluntary tool developed by the Secretariat that combines SMTA generating and reporting functions. It has a new design and workflow that guides users in a step-by-step process that is intuitive and easy to use. It also offers several additional functions, such as uploading spreadsheet files listing the *Annex I* material being transferred, which clearly saves time. So far, about half a million accessions have already been reported through electronic means to the Governing Body.
8. It was noted that a number of Contracting Parties had also been reporting on non-*Annex I* material which were transferred using agreements similar to the SMTA and that the records are being stored in *Easy SMTA*, the voluntary tool developed by the Secretariat. It was further noted that such information was being provided at the discretion of the concerned Contracting Parties and this process involved no extra costs nor constituted additional burden to the information systems of the Multilateral System, since these information systems are largely automated.
9. With regard to the inclusion of material in the Multilateral System, Mr Nnadozie informed the Committee that the activities of the round of projects under the First Call of the Benefit-sharing Fund had been concluded and that material resulting from those projects was being incorporated in the Multilateral System, including those from Peru, Morocco and Costa Rica. Discussions were also underway with other projects on the modalities for inclusion, including the option of depositing the relevant material in national genebanks.
10. The Committee suggested that it would be useful for the Secretariat to provide an update on the development of and progress with the implementation of technology support to the Multilateral System, including the amount and modalities of funding it, to the Governing Body at its Fifth Session.

Agenda Item 4. Recent developments of relevance to the implementation of the Multilateral System and the SMTA

11. The Committee considered document IT/AC-SMTA-MLS 4/12/2. In addition to the information contained in the document, the Committee received several updates from its members and observers on activities relevant to the implementation of the Multilateral System.

12. A representative of the Europe Region informed the Committee of on-going initiatives to implement the Multilateral System at the regional level through EURISCO, which indicates the material included in the Multilateral System and is therefore a useful tool to provide information to the Governing Body. In follow up to Governing Body Resolution 4/2011, a member of the FAO Permanent Representation of Indonesia, on behalf of Brazil and Indonesia, informed the Committee that they had jointly organized a workshop on a platform for the co-development and transfer of technologies and intended to establish the platform, continue to work with existing partners and invite more partners to join. The statement made is in *Appendix 2* to this Report. The Committee appreciated these initiatives and advised that the further work they carry out be reported to the Governing Body at its Fifth Session.

13. The expert from Bioversity International informed the Committee of recent developments in the implementation of the Joint Capacity Building Programme on the implementation of the Multilateral System, which was set up by the Treaty, FAO and Bioversity International. Results of the Programme, which is overseen by the Secretary, will include, *inter alia*, policy options for implementing the Multilateral System, identification of plant genetic resources for food and agriculture in the Multilateral System, studies on germplasm flows, community genebanks and changing demands for plant genetic resources for food and agriculture in the countries concerned to adapt to climate change, and strengthened national capacity to participate in the Multilateral System.

14. The expert from the International Seed Federation informed the Committee of the recently adopted policy statement by the International Seed Federation concerning the need for a single regime on access and benefit-sharing dealing with genetic resources for food and agriculture for plant breeding, which emphasizes on the need for administrative simplicity at the national level to enable compliance with access and benefit-sharing requirements by the private sector.

15. The expert from civil society informed the Committee of recent developments within civil society organizations, which might potentially lead to increased requests from smallholder farmers for access to material in the Multilateral System.

16. The Committee considered that, despite being in its formative stages and pending entry into force, the Nagoya Protocol and related processes remained of high importance to the Treaty. In this regard, the presence and space for the Treaty in the various relevant work tracks needed to be secured consistently in order not only to promote inter-agency partnerships but, most importantly, also to promote coordination between the different implementing authorities at the national level. The Committee commended the Secretariat for its efforts to cooperate with the Secretariat of the Convention on Biological Diversity and requested the Secretariat to continue and further intensify its collaboration with the Secretariat of the Convention on Biological Diversity along the lines established in the Joint Initiative and Memorandum of Cooperation between the two Secretariats.

17. The Committee requested the Secretariat to continue monitoring and participating in the relevant processes related to the Nagoya Protocol and the Convention on Biological Diversity in order to promote practical and harmonious interfaces between general access and benefit-sharing requirements and the operation of the Treaty and its Multilateral System, both nationally and internationally.

18. With regard to the work of the *Ad Hoc* Technical Working Group on Access and Benefit-Sharing (Working Group) of the Commission on Genetic Resources for Food and Agriculture (Commission), the Committee noted the report of the Working Group. The Committee, in particular, welcomed the recommendation of the Working Group encouraging countries that have not done so, to ratify or accede to the Treaty as soon as possible and promote its full implementation in regard to plant genetic resources for food and agriculture. It also noted the invitation to the Governing Body, in its continued governance of plant genetic resources for food and agriculture, to continue to closely coordinate with the Commission in order to address, in a complementary way, the distinctive features and specific uses of genetic resources for food and agriculture, especially in light of the development of access and benefit-sharing measures at both national and international levels.

19. The Committee restated that the scope of the Treaty was all plant genetic resources for food and agriculture, and that the Governing Body, therefore, had the mandate and authority to decide and carry out work on all matters within this scope, including any further work on access and benefit-sharing for plant genetic resources for food and agriculture. It noted that such work should therefore be carried out by the Governing Body and advised the Governing Body to continue its close collaboration with other bodies regarding access and benefit-sharing, in particular the Convention on Biological Diversity and the Commission. It requested the Secretariat to continue coordinating with the Secretariat of the Commission in order to promote complementarity in the work of the two bodies and avoid duplication of efforts. The Committee recommended that the outcomes and follow up processes be brought to the attention of the Governing Body at its Fifth Session, in particular with a view to reaffirming the mandate and authority of the Governing Body on all plant genetic resources for food and agriculture; deciding on any possible role it might wish the Committee to play on any related future work; and ensuring that the Governing Body performs its functions in accordance with its mandate on access and benefit-sharing for plant genetic resources for food and agriculture.

Agenda Item 5. The Policy and Principles on the Management of Intellectual Assets of the Consultative Group on International Agricultural Research

20. The Committee considered document IT/AC-SMTA-MLS 4/12/3. The representative of the Consortium Office of the CGIAR described the process involved in the development of the Principles on the Management of Intellectual Assets (the Principles) and explained the role of the Principles in the new structure of the CGIAR, noting that the Principles were agreed by both the Consortium and the Fund Council as part of the CGIAR Common Operational Framework. He explained that the Principles were intended to be in full harmony with the agreements signed between the CGIAR Centers and the Governing Body of the Treaty in 2006 related to the management of collections held by the CGIAR Centers. He also clarified that the principles on limited exclusivity agreements and incorporation of third party intellectual assets would operate to guide the Centres in areas where the Treaty and the SMTA leave considerable flexibility as to the conditions, additional to those in the SMTA, under which providers may transfer Plant Genetic Resources under Development.

21. The Committee noted the Principles and highlighted the need for transparency and availability of information on the application of the Principles. It requested the Secretariat to follow the process of development of implementation guidelines to the Principles, and related processes, in close consultation with the Consortium Office, and provide the Governing Body with the relevant information.

Agenda Item 6. Options for reflecting clarifications to the SMTA

22. The Committee considered document IT/AC-SMTA-MLS 4/12/4. It thanked the FAO Legal Office and the Secretariat for the preparation of the document, containing options for reflecting the clarifications to the SMTA and an analysis of such options, including the draft explanatory notes that might accompany the SMTA. It expressed concern that this document had been issued too late for adequate consultations by the regional groups before the meeting.

23. In considering the three categories of clarifications that were put before it, the Committee noted the view expressed by the FAO Legal Office that the clarifications arising out of the Resolutions of the Governing Body that specify or clarify specific provisions of the SMTA, were already binding on the users of the SMTA and needed to be reflected in one form or another.

24. The Committee considered that it would also be useful to reflect, in one form or another, the third category of clarifications, which consisted of simple textual adjustments to enhance clarity. However, the Committee took note of a number of concerns expressed by some members

with regard to some of the proposed clarifications. It agreed that more time was needed to examine these proposed clarifications before recommending them to the Governing Body for reflection in one form or another.

25. The Committee, therefore, agreed to suspend further discussion of the issue so that members could consult within their regional groups and bring forward, via online exchanges and prior to resuming the discussions, proposals for addressing the clarifications to the SMTA.

Agenda Item 7. Creating legal space for the Treaty in the context of access and benefit-sharing regimes

26. The Committee considered document IT/AC-SMTA-MLS 4/12/5, regarding legal space for the Treaty and its Multilateral System in particular, in the context of access and benefit-sharing frameworks. It re-affirmed the views expressed in the report of its third meeting on this topic. The Committee stressed the need to promote coordination at the national level, in particular between respective national focal points of the Treaty and the Convention on Biological Diversity so that they could harmonize their views and adopt a more comprehensive approach to access and benefit-sharing. It also recommended that efforts should continue to be made to facilitate regular interactions among other relevant actors involved in the national implementation processes of both agreements, such as farmers and farmers' organizations, NGOs and the private sector, including through convening meetings.

27. The Committee commended the high level of cooperation and the on-going joint activities between the Secretariats of the Treaty and the Convention on Biological Diversity, and encouraged the Secretariat to continue in this regard. It welcomed the exploratory expert workshop being planned by both Secretariats in collaboration with GIZ and Bioversity International on promoting mutual supportiveness in the implementation of the Treaty and the Nagoya Protocol at the national level as a step in the right direction, and emphasised the importance of regional balance among its participants.

28. With regard to possible model provisions that may be inserted in national access and benefit-sharing legislation, the Committee proposed the following text for consideration and further recommendation to interested Contracting Parties by the Governing Body at its next Session:

“Pursuant to the obligations established by the International Treaty on Plant Genetic Resources for Food and Agriculture, access to and the transfer of plant genetic resources for food and agriculture covered by the Treaty, and sharing the benefits arising from their utilization, should be subject only to the conditions set out in or consistent with the said Treaty, as applicable.”

29. The Committee re-emphasized the need for the continued interaction between the different constituencies of the Treaty and the Convention on Biological Diversity, especially at the national level in the course of their implementation. It encouraged the Secretariat to continue its collaborative activities with the Secretariat of the Convention regarding the interface between the Treaty and the Nagoya Protocol, and to report to the Governing Body, as it was requested at its Fourth Session.

Agenda Item 8. Collection, conservation and distribution through the SMTA of samples of plant varieties protected by plant breeder's rights

30. The Committee considered document IT/AC-SMTA-MLS 4/12/6, which contained the question as to whether a genebank can collect, conserve and distribute samples of plant varieties protected by plant breeder's rights, without the right holder's consent, using the SMTA, in the jurisdiction where the plant breeder's rights apply and in other jurisdictions. The Committee also considered the question in relation to the possibility of including material protected by intellectual property rights in the Multilateral System.

31. The Committee recalled the opinion it had given on a related issue at its second meeting in September 2010. The advice of the Committee was that it is possible for such material to be put in the Multilateral System, provided that the basic principle of the Multilateral System – that all material in it should be freely available to others for research, breeding and training for food and agriculture – is respected. In the view of the Committee, intellectual property rights that are not compatible with such free access would need to be waived, for the material to be transferred under an SMTA.¹

32. The Committee confirmed its previous advice and considered that the specific question posed in the document would be outside of the operation of the Multilateral System, and thus not relevant to the mandate of the Committee.

Agenda Item 9. Other business and miscellaneous questions

33. The Committee considered document IT/AC-SMTA-MLS 4/12/7. The first general question posed in the document was whether the SMTA is to be used in cases where the transfer of *Annex I* planting material, after multiplication, is requested to a provider for the purpose of subsequent sale of the planting material. The Committee considered that, the purpose of the transfer being commercial sale, the transaction would not take place under the Multilateral System and, hence, it would not be mandatory to use the SMTA.

34. The second general question posed in the document was whether the “minimal cost involved”, in the sense of Article 12.3(b) of the Treaty and Article 5a) of the SMTA, may be considered as including the transaction costs of germplasm distribution or as also including the cost of producing and conserving germplasm. Recalling the spirit of the Treaty and the text of the relevant provisions, the Committee was of the opinion that the factors involved in calculating fees should be limited as far as possible, thus to cover only mailing or shipping costs and not germplasm producing and conservation costs. In light of the observations made by the representative of the CGIAR at the meeting, the Committee recommended that the issue of unreasonable requests in terms of scope or quantity of germplasm could be considered by the Governing Body at its next Session.

Agenda Item 10. Adoption of the report

35. The Committee adopted this Report and agreed to append the outcomes of its subsequent discussions on agenda item 6 as integral part of this Report.

Agenda Item 11. Closing of the meeting

¹ IT/AC-SMTA-MLS/2/10/Report, Appendix 6, *The practical and legal implications for natural and legal persons putting material in the Multilateral System*, question n. 12.

36. The Committee agreed to suspend the meeting in view of unfinished discussions under agenda item 6. It then requested the Secretariat to make the relevant arrangements regarding the date and venue for the continuation of the meeting.

37. The members of the Committee thanked the Secretary and the Secretariat for the excellent preparations made for and the support provided to the meeting.

Report Appendix 1

FOURTH MEETING OF THE <i>AD HOC</i> ADVISORY TECHNICAL COMMITTEE ON THE STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL SYSTEM

Rome, Italy, 6-7 November 2012

AGENDA

1. Opening of the meeting and election of the Co-Chairpersons
2. Adoption of the agenda
3. Report on the implementation of the SMTA and the Multilateral System
4. Recent developments of relevance to the implementation of the Multilateral System and the SMTA
5. The Policy and Principles on the Management of Intellectual Assets of the Consultative Group on International Agricultural Research
6. Options for reflecting clarifications to the SMTA
7. Creating legal space for the Treaty in the context of access and benefit-sharing regimes
8. Collection, conservation and distribution through the SMTA of samples of plant varieties protected by plant breeder's rights
9. Other business and miscellaneous questions
10. Adoption of the report
11. Closing of the meeting

Report Appendix 2

STATEMENT BY THE GOVERNMENT OF INDONESIA

Thank you, Mr Co-Chairperson, for this opportunity. With the permission of this Committee, I would like to deliver a statement on behalf of Dr. Haryono, Director General of the Indonesian Agency for Agricultural Research and Development (IAARD).

I have the pleasure to inform you of the results of a workshop on the Platform for the Co-Development and Transfer of Technologies under the Treaty.

The Treaty calls for technology transfer as a primary form of non-monetary benefit-sharing. The Governing Body of the Treaty (especially, at its Fourth Session in Bali, Indonesia) has called for measures to realize effective technology transfer and has invited Contracting Parties and other relevant stakeholder to explore innovative benefit-sharing measures.

Technology transfer related to plant genetic resources is crucial for agricultural development and has long been a strong request from developing countries in the Treaty.

IAARD has been facilitating discussions on technology transfer under the Treaty since 2010, when it organized a Global Consultation with Norway.

In 2011, Indonesia hosted the Fourth Session of the Governing Body and the Bali Ministerial Conference on the Treaty that adopted the Bali Ministerial Declaration. The Declaration refers to the importance of technology transfer for implementing the Treaty. The Governing Body, in Resolution 4/2011, requests Contracting Parties to explore technology transfer as one of the non-monetary benefit-sharing mechanisms of the Treaty. In July 2012, the 2nd High-level Roundtable on the Treaty, held at the Rio+20 Summit, adopted the Rio Six Point Action Plan. The first action point of the Rio Action Plan is to establish a Platform for the Co-Development and Transfer of Technologies.

In follow up to Resolution 4/2011 and the Rio Six Point Action Plan, IAARD and the Brazilian Agricultural Research Corporation (Embrapa) jointly organized a workshop on the Platform, in Brasilia, on 7-8 August 2012. As a result of the workshop and on behalf of its co-organizers of the workshop, I am pleased to inform you that we intend to establish the Platform, continue to cooperate with the working partners of the platform that have already joined and invite more working partners to adhere.

In our view, the most important next steps are to start-up the functioning of the platform rapidly by connecting it with other Treaty mechanisms, particularly the Benefit-sharing Fund (BSF). In the view of the working partners at the workshop held in August, the best connection will be by creating a window in the next Call for Proposals of the BSF.

Indonesia is both a financial investor in the Benefit-sharing Fund and a recipient implementing a BSF project. In both of these functions, I welcome this approach and am pleased to offer IAARD's support and expertise to make the Treaty benefit-sharing mechanisms even more synergistic, unique and connected.

We have also informed the first G-20 Meeting of Agricultural Chief Scientists (MACS) of the establishment of the Platform and of our intention to connect it with the Tropical Agriculture Platform.

I am pleased to inform you of these efforts which we are making, at the request of the Governing Body and in the implementation of its Resolutions.

Thank you, Mr Co-Chairperson.

On behalf of,

Dr. Haryono, DG IAARD, Ministry of Agriculture, Republic of Indonesia.

Report Appendix 3

LIST OF PARTICIPANTS

COMMITTEE MEMBERS	
AFRICA	<p>Mr Didier BALMA Secrétaire permanent de la Commission nationale de gestion des ressources phytogénétiques Ministère de la recherche scientifique et de l'innovation (MRSI) 01 B.P. 476 Ouagadougou 01, Burkina Faso Phone: +226 50308269 Fax: +226 50315003 E-mail: dbal@fasonet.bf balma.didier@yahoo.fr</p>
ASIA	<p>Mr Eng Siang LIM Expert Advisor for Plant and Food Genetic Resources Ministry of Agriculture Kuala Lumpur, Malaysia Phone: +603 56119161 E-mail: eslim_choi@yahoo.com</p> <p>Mr Nestor ALTOVEROS Professor Crop Science Cluster Institute of Plant Breeding, University of the Philippines Los Baños, Philippines Phone: +63 49 536 2512 E-mail: ncaltoveros@yahoo.com</p>
EUROPE	<p>Mr Fernando LATORRE GARCÍA Técnico Superior Especialista Centro de Recursos Fitogenéticos Instituto Nacional de Investigación y Tecnología Agraria y Alimentaria Autovía A2, km 36 Apdo 1045, Alcalá de Henares, Madrid, España Phone: +34 91 8819286 (ext. 25) E-mail: latorre@inia.es</p> <p>Ms Elise LECLERCQ G.N.I.S. Relations Internationales 44 rue du Louvre 75001 Paris, France Phone: +33 142337697 Fax: +33 140284016 E-mail: elise.leclercq@gnis.fr</p>

<p>LATIN AMERICA AND THE CARIBBEAN</p>	<p>Mr Eduardo SALAZAR PÉREZ Ministerio de Agricultura, Ganadería y Alimentación 7 Avenida 12-90 – Zona 13 Ciudad de Guatemala, Guatemala E-mail: visardfrndireccion@gmail.com</p> <p>Ms Rosa Miriam VASCONCELOS Coordinator for Regulatory Affairs Brazilian Agricultural Research Corporation Ministry of Agriculture, Livestock and Food Supply Parque Estacao Biologica Pq EB W3 Norte (final) Ed. Sede Caixa Postal 040315 CEP 70770 - 901 Brasilia – DF, Brazil Phone: +55 61 3448 4825 Fax: +55 61 3347 4158 E-mail: rosa.miriam@embrapa.br</p>
<p>NEAR EAST</p>	<p>Mme Lamis CHALAK Biotechnology and Plant Genetic Resources Advisor Faculty of Agricultural Engineering and Veterinary Medicine, Lebanese University Dekwane, Beirut, Lebanon Phone: +961 3 211 855 E-mail: lamis.chalak@gmail.com</p> <p>Ms Fadila AL-SALAMEEN Associate Research Scientist Biotechnology Department P.O. Box 24885 13109 Safat, Kuwait Phone: +965 24989157 Fax: +965 24989069 E-mail: fslamian@safat.kisr.edu.kw</p>
<p>NORTH AMERICA</p>	<p>Mr Brad FRALEIGH Director, Multilateral Science Relations International Engagement Division, Agriculture and Agri-Food 1341 Baseline Road, Tower 5-5, Room 133 Ottawa, ON Canada K1A 0C6 Phone: +1 613-773-1838 Fax: +1 613-773-1833 E-mail: brad.fraleigh@agr.gc.ca</p> <p>Ms Laura SCHWEITZER MEINS Agricultural Specialist, Alternate Permanent Representative U.S. Mission to the UN Agencies in Rome / USDA United States of America Via Boncompagni 2 00187 Rome, Italy Phone: +39 06 4674-3508 Fax: +39 06 4674-3520 E-mail: Laura.Schweitzer@fas.usda.gov</p>

SOUTH WEST PACIFIC	<p>Ms Emily COLLINS Embassy of Australia Via Antonio Bosio 5 00161 Rome, Italy Phone: +39 06 852721 Fax: +39 06 85272300 E-mail: faorep@dfat.gov.au</p>
TECHNICAL EXPERTS SERVING AS OBSERVERS	
	<p>Mr Thomas NICKSON (International Seed Federation) International Policy Lead Monsanto 800 North Lindbergh Blvd St. Louis, Missouri 63167, USA Phone: +1 314-694-2179 Fax: +1 314-694-1622 E-mail: thomas.nickson@monsanto.com</p>
	<p>Mr Michael HALEWOOD (Representative of the CGIAR – Consortium Office) Head Policy Research and Support Unit Bioversity International (CGIAR) Via dei Tre Denari, 472/A Maccarese, Italy Phone: +39 06 6118294 Fax: +39 0661979661 E-mail: m.halewood@cgiar.org</p>
	<p>Mr Carlos CORREA Professor Intellectual Property Rights University of Buenos Aires Buenos Aires, Argentina Phone: +54 11 4 809 5600 ext. 5558 E-mail: quiess@gmail.com</p>
	<p>Mr Dan LESKIEN Senior Liaison Officer Secretariat of the Commission on Genetic Resources for Food and Agriculture Food and Agriculture Organization of the United Nations Viale delle Terme di Caracalla 1 00153 Rome, Italy Phone: +39 0657054666 Fax: +39 0657055246 E-mail: Dan.Leskien@fao.org</p>
	<p>Mr Pat MOONEY Executive Director</p>

	ETC Group, Action Group on Erosion, Technology and Concentration 180 Metcalfe Street, Suite 206 Ottawa, ON Canada K2P 1P5 Phone: +1 613-241-2267 Fax: +1 613-241-2506 E-mail: mooney@etcgroup.org
OTHER OBSERVERS	
INDONESIA	Mr Agus Prihatin SAPTONO Counsellor Embassy of the Republic of Indonesia Via Campania, 55 00187 Rome, Italy Phone: +39 06 42009150 Fax: +39 06 4880280 E-Mail: indorom@indonesianembassy.it

**SECRETARIAT OF THE INTERNATIONAL TREATY
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

Mr Shakeel BHATTI

Secretary
International Treaty on Plant Genetic Resources
for Food and Agriculture
Food and Agriculture Organization of the United Nations
Viale delle Terme di Caracalla 1
00153 Rome, Italy
Phone: +39 06 57053441
Fax: +39 06 57053057
E-mail: shakeel.bhatti@fao.org

Mr Kent NNADOZIE

Senior Treaty Officer
International Treaty on Plant Genetic Resources
for Food and Agriculture
Food and Agriculture Organization of the United Nations
Viale delle Terme di Caracalla 1
00153 Rome, Italy
Phone: +39 06 57052465
Fax: +39 06 57053057
E-mail: kent.nnadozie@fao.org

Mr Daniele MANZELLA

Treaty Support Officer
International Treaty on Plant Genetic Resources
for Food and Agriculture
Food and Agriculture Organization of the United Nations
Viale delle Terme di Caracalla 1
00153 Rome, Italy
Phone: +39 06 57056180
Fax: +39 06 57053057
E-mail: daniele.manzella@fao.org

Francisco LOPEZ

Treaty Support Officer
International Treaty on Plant Genetic Resources
for Food and Agriculture
Food and Agriculture Organization of the United Nations
Viale delle Terme di Caracalla 1
00153 Rome, Italy
Phone: +39 06 57056343
Fax: +39 06 57053057
E-mail: francisco.lopez@fao.org

ANNEX B**RESUMED FOURTH MEETING OF THE OF THE *AD HOC*
ADVISORY TECHNICAL COMMITTEE ON THE STANDARD
MATERIAL TRANSFER AGREEMENT AND THE
MULTILATERAL SYSTEM****Rome, Italy, 12 April 2013****Report****Introduction**

33. At its Fourth Meeting in November 2012, the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System (Committee) had considered, among other agenda items, options for reflecting clarifications or interpretation of the Standard Material Transfer Agreement (SMTA). In the light of the need for more consultations within regional groups regarding the options, the Committee had agreed to suspend the meeting and resume it at a later date.

34. The resumed meeting was held at the FAO Headquarters in **Rome, Italy, on 12 April 2013**. The list of participants is contained in *Appendix 4* to this document.

Options for reflecting clarifications or interpretation of the SMTA

3. Prior to the suspension of its Fourth Meeting, the Committee had commenced the examination of options for reflecting clarifications or interpretation of the SMTA. The document IT/AC-SMTA-MLS 4/12/4, *Options for Reflecting Updates of the Standard Material Transfer Agreement*, contained such options and an analysis thereof, including draft explanatory notes that might accompany the SMTA.

4. The document provided three Options for reflecting clarifications to or interpretations of the SMTA, namely:

1. the incorporation of all the clarifications or interpretations into the text of the SMTA, either into the main text or in the footnotes;
2. the reflection of the clarifications or interpretations in explanatory notes accompanying the SMTA, with the text of the SMTA remaining fundamentally unaltered;
3. a combination of the two previous options.

5. The document also classified the clarifications to or interpretations of the SMTA in three categories, namely:

- a) those directly reflecting the decisions of the Governing Body that specify or clarify certain provisions of the SMTA, including in relation to the obligations of parties to the SMTA;
- b) those that, in previous meetings, the Committee had deemed advisable in light of the decisions of the Governing Body, in order to follow the logic underpinning those decisions and avoid major inconsistencies in the application of the SMTA; and
- c) those consisting of simple textual adjustments to enhance clarity.

6. At the resumed meeting, the Committee proceeded on the basis of Options 1 and 2, as presented in the aforementioned document.
7. The Committee examined the proposed clarifications to and interpretations of the text of the SMTA, including its footnotes, as foreseen under Option 1. Some members agreed with the concept of incorporating agreed clarifications and interpretations into the text, but expressed reservations as to the content of some of the proposed clarifications and interpretations. Other members wished to maintain the text as it is, and incorporate agreed clarifications and interpretations into explanatory notes: this is Option 2. In relation to Option 1, therefore, the Committee reviewed the proposed clarifications and interpretations, and bracketed those where there was no agreement. The resulting text of Option 1 is in *Appendix 1* to this report.
8. Subsequently, the Committee examined the text of the explanatory notes, as provided under Option 2, and revised it, keeping in brackets text where there was not agreement within the Committee as to the content. Some members noted that the explanatory notes may not be legally binding upon parties to the SMTA. The revised text of the explanatory note to the SMTA is in *Appendix 2* to this report.
9. In addition to Options 1 and 2, an Option 3 was proposed. Under such option, clarifications to or interpretations of the SMTA could go in a Schedule to the SMTA, and the text of the SMTA could be amended to include the following text:

*“The Governing Body has taken further decisions on the implementation of the SMTA, which are included in Schedule * to **this Agreement**”.*
10. The title of Option 3 could be “Schedule”. The text of option 3 is in *Appendix 3* to this report.

Adoption of the report

11. The Committee adopted this report, to be considered as an integral part of the Report of the Fourth Meeting of the Committee. For the purpose of preparing documentation for the Fifth Session of the Governing Body, this document will be attached to the Report of the Fourth Meeting, which will be made available as information document.

Closing of the meeting

12. The Committee thanked the Co-Chairpersons Messrs. Fernando Latorre García (Europe Region) and Eng Siang Lim (Asia Region) for the guidance of, and the Secretariat for the preparations for, and support to the resumed meeting.

Report Appendix I

OPTION 1

Clarifications or interpretation in the text of the SMTA

Text proposed for deletion is ~~struck through~~; and text proposed for insertion is double-underlined. Annotations by the *Ad Hoc* Advisory Technical Committee are **washed in grey.**

STANDARD MATERIAL TRANSFER AGREEMENT

PREAMBLE

WHEREAS

The International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as “the **Treaty**”)² was adopted by the Thirty-first session of the FAO Conference on 3 November 2001 and entered into force on 29 June 2004;

The objectives of the **Treaty** are the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture** and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security;

The Contracting Parties to the **Treaty**, in the exercise of their sovereign rights over their **Plant Genetic Resources for Food and Agriculture**, have established a **Multilateral System** both to facilitate access to **Plant Genetic Resources for Food and Agriculture** and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis;

Articles 4, 11, 12.4 and 12.5 of the **Treaty** are borne in mind;

The diversity of the legal systems of the Contracting Parties with respect to their national procedural rules governing access to courts and to arbitration, and the obligations arising from international and regional conventions applicable to these procedural rules, are recognized;

Article 12.4 of the **Treaty** provides that facilitated access under the **Multilateral System** shall be provided pursuant to a Standard Material Transfer Agreement, and the **Governing Body** of the **Treaty**, in its Resolution 1/2006 of 16 June 2006, adopted the Standard Material Transfer Agreement.

² *Note by the Secretariat:* as suggested by the Legal Working Group during the Contact Group for the Drafting of the Standard Material Transfer Agreement, [defined terms have, for clarity, been put in bold throughout.] The numbering of footnotes has provisionally been changed and will be finalized on the basis of final decisions regarding the text.

ARTICLE 1 — PARTIES TO THE AGREEMENT

1.1 The present Material Transfer Agreement (hereinafter referred to as “**this Agreement**”) is the Standard Material Transfer Agreement referred to in Article 12.4 of the **Treaty**.

1.2 **This Agreement** is:

BETWEEN: (*name and address of the provider or providing institution, name of authorized official, contact information for authorized official*)³ (hereinafter referred to as “the **Provider**”),

AND: (*name and address of the recipient or recipient institution, name of authorized official, contact information for authorized official*)² (hereinafter referred to as “the **Recipient**”).

1.3 The parties to **this Agreement** hereby agree as follows:

ARTICLE 2 — DEFINITIONS

In **this Agreement** the expressions set out below shall have the following meaning:

“**Available without restriction**”: a **Product** is considered to be available without restriction to others for further research and breeding when it is available for research and breeding without any legal or contractual obligations, or technological restrictions, that would preclude using it in the manner specified in the **Treaty**.

“**Genetic material**” means any material of plant origin, including reproductive and vegetative propagating material, containing functional units of heredity.

“**Governing Body**” means the **Governing Body** of the **Treaty**.

“**Multilateral System**” means the **Multilateral System** established under Article 10.2 of the **Treaty**.

“**Plant Genetic Resources for Food and Agriculture**” means any **genetic material** of plant origin of actual or potential value for food and agriculture.

“**Plant Genetic Resources for Food and Agriculture under Development**” means material derived from the **Material**, and hence distinct from it, that is not yet ready for **commercialization** and which the developer intends to further develop or to transfer to another person or entity for further development. The period of development for the **Plant Genetic Resources for Food and Agriculture under Development** shall be deemed to have ceased when those resources are **commercialized** as a **Product**.

³ *Insert as necessary. Not applicable for shrink-wrap and click-wrap Standard Material Transfer Agreements.*

A “shrink-wrap” Standard Material Transfer Agreement is where a copy of the Standard Material Transfer Agreement is included in the packaging of the **Material**, and the **Recipient’s** acceptance of the **Material** constitutes acceptance of the terms and conditions of the Standard Material Transfer Agreement.

A “click-wrap” Standard Material Transfer Agreement is where the agreement is concluded on the internet and the **Recipient** accepts the terms and conditions of the Standard Material Transfer Agreement by clicking on the appropriate icon on the website or in the electronic version of the Standard Material Transfer Agreement, as appropriate.

“**Product**” means **Plant Genetic Resources for Food and Agriculture** that incorporate⁴ the **Material** or any of its genetic parts or components that are ready for **commercialization**, excluding commodities and other products used for food, feed and processing.

“**Sales**” means the gross income resulting from the **commercialization** of a **Product** or **Products**, by the **Recipient**, its affiliates, contractors, licensees and lessees.

“**To commercialize**” means to sell a **Product** or **Products** for monetary consideration on the open market, and “**commercialization**” has a corresponding meaning. **Commercialization** shall not include any form of transfer of **Plant Genetic Resources for Food and Agriculture under Development**.

ARTICLE 3 — SUBJECT MATTER OF THE MATERIAL TRANSFER AGREEMENT

The **Plant Genetic Resources for Food and Agriculture** specified in *Annex 1* to **this Agreement** (hereinafter referred to as the “**Material**”) and the available related information referred to in Article 5b and in *Annex 1* are hereby transferred from the **Provider** to the **Recipient** subject to the terms and conditions set out in **this Agreement**.

ARTICLE 4 — GENERAL PROVISIONS

4.1 **This Agreement** is entered into within the framework of the **Multilateral System** and shall be implemented and interpreted in accordance with the objectives and provisions of the **Treaty**.

4.2 The parties recognize that they are subject to the applicable legal measures and procedures, that have been adopted by the Contracting Parties to the **Treaty**, in conformity with the **Treaty**, in particular those taken in conformity with Articles 4, 12.2 and 12.5 of the **Treaty**.⁵

4.3 The parties to **this Agreement** agree that ~~(the entity designated by the **Governing Body**)~~ the Food and Agriculture Organization of the United Nations [or such other entity as may be designated in its place by the **Governing Body**],⁶ acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**, is the third party beneficiary under **this Agreement**. It has not yet been decided whether to make this clarification directly in the text or to place it in Option 2.

4.4 The third party beneficiary has the right to request the appropriate information as required in Articles 5e, 6.5c, 8.3 and *Annex 2, paragraph 3*, to **this Agreement**.

⁴ As evidenced, for example, by pedigree or notation of gene insertion.

⁵ In the case of the International Agricultural Research Centres of the Consultative Group on International Agricultural Research (CGIAR) and other international institutions, the Agreement between the Governing Body and the CGIAR Centres and other relevant institutions will be applicable.

[⁶ ~~Note by the Secretariat: by Resolution 2/2006, the **Governing Body** “invite[d] the Food and Agriculture Organization of the United Nations, as the Third Party Beneficiary, to carry out the roles and responsibilities as identified and prescribed in the Standard Material Transfer Agreement, under the direction of the **Governing Body**, in accordance with the procedures to be established by the **Governing Body** at its next session”. Upon acceptance by the FAO of this invitation, the term, “the entity designated by the **Governing Body**”, will be replaced throughout the document by the term, “the Food and Agriculture Organization of the United Nations”.~~]

4.5 The rights granted to ~~(the entity designated by the **Governing Body**)~~ the Food and Agriculture Organization of the United Nations above do not prevent the **Provider** and the **Recipient** from exercising their rights under **this Agreement**. It has not yet been decided whether to make this clarification directly in the text or to place it in Option 2.

ARTICLE 5 — RIGHTS AND OBLIGATIONS OF THE PROVIDER

The **Provider** undertakes that the **Material** is transferred in accordance with the following provisions of the **Treaty**:

- a) Access shall be accorded expeditiously, without the need to track individual accessions and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved.
- b) All available passport data and, subject to applicable law, any other associated available non-confidential descriptive information, shall be made available with the **Plant Genetic Resources for Food and Agriculture** provided;
- c) Access to **Plant Genetic Resources for Food and Agriculture under Development**, including material being developed by farmers, shall be at the discretion of its developer, during the period of its development;
- d) Access to **Plant Genetic Resources for Food and Agriculture** protected by intellectual and other property rights shall be consistent with relevant international agreements, and with relevant national laws;

It has not yet been decided whether to make the clarifications to *Article 5e* directly in the text or to place them in Option 2.

- e) The **Provider** shall inform the **Governing Body** at least once every two calendar years about the Material Transfer Agreements entered into, either by:

Option A. Transmitting a copy of the completed Standard Material Transfer Agreement.⁷

or

Option B. In the event that a copy of the Standard Material Transfer Agreement is not transmitted,

- i. ensuring that the completed Standard Material Transfer Agreement is at the disposal of the third party beneficiary as and when needed;
- ii. stating where the Standard Material Transfer Agreement in question is stored, and how it may be obtained; and
- iii. providing the following information:
 - a) The identifying symbol or number attributed to the Standard Material Transfer Agreement by the Provider;

⁷ In the event that the copy of the completed Standard Material Transfer Agreement that is transmitted is shrink-wrap, the **Provider** shall also include information as to (a) the date on which the shipment was sent, and (b) the name of the person to whom the shipment was sent, in accordance with Article 10, Option 2 of the SMTA.] It has not yet been decided whether to make this clarification directly in the text or to place it in Option 2.

- b) The name and address of the Provider;
- c) The date on which the Provider agreed to or accepted the Standard Material Transfer Agreement, and in the case of shrink-wrap, the date on which the shipment was sent;
- d) The name and address of the Recipient, and in the case of a shrink-wrap agreement, the name of the person to whom the shipment was made;
- e) The identification of each accession in Annex I to the Standard Material Transfer Agreement, and of the crop to which it belongs.

according to a schedule to be established by the **Governing Body**. This information shall be made available by the **Governing Body** to the third party beneficiary.⁸

ARTICLE 6 — RIGHTS AND OBLIGATIONS OF THE RECIPIENT

6.1 The **Recipient** undertakes that the **Material** shall be used or conserved only for the purposes of research, breeding and training for food and agriculture. Such purposes shall not include chemical, pharmaceutical and/or other non-food/feed industrial uses.

6.2 The **Recipient** shall not claim any intellectual property or other rights that limit the facilitated access to the **Material** provided under **this Agreement**, or its genetic parts or components, in the form received from the **Multilateral System**.

6.3 In the case that the **Recipient** conserves the **Material** supplied, the **Recipient** shall make the **Material**, and the related information referred to in Article 5b, available to the **Multilateral System** using the Standard Material Transfer Agreement.

6.4 In the case that the **Recipient** transfers the **Material** supplied under **this Agreement** to another person or entity (hereinafter referred to as “the **subsequent recipient**”), the **Recipient** shall

- a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement; and
- b) notify the **Governing Body**, in accordance with Article 5e.

On compliance with the above, the **Recipient** shall have no further obligations regarding the actions of the **subsequent recipient**.

6.5 In the case that the **Recipient** transfers [~~a-Plant Genetic Resources~~] **for Food and Agriculture under Development**

- a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement, provided that Article 5a of the Standard Material Transfer Agreement shall not apply;

⁸ ~~Note by the Secretariat:~~ The Standard Material Transfer Agreement makes provision for information to be provided to the **Governing Body**, in the following Articles: 5e, 6.4b, 6.5c and 6.11h, as well as in *Annex 2*, paragraph 3, *Annex 3*, paragraph 4, and in *Annex 4*. Such information should be submitted to:

The Secretary
International Treaty on Plant Genetic Resources for Food and Agriculture
Food and Agriculture Organization of the United Nations
I-00153 Rome, Italy.

- b) identify, in *Annex 1* to the new material transfer agreement, the **Material** received from the **Multilateral System**, and specify that the **Plant Genetic Resources for Food and Agriculture under Development** being transferred are derived from the **Material**;
- c) notify the **Governing Body**, in accordance with Article 5e; and
- d) have no further obligations regarding the actions of any **subsequent recipient**.

6.6 Entering into a material transfer agreement under paragraph 6.5 shall be without prejudice to the right of the parties to attach additional conditions, relating to further product development, including, as appropriate, the payment of monetary consideration.⁹

6.7 In the case that the **Recipient commercializes a Product** that is a **Plant Genetic Resource for Food and Agriculture** and that incorporates **Material** as referred to in Article 3 of **this Agreement**, and where such **Product** is not **available without restriction** to others for further research and breeding, the **Recipient** shall pay a fixed percentage of the **Sales** of the **commercialized Product** into the mechanism established by the **Governing Body** for this purpose, in accordance with *Annex 2* to **this Agreement**.

6.8 In the case that the **Recipient commercializes a Product** that is a **Plant Genetic Resource for Food and Agriculture** and that incorporates **Material** as referred to in Article 3 of **this Agreement** and where that **Product** is **available without restriction** to others for further research and breeding, the **Recipient** is encouraged to make voluntary payments into the mechanism established by the **Governing Body** for this purpose in accordance with *Annex 2* to **this Agreement**.

6.9 The **Recipient** shall make available to the **Multilateral System**, through the information system provided for in Article 17 of the **Treaty**, all non-confidential information that results from research and development carried out on the **Material**, and is encouraged to share through the **Multilateral System** non-monetary benefits expressly identified in Article 13.2 of the **Treaty** that result from such research and development. After the expiry or abandonment of the protection period of an intellectual property right on a **Product** that incorporates the **Material**, the **Recipient** is encouraged to place a sample of this **Product** into a collection that is part of the **Multilateral System**, for research and breeding.

6.10 A **Recipient** who obtains intellectual property rights on any **Products** developed from the **Material** or its components, obtained from the **Multilateral System**, and assigns such intellectual property rights to a third party, shall transfer the benefit-sharing obligations of **this Agreement** to that third party.

6.11 The **Recipient** may opt as per *Annex 4*, as an alternative to payments under Article 6.7, for the following system of payments:

- a) The **Recipient** shall make payments at a discounted rate during the period of validity of the option;

⁹ Additional conditions attached to the transfer of **Plant Genetic Resources for Food and Agriculture under Development** should be contained in a separate agreement between the parties to the transfer, instead of in the new material transfer agreement provided for under *Article 6.5a*. The **Provider** is not obliged to transmit such a separate agreement, or information about it, to the **Governing Body**, when reporting in accordance with *Article 6.5*. It has not yet been decided whether to make this clarification directly in the text or to place it in Option 2

- b) The period of validity of the option shall be ten years renewable in accordance with *Annex 3 to this Agreement*;
- c) The payments shall be based on the **Sales** of any **Products** and of the sales of any other products that are **Plant Genetic Resources for Food and Agriculture** belonging to the same crop, as set out in Annex 1 to the **Treaty**, to which the **Material** referred to in *Annex 1 to this Agreement* belongs;
- d) The payments to be made are independent of whether or not the **Product** is **available without restriction**;
- e) The rates of payment and other terms and conditions applicable to this option, including the discounted rates are set out in *Annex 3 to this Agreement*;
- f) The **Recipient** shall be relieved of any obligation to make payments under Article 6.7 of **this Agreement** or any previous or subsequent Standard Material Transfer Agreements entered into in respect of the same crop;
- g) After the end of the period of validity of this option the **Recipient** shall make payments on any **Products** that incorporate **Material** received during the period in which this Article was in force, and where such **Products** are not **available without restriction**. These payments will be calculated at the same rate as in paragraph (a) above;
- h) The **Recipient** shall notify the **Governing Body** that he has opted for this modality of payment. If no notification is provided the alternative modality of payment specified in Article 6.7 will apply.¹⁰

ARTICLE 7 — APPLICABLE LAW

The applicable law shall be General Principles of Law, including the UNIDROIT Principles of International Commercial Contracts 2004, the objectives and the relevant provisions of the **Treaty**, and, when necessary for interpretation, the decisions of the **Governing Body**.

ARTICLE 8 — DISPUTE SETTLEMENT

8.1 Dispute settlement may be initiated by the **Provider** or the **Recipient** or ~~(the entity designated by the **Governing Body**)~~ the Food and Agriculture Organization of the United Nations, acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**. It has not yet been decided whether to make this clarification directly in the text or to place it in Option 2.

8.2 The parties to **this Agreement** agree that ~~(the entity designated by the **Governing Body**)~~ the Food and Agriculture Organization of the United Nations (It has not yet been decided whether to make this clarification directly in the text or to place it in Option 2) representing the **Governing Body** and the **Multilateral System**, has the right, as a third party beneficiary, to initiate dispute settlement procedures regarding rights and obligations of the **Provider** and the **Recipient** under **this Agreement**.

¹⁰Where the recipient has disclosed information to the provider before acceptance of the SMTA on the payment modality to be chosen, the Provider should issue a separate SMTA for material to which the payment modality under Article 6.11 will apply. It has not yet been decided whether to make this clarification directly in the text or to place it in Option 2.

8.3 The third party beneficiary has the right to request that the appropriate information, including samples as necessary, be made available by the **Provider** and the **Recipient**, regarding their obligations in the context of **this Agreement**. Any information or samples so requested shall be provided by the **Provider** and the **Recipient**, as the case may be.

8.4 Any dispute arising from **this Agreement** shall be resolved in the following manner:

- a) Amicable dispute settlement: The parties shall attempt in good faith to resolve the dispute by negotiation.
- b) Mediation: If the dispute is not resolved by negotiation, the parties may choose mediation through a neutral third party mediator, to be mutually agreed.
- c) Arbitration: If the dispute has not been settled by negotiation or mediation, any party may submit the dispute for arbitration under the Arbitration Rules of an international body as agreed by the parties to the dispute. Failing such agreement, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, by one or more arbitrators appointed in accordance with the said Rules. Either party to the dispute may, if it so chooses, appoint its arbitrator from such list of experts as the Governing Body may establish for this purpose; both parties, or the arbitrators appointed by them, may agree to appoint a sole arbitrator, or presiding arbitrator as the case may be, from such list of experts. The result of such arbitration shall be binding.

ARTICLE 9 — ADDITIONAL ITEMS

Warranty

9.1 The **Provider** makes no warranties as to the safety of or title to the **Material**, nor as to the accuracy or correctness of any passport or other data provided with the **Material**. Neither does it make any warranties as to the quality, viability, or purity (genetic or mechanical) of the **Material** being furnished. The phytosanitary condition of the **Material** is warranted only as described in any attached phytosanitary certificate. The **Recipient** assumes full responsibility for complying with the recipient nation's quarantine and biosafety regulations and rules as to import or release of **genetic material**.

Duration of Agreement

9.2 **This Agreement** shall remain in force so long as the **Treaty** remains in force.

ARTICLE 10 — SIGNATURE/ACCEPTANCE

The **Provider** and the **Recipient** may choose the method of acceptance unless either party requires **this Agreement** to be signed.

Option 1 –Signature ^{*11}

¹¹ Where the **Provider** chooses signature, only the wording in Option 1 will appear in the Standard Material Transfer Agreement. Similarly where the **Provider** chooses either shrink-wrap or click-wrap, only the wording in Option 2 or Option 3, as appropriate, will appear in the Standard Material Transfer Agreement.

I, (*Full Name of Authorized Official*), represent and warrant that I have the authority to execute **this Agreement** on behalf of the **Provider** and acknowledge my institution's responsibility and obligation to abide by the provisions of **this Agreement**, both by letter and in principle, in order to promote the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture**.

Signature..... Date.....
Name of the **Provider**

I, (*Full Name of Authorized Official*), represent and warrant that I have the authority to execute **this Agreement** on behalf of the **Recipient** and acknowledge my institution's responsibility and obligation to abide by the provisions of **this Agreement**, both by letter and in principle, in order to promote the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture**.

Signature..... Date.....
Name of the **Recipient**.....

Option 2 – Shrink-wrap Standard Material Transfer Agreements*¹⁰

The **Material** is provided conditional on acceptance of the terms of **this Agreement**. The provision of the **Material** by the **Provider** and the **Recipient's** acceptance and use of the **Material** constitutes acceptance of the terms of **this Agreement**.

Option 3 – Click-wrap Standard Material Transfer Agreement*¹⁰

- I hereby agree to the above conditions.

Where the "click-wrap" form is chosen, the **Material** should also be accompanied by a written copy of the Standard Material Transfer Agreement.

Annex 2

RATE AND MODALITIES OF PAYMENT UNDER ARTICLE 6.7 OF THIS AGREEMENT

1. If a **Recipient**, its affiliates, contractors, licensees, and lessees, **commercializes** a **Product** or **Products**, then the **Recipient** shall pay one point-one percent (1.1 %) of the **Sales** of the **Product** or **Products** less thirty percent (30%); except that no payment shall be due on any **Product** or **Products** that:

(a) are **available without restriction** to others for further research and breeding in accordance with Article 2 of **this Agreement**;

(b) have been purchased or otherwise obtained from another person or entity who either has already made payment on the **Product** or **Products** or is exempt from the obligation to make payment pursuant to subparagraph (a) above;

(c) are sold or traded as a commodity.

2. Where a **Product** contains [~~a-Plant Genetic Resources~~] **for Food and Agriculture** accessed from the **Multilateral System** under two or more material transfer agreements based on the Standard Material Transfer Agreement only one payment shall be required under paragraph 1 above.

3. The **Recipient** shall submit to the **Governing Body**, within sixty (60) days after each calendar year ending December 31st, an annual report setting forth:

(a) the **Sales** of the **Product** or **Products** by the **Recipient**, its affiliates, contractors, licensees and lessees, for the twelve (12) month period ending on December 31st;

(b) the amount of the payment due;

[(c) the **Material** received from the **Multilateral System**, from which the **Product** or **Products** were derived; and] It has not yet been decided whether to make this clarification directly in the text or to place it in Option 2.

([e]d) information that allows for the identification of any restrictions that have given rise to the benefit-sharing payment.

4. Payment shall be due and payable upon submission of each annual report. All payments due to the **Governing Body** shall be payable in *United States dollars (US\$)*¹² for the following account established by the **Governing Body** in accordance with Article 19.3f of the **Treaty**:

FAO Trust Fund (USD) GINC/INT/031/MUL,
IT-PGRFA (Benefit-sharing),
HSBC New York, 452 Fifth Ave., New York, NY, USA, 10018,
Swift/BIC: MRMDUS33, ABA/Bank Code: 021001088,

¹² *Note by the Secretariat:* The **Governing Body** has not yet considered the question of currency of payment. Until it does so, Standard Material Transfer Agreements should specify United States dollars (US\$).

Account No. 000156426.⁴³

Annex 3

**TERMS AND CONDITIONS OF THE ALTERNATIVE PAYMENTS SCHEME UNDER
ARTICLE 6.11 OF THIS AGREEMENT**

1. The discounted rate for payments made under Article 6.11 shall be zero point five percent (0.5 %) of the **Sales** of any **Products** and of the sales of any other products that are **Plant Genetic Resources for Food and Agriculture** belonging to the same crop, as set out in Annex 1 to the **Treaty**, to which the **Material** referred to in *Annex 1* to **this Agreement** belong.
2. Payment shall be made in accordance with [~~the banking instructions set out in-~~ paragraph[s] 3a, 3b and] 4 of *Annex 2* to **this Agreement**, provided that paragraph[s] 3a, 3b and 4 of *Annex 2* shall apply to the **Sales** of any **Products** and to the sales of any other products that are **Plant Genetic Resources for Food and Agriculture** of the crop or crops for which the **Recipient** has opted for the alternative payments scheme.] It has not yet been decided whether to make the clarifications to *paragraph 2* of *Annex 2* directly in the text or to place them in Option 2.
3. When the **Recipient** transfers **Plant Genetic Resources for Food and Agriculture under Development**, the transfer shall be made on the condition that the **subsequent recipient** shall pay into the mechanism established by the **Governing Body** under Article 19.3f of the **Treaty** zero point five percent (0.5 %) of the **Sales** of any **Product** derived from such **Plant Genetic Resources for Food and Agriculture under Development**, whether the **Product** is **available or not without restriction**.
4. At least six months before the expiry of a period of ten years counted from the date of signature of **this Agreement** and, thereafter, six months before the expiry of subsequent periods of five years, the **Recipient** may notify the **Governing Body** of his decision to opt out from the application of this Article as of the end of any of those periods. In the case the **Recipient** has entered into other Standard Material Transfer Agreements, the ten years period will commence on the date of signature of the first Standard Material Transfer Agreement where an option for this Article has been made.
5. Where the **Recipient** has entered or enters in the future into other Standard Material Transfer Agreements in relation to material belonging to the same crop[s], the **Recipient** shall only pay into the referred mechanism the percentage of sales as determined in accordance with this Article or the same Article of any other Standard Material Transfer Agreement. No cumulative payments will be required.

[⁴³ *Note by the Secretariat:* This is the Trust Account provided for in Article 6.3 of the Financial Rules, as approved by the Governing Body at its First Session (*Appendix E* to IT/GB-1/06/Report).]

Annex 4

**OPTION FOR CROP-BASED PAYMENTS UNDER THE ALTERNATIVE PAYMENTS
SCHEME UNDER ARTICLE 6.11 OF THIS AGREEMENT**

It has not yet been decided whether to make the clarifications to *Annex 4* directly in the text or to place them in Option 2.

I (full name of **Recipient** or **Recipient's authorised official**) declare to opt for payment in accordance with Article 6.11 of **this Agreement**, for the following crop or crops:

.....

Signature.....

Date.....¹⁴

Address of **Recipient**:

.....
.....
.....
.....

Name and Address of **Provider**:

.....
.....
.....
.....

Provider's Standard Material Transfer Agreement identifying symbol or number:

.....

Date of the Standard Material Transfer Agreement.

.....

¹⁴ In accordance with Article 6.11h of [**this Agreement**] ~~the Standard Material Transfer Agreement~~, the option for this modality of payment will become operative only once notification has been provided by the **Recipient** to the **Governing Body**. The signed declaration opting for this modality of payment must be sent by the **Recipient** to the **Governing Body** at the following address, whichever method of acceptance of **this Agreement** (signature, shrink-wrap or click-wrap) has been chosen by the parties to **this Agreement**, and whether or not the **Recipient** has already indicated his acceptance of this option in accepting **this Agreement** itself:

The Secretary,
International Treaty on Plant Genetic Resources for Food and Agriculture
Food and Agriculture Organization of the United Nations
I-00153 Rome, Italy.

The signed declaration must be accompanied by ~~the following:~~

- ~~The date on which **this Agreement** was entered into;~~
- ~~The name and address of the **Recipient** and of the **Provider**;~~
- ~~A copy of *Annex 1* to **this Agreement**.~~

Once notification has been provided by the **Recipient** to the **Governing Body** for one or more crops, the payment rate of the alternative payments scheme is operative for any subsequent Standard Material Transfer Agreement entered into in respect of the same crop or crops, for the period specified in *Article 6.11b*. During this period, no further notification in respect of this crop or these crops is required. It has not yet been decided whether to make this clarification directly in the text or to place it in Option 2.

Report Appendix 2

OPTION 2
**EXPLANATORY NOTE TO THE
STANDARD MATERIAL TRANSFER AGREEMENT**

Relevant Article(s)	Related Explanations
Article 4.3 Article 4.5 Article 8.1 Article 8.2	<p>The Food and Agriculture Organization of the United Nations is the entity designated by the Governing Body in the text of the SMTA.</p>
Article 5e	<p>Providers [shall] / [may] inform the Governing Body at least every two calendar years about the Material Transfer Agreements entered into, either by:</p> <p>Option A. Transmitting a copy of the completed Standard Material Transfer Agreement,</p> <p style="text-align: center;"><i>or</i></p> <p>Option B. In the event that a copy of the Standard Material Transfer Agreement is not transmitted,</p> <ol style="list-style-type: none"> i. ensuring that the completed Standard Material Transfer Agreement is at the disposal of the third party beneficiary as and when needed; ii. stating where the Standard Material Transfer Agreement in question is stored, and how it may be obtained; and iii. providing the following information: <ol style="list-style-type: none"> a) The identifying symbol or number attributed to the Standard Material Transfer Agreement by the Provider; b) The name and address of the Provider; c) The date on which the Provider agreed to or accepted the Standard Material Transfer Agreement, and in the case of shrink-wrap, the date on which the shipment was sent; d) The name and address of the Recipient, and in the case of a shrink-wrap agreement, the name of the person to whom the shipment was made; e) The identification of each accession in <i>Annex I</i> to the Standard Material Transfer Agreement, and of the crop to which it belongs. <p>[In the event that a copy of the completed Standard Material Transfer Agreement that is transmitted is shrink-wrap, the Provider should also include information as to:</p> <ol style="list-style-type: none"> a) the date on which the shipment was sent; and

	b) the name of the person to whom the shipment was sent, in accordance with Article 10, Option 2 of the SMTA.]
Article 6.6	Additional conditions attached to the transfer of Plant Genetic Resources for Food and Agriculture under Development should be contained in a separate agreement between the parties to the transfer, instead of in the new material transfer agreement provided for under Article 6.5a. The Provider is not obliged to transmit such a separate agreement, or information about it, to the Governing Body, when reporting in accordance with Article 6.5.
Article 6.11	[Where the recipient has disclosed information to the provider before acceptance of the Standard Material Transfer Agreement on the payment modality to be chosen, the Provider should issue a separate Standard Material Transfer Agreement for material to which the payment modality under Article 6.11 will apply.]
Annex 1	<p>[Information to be provided in Annex 1 should include:</p> <ul style="list-style-type: none"> • the identification of the crop to which the accession belongs; • the accession number or other identifier; • any associated information, or source from which it may be obtained.] <p>[If the Material is Plant Genetic Resources for Food and Agriculture under Development, as provided for in Article 6.5, the Provider should notify the Governing Body of:</p> <ul style="list-style-type: none"> • the accession number or other identifier in the original Standard Material Transfer Agreement; • the original Standard Material Transfer Agreement's identifying symbol or number; • the name and address of the Provider; • the name and address of the Recipient; • the date of the original Standard Material Transfer Agreement.]
Annex 2	[In submitting the report to the Governing Body in accordance with paragraph 3 of <i>Annex 2</i> , the Recipient should report on the Material received from the Multilateral System, from which the Product or Products were derived.]
Annex 3	[Payment should be made in accordance with paragraphs 3a, 3b and 4 of <i>Annex 2</i> to this Agreement, provided that paragraphs 3a, 3b and 4 of <i>Annex 2</i> should apply to the Sales of any Products and to the sales of any other products that are Plant Genetic Resources for Food and Agriculture of the crop or crops for which the Recipient has opted for the alternative payments scheme.]
Annex 4	<p>Recipients opting for the crop-based payment modality under Article 6.11, by submitting Annex 4 to the Standard Material Transfer Agreement, duly signed, should at the same time specify to which crop it applies.</p> <p>The notification to the Governing Body by a Recipient in accordance with Annex 4 should specify:</p>

	<ul style="list-style-type: none">• to which crop or crops it applies;• the address of the Recipient;• the name and address of the Provider;• the Provider's Standard Material Transfer Agreement identifying symbol or number;• the date of the Standard Material Transfer Agreement. <p>Once the notification has been provided by the Recipient to the Governing Body for one or more crops, the payment rate of alternative payments scheme is operative for any subsequent Standard Material Transfer Agreement entered into in respect of the same crop or crops, for the period of specified in Article 6.11b. During this period, no further notification in respect of this crop or these crops is expected.</p>
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Report Appendix 3

OPTION 3

[SCHEDULE

<p>Article 4.3 Article 4.5 Article 8.1 Article 8.2</p>	<p>The Food and Agriculture Organization of the United Nations is the entity designated by the Governing Body in the text of the SMTA.</p>
<p>Article 5e)</p>	<p>Providers shall inform the Governing Body at least every two calendar years about the Material Transfer Agreements entered into, either by:</p> <p>Option A. Transmitting a copy of the completed Standard Material Transfer Agreement,</p> <p style="text-align: center;"><i>or</i></p> <p>Option B. In the event that a copy of the Standard Material Transfer Agreement is not transmitted,</p> <ol style="list-style-type: none"> i. ensuring that the completed Standard Material Transfer Agreement is at the disposal of the third party beneficiary as and when needed; ii. stating where the Standard Material Transfer Agreement in question is stored, and how it may be obtained; and iii. providing the following information: <ol style="list-style-type: none"> a) The identifying symbol or number attributed to the Standard Material Transfer Agreement by the Provider; b) The name and address of the Provider; c) The date on which the Provider agreed to or accepted the Standard Material Transfer Agreement, and in the case of shrink-wrap, the date on which the shipment was sent; d) The name and address of the Recipient, and in the case of a shrink-wrap agreement, the name of the person to whom the shipment was made; e) The identification of each accession in <i>Annex I</i> to the Standard Material Transfer Agreement, and of the crop to which it belongs. <p>[In the event that a copy of the completed Standard Material Transfer Agreement that is transmitted is shrink-wrap, the Provider shall also include information as to:</p> <ol style="list-style-type: none"> a) the date on which the shipment was sent; and b) the name of the person to whom the shipment was sent, in accordance with Article 10, Option 2 of the SMTA.]
<p>Article 6.6</p>	<p>Additional conditions attached to the transfer of Plant Genetic Resources</p>

	for Food and Agriculture under Development should be contained in a separate agreement between the parties to the transfer, instead of in the new material transfer agreement provided for under Article 6.5a). The Provider is not obliged to transmit such a separate agreement, or information about it, to the Governing Body, when reporting in accordance with Article 6.5.
Article 6.11	[Where the recipient has disclosed information to the provider before acceptance of the Standard Material Transfer Agreement on the payment modality to be chosen, the Provider should issue a separate Standard Material Transfer Agreement for material to which the payment modality under Article 6.11 will apply.]
Annex 1	<p>[Information to be provided in Annex 1 shall include:</p> <ul style="list-style-type: none"> • the identification of the crop to which the accession belongs; • the accession number or other identifier; • any associated information, or source from which it may be obtained.] <p>[If the Material is Plant Genetic Resources for Food and Agriculture under Development, as provided for in Article 6.5, the Provider shall notify the Governing Body of:</p> <ul style="list-style-type: none"> • the accession number or other identifier in the original Standard Material Transfer Agreement; • the original Standard Material Transfer Agreement's identifying symbol or number; • the name and address of the Provider; • the name and address of the Recipient; • the date of the original Standard Material Transfer Agreement.]
Annex 2	[In submitting the report to the Governing Body in accordance with paragraph 3 of <i>Annex 2</i> , the Recipient shall report on the Material received from the Multilateral System, from which the Product or Products were derived.]
Annex 3	[Payment shall be made in accordance with paragraphs 3a, 3b and 4 of <i>Annex 2</i> to this Agreement, provided that paragraphs 3a, 3b and 4 of <i>Annex 2</i> shall apply to the Sales of any Products and to the sales of any other products that are Plant Genetic Resources for Food and Agriculture of the crop or crops for which the Recipient has opted for the alternative payments scheme.]
Annex 4	<p>Recipients opting for the crop-based payment modality under Article 6.11, by submitting Annex 4 to the Standard Material Transfer Agreement, duly signed, shall at the same time specify to which crop it applies.</p> <p>The notification to the Governing Body by a Recipient in accordance with Annex 4 shall specify:</p> <ul style="list-style-type: none"> • to which crop or crops it applies; • the address of the Recipient; • the name and address of the Provider;

	<ul style="list-style-type: none">• the Provider's Standard Material Transfer Agreement identifying symbol or number;• the date of the Standard Material Transfer Agreement. <p>Once the notification has been provided by the Recipient to the Governing Body for one or more crops, the payment rate of alternative payments scheme is operative for any subsequent Standard Material Transfer Agreement entered into in respect of the same crop or crops, for the period of specified in Article 6.11b). During this period, no further notification in respect of this crop or these crops is expected.</p>
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Report Appendix 4

LIST OF PARTICIPANTS

COMMITTEE MEMBERS	
AFRICA	<p>Ms Hadyatou DANTSEY-BARRY Point Focal National des ressources phylogénétiques Institut togolais de recherche agronomique B.P. 1163, Lomé, Togo Phone: +228 222 52148 Fax: +228 9016 6189 E-mail: hadyabarry@yahoo.fr</p> <p>Mr Didier BALMA Secrétaire permanent de la Commission nationale de gestion des ressources phylogénétiques Ministère de la recherche scientifique et de l'innovation (MRSI) 01 B.P. 476, Ouagadougou 01, Burkina Faso Phone: +226 5030 8269 Fax: +226 5031 5003 E-mail: balma_didier@yahoo.fr</p>
ASIA	<p>Mr Eng Siang LIM Expert Advisor for Plant and Food Genetic Resources Ministry of Agriculture Kuala Lumpur, Malaysia Phone: +603 5611 9161 E-mail: eslim_choi@yahoo.com</p> <p>Mr R. C. AGRAWAL Registrar-General Protection of Plant Varieties & Farmers' Rights Authority, Ministry of Agriculture S-2, Societies Block, NASC Complex DPS Marg, New Delhi – 110012, India Phone: +91 11 2584 3316 Fax: +91 11 2584 0478 E-mail: rg-ppvfra@nic.in</p>
EUROPE	<p>Mr Fernando LATORRE GARCÍA Técnico Superior Especialista Centro de Recursos Fitogenéticos Instituto Nacional de Investigación y Tecnología Agraria y Alimentaria Autovía A2, km 36 Apdo 1045, Alcalá de Henares, Madrid, España Phone: +34 91 881 9286 (ext. 25) E-mail: latorre@inia.es</p>

	<p>Mr François BURGAUD G.N.I.S. 44 rue du Louvre 75001 Paris, France Phone : +33 1 4233 7694 E-mail: Francois.burgaud@gnis.fr</p>
<p>LATIN AMERICA AND THE CARIBBEAN</p>	<p>Ms Rosa Miriam VASCONCELOS Coordinator for Regulatory Affairs Brazilian Agricultural Research Corporation Ministry of Agriculture, Livestock and Food Supply Parque Estacao Biologica Pq EB W3 Norte (final) Ed. Sede Caixa Postal 040315 CEP 70770 - 901 Brasilia – DF, Brazil Phone: +55 61 3448 4825 Fax: +55 61 3347 4158 E-mail: rosa.miriam@embrapa.br</p> <p>Ms Mónica MARTÍNEZ MENDUÍÑO Minister, Permanent Mission of Ecuador to the United Nations Office in Geneva Rue de Lausanne 80-82 1202 Geneva, Switzerland Phone: +41 786 143 370 E-mail: monicaun@hotmail.com mmartinez@mrrree.gob.ec</p>
<p>NEAR EAST</p>	<p>Ms Fadila AL-SALAMEEN Associate Research Scientist Biotechnology Department P.O. Box 24885 13109 Safat, Kuwait Phone: +965 2498 9157 or +965 9984 3360 Fax: +965 2498 9069 E-mail: fslamian@safat.kisr.edu.kw</p>
<p>NORTH AMERICA</p>	<p>Mr Brad FRALEIGH Director, Multilateral Science Relations International Engagement Division Agriculture and Agri-Food Canada 1341 Baseline Road, Tower 5-5, Room 133 Ottawa, ON Canada K1A 0C6 Phone: +1 613 773 1838 Fax: +1 613 773 1833 E-mail: brad.fraleigh@agr.gc.ca</p> <p>Ms June BLALOCK Technology Licensing Programme Coordinator USDA, ARS, Office of Technology Transfer Room 4-1174, George Washington Carver Center 5601 Sunnyside Ave. Beltsville, MD 20705-5131, USA Phone: +1 301 504 5989</p>

	<p>Fax: +1 301 504 5060 Email: june.blalock@ars.usda.gov</p>
SOUTH WEST PACIFIC	<p>Ms Emily COLLINS Embassy of Australia Via Antonio Bosio 5 00161 Rome, Italy Phone: +39 06 852 721 Fax: +39 06 8527 2300 E-mail: faorep@dfat.gov.au</p> <p>Mr Poasa NAULUVULA Principal Research Officer Koronivia Research Station Ministry of Agriculture Suva, Fiji Islands Phone: +679 347 7044 or +679 849 4231 Fax: +679 340 0262 E-mail: pnauluvula@ymail.com</p>
TECHNICAL EXPERTS SERVING AS OBSERVERS	
	<p>Ms Anke VAN DEN HURK Plantum NL Vossenburchkade 68 2805 PC Gouda, The Netherlands Phone: + 31 182 688 668 Fax: + 31 182 688 667 E-mail: a.vandenhurk@plantum.nl</p>
	<p>Mr Michael HALEWOOD (Representative of the CGIAR – Consortium Office) Head Policy Research and Support Unit Bioversity International (CGIAR) Via dei Tre Denari, 472/A Maccarese, Italy Phone: +39 06 611 8294 Fax: +39 06 619 79661 E-mail: m.halewood@cgiar.org</p>
	<p>Mr Carlos CORREA Professor University of Buenos Aires Buenos Aires, Argentina Phone: +54 11 4 809 5600 ext. 5558 E-mail: ceidie@derecho.uba.ar</p>
	<p>Mr Dan LESKIEN Senior Liaison Officer Secretariat of the Commission on Genetic Resources for Food and Agriculture Food and Agriculture Organization of the United Nations</p>

	<p>Viale delle Terme di Caracalla 1 00153 Rome, Italy Phone: +39 06 5705 4666 Fax: +39 06 5705 5246 E-mail: Dan.Leskien@fao.org</p>
	<p>Mr Pat MOONEY Executive Director ETC Group, Action Group on Erosion, Technology and Concentration 180 Metcalfe Street, Suite 206 Ottawa, ON Canada K2P 1P5 Phone: +1 613 241 2267 Fax: +1 613 241 2506 E-mail: mooney@etcgroup.org</p>
<p>OTHER OBSERVERS</p>	
	<p>Mr Oliver M. LEWIS Attorney-Adviser Office of the Legal Adviser (L/OES) U.S. Department of State 2201 C Street NW Washington, DC, USA, 20520 Phone: +1 202 647 1698 Fax: +1 202 736 7620 E-mail: lewisom@state.gov</p>

**SECRETARIAT OF THE INTERNATIONAL TREATY
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

Mr Shakeel BHATTI

Secretary

International Treaty on Plant Genetic Resources
for Food and Agriculture

Food and Agriculture Organization of the United Nations
Viale delle Terme di Caracalla 1

00153 Rome, Italy

Phone: +39 06 5705 3441

Fax: +39 06 5705 3057

E-mail: shakeel.bhatti@fao.org

Mr Daniele MANZELLA

Treaty Support Officer

International Treaty on Plant Genetic Resources
for Food and Agriculture

Food and Agriculture Organization of the United Nations
Viale delle Terme di Caracalla 1

00153 Rome, Italy

Phone: +39 06 5705 6180

Fax: +39 06 5705 3057

E-mail: daniele.manzella@fao.org

Mr Clive STANNARD

Consultant

International Treaty on Plant Genetic Resources
for Food and Agriculture

Food and Agriculture Organization of the United Nations
Viale delle Terme di Caracalla 1

00153 Rome, Italy

Phone: +39 333 4334 009

E-mail: clive@stannard.info