

May 2014



The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

FIRST MEETING OF THE *AD HOC* OPEN-ENDED WORKING GROUP TO ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM

Geneva, Switzerland, 14-16 May 2014

REPORT

ITEM 1. OPENING OF THE SESSION

1. At its Fifth Session, the Governing Body decided to establish the *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the Multilateral System of Access and Benefit-sharing through Resolution 2/2013. The first meeting of the Working Group was held in Geneva, Switzerland, from 14 to 16 May 2014. It was preceded by a day of regional and multistakeholder consultations, including through the information event *History and existing work on Innovative approaches to mobilize income to the Benefit-sharing Fund: outcomes of the work undertaken by the Ad Hoc Advisory Committee on the Funding Strategy*.

2. The Working Group thanked the FAO Liaison Office in Geneva (FAO-LOG) for supporting the preparation and running of the first meeting of the Working Group. In its opening remarks to the information event, Ms Sandra Aviles, Officer-in-Charge, Liaison Office in Geneva of FAO, highlighted that the office will continue to support the work of the Working Group and its stakeholder consultations, including by facilitating a consultation with Geneva-based and other relevant stakeholder groups on innovative financing approaches and benefit-sharing mechanisms and the management of global public goods. A report of this consultation will be made available as an input to the Working Group at one of its subsequent meetings. The Working Group also thanked the Swiss Confederation for having generously provided the facilities for holding the meeting at the Centre International de Conférence de Genève (CICG).

ITEM 2. ELECTION OF CO-CHAIRPERSONS

3. The Working Group elected Mr Modesto Fernandez (Cuba) and Mr Bert Visser (The Netherlands) as its two Co-Chairpersons.

4. Further to Resolution 2/2013, the Working Group invited a number of silent observers to follow the meeting. These silent observers had made a request in advance to attend the meeting to the Secretariat. The Working Group decided that silent observers had no speaking rights unless at the invitation of the Co-Chairs. All requests from Contracting Parties or stakeholder groups to have additional observers present beyond the number of representatives invited according to the Resolution will be considered as silent observers. It further decided that this decision would set no precedents for other inter-sessional bodies of the Governing Body, and requested the Governing

Body to develop procedures for participation in future inter-sessional meetings. The list of participants is attached as *Appendix 2*.

ITEM 3. ADOPTION OF AGENDA

5. The Working Group adopted its agenda, as given in *Appendix 1*.

ITEM 4. ENHANCING THE FUNCTIONING OF THE MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING: BACKGROUND ON THE WORK UNDERTAKEN BY THE AD HOC COMMITTEE ON THE FUNDING STRATEGY, AND ITS FURTHER DEVELOPMENT

Factors leading to the current short-fall of income to the Benefit-sharing Fund

6. The Working Group considered document, *Background on the Work Undertaken by the Ad Hoc Advisory Committee on the Funding Strategy, and its Further Development*¹ and thanked the Secretariat for its preparation.

7. The Working Group reviewed the factors leading to the current short-fall of user-based income to the Benefit-sharing Fund, including in particular: the slow speed of plant breeding; the availability of material, and type of material; the alternative sources of materials; avoidance of SMTA material and the problem of voluntary payments; the imbalance of payment rates between options; and the transaction costs for users.

8. The Working Group noted the need to increase the attractiveness of the System for both providers and recipients of materials. It highlighted the importance of keeping track with the progress that is being made in plant breeding science and the rapid technical changes in the seed sector. It especially emphasized that the Treaty needed to take into consideration technical advances, in particular the increasing role of DNA information in plant breeding, in the context of developing innovative approaches to generate income for the Benefit-sharing Fund.

9. The Working Group noted that the Nagoya Protocol would probably come into force in the near future and agreed that it will be crucial to continue to stress the special features of plant genetic resources for food and agriculture. In this context, the Working Group provides a unique opportunity for the Treaty community to work together to strengthen its mechanisms for access and benefit-sharing so that the key role of the Treaty in the International Regime of access and benefit-sharing is fully respected by all fora and processes.

10. The Working Group requested more data on the current use of the Multilateral System, including about users, the material used and the availability of material, to better understand questions such as why the increase in seed sales in recent years has not resulted in income to the Benefit Sharing Fund. It noted that assessing the ways in which the funds are being used, and demonstrating the effectiveness of the projects, and their relevance to donor and user priorities will increase the willingness of stakeholder groups to make contributions to the Benefit-sharing Fund.

11. The Working Group recognized that in the immediate future, voluntary contributions should continue to play a role to increase the funding available under the Benefit-sharing Fund.

¹ IT/OWG-EFMLS-1/14/3.

Innovative approaches

12. The Working Group reviewed the six innovative approaches identified by the *Ad Hoc* Advisory Committee on the Funding Strategy (ACFS)² and alternative versions presented in the meeting. The rationale and objectives behind the various approaches were presented and discussed in some depth. It was agreed to keep all approaches under review, in preparation for the second meeting.

13. There was wide support for revisiting SMTA Article 6.11, including in the context of its relationship with revisited Articles 6.7/6.8. There was agreement that it should be made as attractive as possible to users. The strengthening of the use of the SMTA as a certificate of compliance was also raised. There was agreement that any proposal should be made interesting to users. Less priority was given to considering two innovative approaches—novel ways to attract user-based voluntary funding, and up-front payments on access, during the meeting. In preparation for the next meeting, the possibility of making the innovative approach—promoting regular seed-sales based contributions — more attractive to Contracting Parties, should be considered.

14. Recalling that the scope of the Treaty is all plant genetic resources for food and agriculture and that the Multilateral System deals both with access and benefit-sharing, there was general agreement that an efficient benefit-sharing approach and the enhancement of the Multilateral System are closely inter-connected. All materials in the System, those of Contracting Parties and those held by natural and legal persons, should be made available in a transparent manner. This would mean not only expanding the amount of material available, but also ensuring the materials most attractive to users are actually available. The need to provide capacity-building and support to developing countries to enable them to do so was stressed, as well as the need to identify other possible reasons why other material is not available to users.

15. The Working Group, in its later meetings, would need to consider, as a whole, the expansion of Treaty access and benefit-sharing provisions, to enhance the functioning of the Multilateral System.

16. It was recognized that the outcome of studies requested by the Governing Body, which the Secretariat was undertaking, in preparation for the following meeting, would be necessary before deciding on the measures to be proposed to the Governing Body. A number of factors were identified, to be taken into account in evaluating and further developing the innovative approaches under the Multilateral System. These included:

- Their capacity to provide sustainable and predictable income to the Benefit-sharing Fund,
- Their ability to expand the use of the Multilateral System,
- Whether they would attract wider user acceptance,
- Whether they require any changes to the text of the Treaty,
- Their ability to include a differentiated approach when material is freely available for research and breeding,
- Their legal and policy implications for the Treaty,
- Whether they strengthen confidence by both Contracting Parties, and providers and users, and,
- Their potential to simplify procedures and reduce transaction costs, in particular in relation to tracking and tracing, while providing legal and accounting certainty.

² IT/OWG-EFMLS-1/14/4.

17. In considering the innovative approaches, their consistency with the objectives and the provisions of the Treaty should be taken into account, and should be reflected in the studies being undertaken by the Secretariat. The Working Group also emphasized that the studies should be short and strategic in nature, primarily serving to help deliberations of the Working Group and that the understanding of factors influencing users' interactions with the Multilateral System will be an important input for the future deliberations of the Working Group.

ITEM 5. TIMING AND PREPARATIONS FOR FUTURE MEETINGS OF THE WORKING GROUP

18. The Working Group considered the document *Preparations for future meetings of the Working Group*.³

19. The Working Group reviewed the list of inputs for future meetings and provided a number of recommendations regarding the preparation by the Secretariat of studies requested by the Governing Body. It requested Study 1 to include a review of the current use of the Multilateral System and Study 2 to take into account the relevant interfaces with the Nagoya Protocol, UPOV Convention and other relevant instruments. Such study should also describe which approaches would necessitate an amendment to the Treaty and present legal options to give effect to the approaches. Such options would be considered by the Working Group in preparing the measures to be proposed to the Governing Body. It noted that Study 4 would involve a questionnaire to be provided to stakeholders and followed up with interviews where possible. The Secretariat should take into account views expressed in the informal stakeholder dialogue facilitated by the Co-chairs on the third day of the meeting. The Studies will be circulated by 1 October in English. Executive summaries of the Studies will be made available in all languages by the third week of October.

20. The Working Group took note of the tentative schedule for its second and third meetings, in late November 2014 and May 2015, respectively and urged Contracting Parties to provide support and financial resources for the third meeting. It requested the Secretariat to keep the Co-Chairs informed of any developments regarding arrangements for future meetings. The Working Group agreed that the time and place of the second meeting will be communicated by the first week of July.

21. The Working Group decided that arrangements for participation of observers at its subsequent meetings should be similar to those followed for the first meeting. It distinguished the following categories for processing future requests: Contracting Party Observers, Stakeholder groups, and silent observers (including non-Contracting Parties, Intergovernmental organizations, and the academic sector). The Working Group requested the Legal Office of FAO to be present at the second meeting.

22. The Working Group requested the Co-Chairs to continue the established practice of consulting intersessionally with stakeholder groups, in a formal, transparent and inclusive manner, to assist in the development of innovative approaches and requested them to report back on progress at the second meeting. It requested the Regional Groups to enable consultations amongst Contracting Parties and with stakeholders during the intersessional period in preparation for the second meeting. It also requested the stakeholder groups to consult their constituencies by contacting their members, holding discussions, and contributing inputs from their constituencies to the second meeting.

23. For the agenda of its second meeting, the Working Group decided that it would consider the studies during the first day. It further requested that an information event be organized during

³ IT/OWG-EFMLS-1/14/5

the regional consultations to precede the meeting on the comparative analysis of the innovative approaches.

ITEM 6. OTHER BUSINESS

24. No other business were identified by the Working Group.

ITEM 7. ADOPTION OF THE REPORT

25. The Working Group adopted the report of its first meeting.

Appendix 1

INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

FIRST MEETING OF THE <i>AD-HOC</i> OPEN-ENDED WORKING GROUP TO ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM
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Geneva, Switzerland, 14-16 May 2014
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AGENDA

1. Opening of the meeting
2. Election of Co-chairs
3. Adoption of the agenda and time table
4. Enhancing the functioning of the Multilateral System of Access and Benefit-sharing:
background on the work undertaken by the *Ad Hoc* Committee on the Funding Strategy, and
its further development
 - 4.1 Factors leading to the current short-fall of income to the Benefit-sharing Fund
 - 4.2 Innovative approaches already identified
 - 4.3 Further possible innovative approaches
 - 4.4 The concepts involved in revisiting SMTA Articles 6.7/6.8 and 6.11, and their
inter-relationship
 - 4.5 Other measures that can enhance monetary benefit-sharing
5. Timing and preparations for future meetings of the Working Group
 - 5.1 Identification and scheduling of inputs needed
 - 5.2 Working Group's consultations with stakeholders between sessions
6. Other business
7. Adoption of the report

Appendix 2

**LIST OF PARTICIPANTS - AD HOC OPEN-ENDED WORKING GROUP TO ENHANCE
THE FUNCTIONING OF THE MULTILATERAL SYSTEM OF ACCESS AND
BENEFIT-SHARING**

REGION	REPRESENTATIVES
AFRICA	<p>Ms Elizabeth MATOS Président Comité national des ressources phytogénétiques Prédio CNIC-U.A.N. Av. Revolução de Outubro Box 10043 (BG) Luanda, Angola Phone: +244 923937353 (M) Email: lizmatos@netcabo.co.ao liz.matos35@gmail.com</p>
	<p>Mr John Wasswa MULUMBA Curator Entebbe Botanic Gardens National Agricultural Research Organization (NARO) Plot 2-4 Barkeley Road Entebbe, Uganda Phone: +256 414320638 Fax: +256 414321070 Email: jwmulumba@yahoo.com</p>
	<p>Mr Mohamed EL HADDIOUI Ingénieur en Chef Division du Control des Semences et Plantes, Office National de la Sécurité Sanitaire des Produits Alimentaires, Ministère de l'Agriculture et de la Pêche Maritime B.P. 1308, Rabat, Morocco Phone: +212 537 771085 Email: med.elhaddioui@gmail.com</p>

	<p>Mr Kudzai KUSENA Curator Genetic Resources and Biotechnology Institute Fifth Street Extension PO Box CY 550 Causeway, Harare, Zimbabwe Phone: +263 4 704531 - 702519 - 704531 Cell: +263 773041186 Fax: +263 4 700339 Email: ngbz@mweb.co.zw kudzai kusena@yahoo.com</p> <p>M. Kan Sylvain KOUAKOU Sous-Directeur de la Reserche Agricole Ministère de l'Agriculture 30 BP 247 Abidjan, Côte d'Ivoire Phone: +225 07648210 Email: k07648210@yahoo.fr</p>
<p>ASIA</p>	<p>Mr Muhamad SABRAN Senior Researcher ICABIOGRAD Centre for Biotechnology and Genetic Resources Ministry of Agriculture JL. Tentara Pelajar no. 3a Bogor 16111, Indonesia Phone: +62 2178831114 Fax: +62 2518338820 Email: msbran23@yahoo.com</p> <p>Mr Atanu PURKAYASTHA Joint Secretary Ministry of Agriculture Krishi Bhavan New Delhi, India Phone: +91 1123381503 Fax: +91 1123387669 Email: atanu@nic.in</p>

	<p>Mr Nestor ALTOVEROS Associate Professor Crop Science Cluster University of the Philippines College, Laguna, Philippines Phone: +63 495016649 Fax: +63 495362468 Email: ncaltoveros@yahoo.com</p>
	<p>Mr Eng Siang LIM Advisor/Consultant Ministry of Agriculture and Agrobased Industry (MOA) No. 28, Persiaran Perdana Putrajaya, Malaysia Phone: +603 99701206 Fax: +603 88888548 Email: eslim_choi@yahoo.com</p>
	<p>Mr Akio YAMAMOTO Director Unit of Sustainable Use of Biological Diversity Environment Policy Division Minister's Secretariat Ministry of Agriculture, Forestry and Fisheries (MAFF) 1-2-1 Kasumigaseki, Chiyoda-ku 100-8950, Tokyo, Japan Phone: +81 335028458 Fax: +81 335916640 Email: akio_yamamoto@nm.maff.go.jp</p>
<p>EUROPE</p>	<p>Mr Bert VISSER Director Centre for Genetic Resources Droevendaalsesteeg, 1 Wageningen, The Netherlands Phone: +31 317480993 Fax: +31 317418094 Email: bert.visser@wur.nl</p>

	<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) Email: latorre@inia.es</p>
	<p>Mr François BURGAUD Directeur des Relations Extérieures Groupement National Interprofessionnel des Semences et Plantes (GNIS) 44 rue du Louvre 75001 Paris, France Phone: +33 1.42.33.76.94 Email: Francois.burgaud@gnis.fr</p>
	<p>Ms Svanhild Isabelle BATTA TORHEIM Senior Adviser Department of Forest and Natural Resources Policy Ministry of Agriculture and Food PO Box 8007 Dep NO 0030 Oslo, Norway Phone: +47 222 49235 Mobile: +47 41 123404 Email: sto@lmd.dep.no</p>
	<p>M. François PYTHOUD Responsable Secteur Agriculture durable internationale Office fédéral de l'agriculture OFAG Mattenhofstrasse 5 CH 3003 Berne, Switzerland Phone: +41 31 3234445 Fax: +41 31 3222634 - 3237164 Email: francois.pythoud@blw.admin.ch</p>

**LATIN AMERICA
AND THE
CARIBBEAN****Mr Modesto FERNÁNDEZ DÍAZ-SILVERA**

Funcionario

Dirección de Medio Ambiente

Ministerio de Ciencia, Tecnología y Medio Ambiente

Calle 20 y 18A, Miramar, Playa

Ciudad de La Habana, **Cuba**

Phone: +537 2096576

E-mail: modesto@citma.cu**Mr José Francisco MONTENEGRO VALLS**

Agronomist

EMBRAPA Genetic Resources and
Biotechnology/Cenargen

Parque Estação Biológica/PqEB

Cx.Postal 02372 - CEP 70770-917

Brasília, DF - **Brazil**

Phone: +55 61 3448 4644

Fax: +55 61 3340 3624

E-mail: jose.valls@embrapa.br**Mr José Alberto YAU QUINTERO**Director Nacional de Investigación e Innovación para la
Competitividad del Agronegocio, IDIAP

Villa de las Fuentes N° 2, calle segunda, cada D-55

apartado el Dorado, **Panamá**

Phone: +507 260-1671 / 317-0519

Fax: +507 260 317-0510

E-mail: yau_55@yahoo.com**Mr Ricardo SEVILLA PANIZO**

Profesor

Universidad Nacional Agraria La Molina

Av. La Molina

Lima 12, **Perú**E-mail: rsevilla@lamolina.edu.pe

	<p>Ms Monica Menduiño Ministra Misión Permanente del Ecuador ante Naciones Unidas, Ginebra 80-82, rue de Lausanne 1202 Genève (Ginebra), Suiza Phone: +41 22 732 4955 Fax: 0041 22 732 4834 E-mail: monicaun@hotmail.com</p>
<p>NEAR EAST</p>	<p>Mr Javad MOZAFARI HASHJIN Head National Plant Gene Bank Seed and Plant Improvement Institute (SPII) Mahdasht Ave. (or P.O. Box 31585-4119) Karaj, Iran Phone: +98 2612701260 Fax: +98 2612716793 Email: jmozafar@yahoo.com</p>
<p>NORTH AMERICA</p>	<p>Ms Felicitas KATEPA-MUPONDWA Director, Research Development & Technology Transfer Charlottetown, Kentville & St. John's Research Centres and Coastal Directorate Science and Technology Branch Agriculture and Agri-Food Canada 440 University Avenue, Charlottetown, Prince Edward Island, Canada C1A 4N6 Phone: +1-902-370-1399 Cell: +1-902-393-9489 E-mail: Felicitas.Katepa-Mupondwa@agr.gc.ca</p>

	<p>Ms Catherine KARR-COLQUE Office of Conservation and Water (OES/ECW) US Department of State 2201 C Street NW, Room 2657 Washington, DC 20520, USA Phone: +1 202 647 2255 Fax: +1 202 736 7351 E-mail Karr-ColqueCJ@state.gov.us</p>
<p>SOUTH WEST PACIFIC</p>	<p>Ms Ivana SASKA Senior Policy Officer Productivity and Food Security Unit Agricultural Productivity Division Department of Agriculture 18 Marcus Clarke Street Canberra ACT 2601 Australia Phone: +61 2 6272 3118 Fax: +61 2 6272 3025 Email: ivana.saska@daff.gov.au</p>
	<p>Ms Valerie S. TUIA Genetic Resources Coordinator Secretariat of the Pacific Community (SPC) SPC Suva Regional Office Private Mail Bag Suva, Fiji Phone: +679 337 0733 Fax: +679 337 0021 Email: ValerieT@spc.int</p>

OBSERVERS	STAKEHOLDER GROUPS
<p>CIVIL SOCIETY ORGANIZATIONS</p>	<p>Berne Declaration M François MEIENBERG Déclaration de Berne Erklärung von Bern Zürich, Switzerland Phone: +41 442777004 Fax: +41 442777001 Email: food@evb.ch</p> <p>Third World Network Mr Edward HAMMOND Advisor 131 Jalan Macalister Penang, Malaysia Phone: +1 3253472829 Email: eh@pricklyresearch.com</p>
<p>FARMERS' ORGANIZATIONS</p>	<p>La Via Campesina Mr Guy KASTLER Cazalens, 81 Brens, France Phone: +33 0563417286 Email: guy.kastler@wanadoo.fr</p> <p>World Farmers' Organization Mr James MILLS Combinable Crops Adviser Agriculture House, Stoneleigh Park, Stoneleigh</p>

	<p>Warwickshire CV8 2TZ Phone: 024 76858708 Fax: 024 76858501 Email: james.mills@nfu.org.uk</p>
SEED INDUSTRY	<p>Ms Anke VAN DEN HURK Deputy Director International Seed Federation - Plantum Vossenburchkade 68 Gouda, The Netherlands Phone: +31 182688668 Fax: +31 182688667 Email: a.vandenhurk@plantum.nl</p> <p>Mr Thomas NICKSON International Policy Lead Monsanto Law 800 North Lindbergh Bvd St. Louis, Missouri, USA Phone: +1 3146942179 Fax: +1 3146941622 Email: thomas.nickson@monsanto.com</p>
CGIAR	<p>Mr Philippe ELLUL Senior Science Officer CGIAR Consortium Agropolis, 34394 Montpellier Cedex 5 France Office: +33 4 67 04 75 22; Mobile: +33 6 77 20 36 83 p.ellul@cgiar.org</p>

	<p>Mr. Michael HALEWOOD Policy Theme Leader Conservation and Availability Programme Biodiversity International Via dei Tre Denari, 472/a 00057 Maccarese (Fiumicino) Rome, Italy Tel: (39) 066118294; Fax: (39) 0661979661 M.Halewood@cgiar.org</p>
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OBSERVERS FROM CONTRACTING PARTIES**BRASIL****Mr André MISI**

First Secretary

Permanent Mission of Brazil to the United

Nations Office and other International

Organizations in Geneva

Chemin Louis Dunant, 15, 6th Floor

1202 Geneva, **Switzerland**

Phone: +41 (22) 332 50 21/ +41 (22) 332 50 00

Fax: +41 (22) 910 07 51

Email: andre.misi@itamaraty.gov.br

EUROPEAN COMMISSION**Mr Thomas WEBER**

Policy Officer

Unit E2 Plant Health

European Commission

Rue Breydel 4

Brussels, **Belgium**

Phone: +32 22957616

Email: thomas.weber@ec.europa.eu

Ms Isabelle CLEMENT-NISSOU

Policy Officer

Unit E2 Plant Health

Sector Plant Reproductive Material

European Commission

Health and Consumers DG

Rue Froissart 101

B-1040 Brussels, **Belgium**

Phone: +32 (2) 2987834

Fax: +32 (2) 2960951

Email: isabelle.clement-nissou@ec.europa.eu

GERMANY

Mrs Marliese VON DEN DRIESCH

Federal Office for Agriculture and Food (BLE)

Information and Coordination Centre for Biological Diversity (IBV)

Deichmanns Aue 29

D-53179 Bonn, **Germany**

TEL: +49 (0)228 99 6845-3241

FAX: +49 (0)228 6845-3105

E-Mail: Marliese.vondenDriesch@ble.de

Mr Thomas MEIER

Senior Advisor

Division of Biological Diversity and Biopatents

Federal Ministry of Food, Agriculture and Consumer Protection

Rochusstr. 1

Bonn, **Germany**

Phone: +49 228 99 529 4078

Fax: +49 228 99529 4332

Email: thomas.meier@bmel.bund.de

INDIA

Mr. R.C. AGRAWAL

Registrar General

PPV & FR Authority

Ministry of Agriculture of India

NASC Complex,

New Delhi, **India**

Phone : 25843316/ 25840478/

Phone : 9899008855(M)

rg-ppvfra@nic.in

Mr K. C. BANSAL

Director
National Bureau of Plant Genetic Resources
Indian Council of Agricultural Research
New Delhi, 110012, **India**
Phone : kailashbansal@hotmail.com
director@nbpgr.ernet.in

INDONESIA**Mr Karden MULYA**

Director of ICABIOGRAD
Centre for Biotechnology and Genetic Resources
Ministry of Agriculture
JL. Tentara Pelajar no. 3a
Bogor 16111, **Indonesia**
Tel: +62 251 8333440
Mobile: 62 251 8111117756
Fax: +62 251 8338820
E-mail: k.mulya@litbang.dep.go.id

Ms Riena DWI ASTUTY

Head of Section for Social Cooperation Affairs
Directorate of Economic and Socio-cultural Affairs
Directorate General of Legal Affairs and International Treaty
Ministry of Foreign Affairs, Jakarta, **Indonesia**
Phone: +62 21 3858015
Fax: +62 21 3503302
Email: riena_dwi_astuty@yahoo.com

LIBYA**Mr Mustafa Ali AGHEL**

ARC, Libya Genebank
Libya
Phone: +218 926487642
Email: moustafa_elaghel@yahoo.com

Mr Ibrahim A. DOKALY

Department of International Cooperation

Ministry of Agriculture

Tripoli, **Lybia**

Phone: +21 8926172376

Email: abrahimdokaly@yahoo.com

UNITED KINGDOM**Mr Julian JACKSON**

Genetic Resources Policy Advisor

Department for Environment, Food and Rural Affairs (DEFRA)

17 Smith Square

London, **United Kingdom**

Phone: +44 (0)2072386813

Email: julian.jackson@defra.gsi.gov.uk

Ms Sarah CUNNINGHAM

32, Vicarage Road, Norwich, Norfolk

NR321NB London, **United Kingdom**

Phone: +44 020 72386252

Email: sarah.cunningham@defra.gsi.gog.uk

SILENT OBSERVERS**Mr. Alwin KOPSE**

ARK

Chemin des Fougères, 12

1007 Lausanne, **Switzerland**

Phone: +4179812 97 82

Email: alwin.kopse@gmail.com**Ms. Jessica Noelia DÍAZ**

Secretario de Embajada

Dirección General de Asuntos Ambientales del Ministerio

de Relaciones Exteriores y Culto

Buenos Aires, **Argentina**

Tel:0054 11 4819-7414

Fax:0054 11 4819-7413

Email: jnz@mrecic.gov.ar**Mr Enrique DOMÍNGUEZ LUCERO**

Ministro Consejero Agrícola (SAGARPA)

Misión Permanente de México ante la ONU y los

Organismos internacionales

15, Chemin Louis-Dunant, 5th Floor

1202, Genève, **Switzerland**

Phone: +41 22 748-0753

Email: wera@mexico-wto.orgEmail: edominguezl@sre.gob.mx**Mr. Worku Damena YIFRU**

Senior Legal Officer

Convention on Biological Diversity

413, Saint-Jacques Street, Suit 800

Montreal QC H2Y 1N9, **Canada**

Phone: + 514 287 7006/ + 514 288 2220

Fax: + 514 288 6588

Email: worku.yifru@cbd.int

Mr Morten WALLOE TVEDT

Senior Research Fellow

Fridtjof Nansen Institute

P.O.Box 326, 1326 Lysaker, **Norway**

Phone: +47 67111900

Email: mwt@fni.no

Ms Carolina Roa RODRIGUEZ

Legal and IP Consultant

CIMMYT. Km 45, Ctra. México-Veracruz,

El Batán, Texcoco, Estado de México, **México**

Phone: +52 (595) 952 1917

Email: carolina@crop-ip.info

Ms Szonja CSÖRGŐ

Intellectual Property and Legal Affairs Director

European Seed Association

Rue du Luxembourg 23,

1000 Brussel, **Belgium**

Phone: +32 486528656

Email: szonjacsorgo@euroseeds.org

Ms Christa GERBER

Schweizer Bauernverband

Belpstrasse, 26

3017, Bern, **Germany**

Phone: +41 792099070

Email: christa.gerber@sbv-usp.ch

SECRETARIAT**Mr Shakeel BHATTI**

Secretary

Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), FAO

Viale delle Terme di Caracalla

Rome, **Italy**

Phone: +39 0657053441

Fax: +39 0657056347

Email: shakeel.bhatti@fao.org

Mr Álvaro TOLEDO CHÁVARRI

Technical Officer

Phone: +39 0657054497

Email: alvaro.toledo@fao.org

Mr Tobias KIENE

Technical Officer

Phone: +39 0657055586

Email: tobias.kiene@fao.org

Mr Francisco LÓPEZ MARTÍN

Technical Officer

Phone: +39 0657056343

Email: francisco.lopez@fao.org

Mr Clive STANNARD

Senior Consultant

Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)

Phone: +39 3334334009

Email: clive@stannard.info