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| Working group on harvested material and unauthorized use of propagating material  Fourth Meeting  Geneva, October 25, 2023 | WG-HRV/4/3  Original: English  Date: January 4, 2024 |

REPORT

prepared by the Office of the Union

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# Opening of the MEETING

The Working Group on Harvested material and unauthorized use of propagating material (WG-HRV) held its fourth meeting in Geneva, on October 25, 2023, in hybrid format, chaired by Ms. Yolanda Huerta, Vice Secretary‑General of UPOV.

The meeting was opened by the Chair, who welcomed the participants.

The list of participants is reproduced in the Annex to this report.

# Adoption of the agenda

The WG-HRV adopted the draft agenda as proposed in document WG-HRV/4/1.

# PROPOSAL TO REVISE THE "EXPLANATORY NOTES ON PROPAGATING MATERIAL" UNDER THE UPOV CONVENTION

The WG-HRV considered document WG-HRV/4/2.

The WG-HRV noted that, at its third meeting, held in Geneva on March 21, 2023, agreed to modify the section “Factors that have been considered in relation to propagating material”, as presented below.

Factors that HAVE BEEN considered in relation to propagating material

The UPOV Convention does not provide a definition of “propagating material”. Propagating material encompasses reproductive and vegetative propagating material. The following are non-exhaustive examples of factors, one or more of which could be used to decide whether material is propagating material. Those factors should be considered in the context of each member of the Union and the particular circumstances.

(i) plant or part of plants used for the variety reproduction;

(ii) whether the material has been used to propagate the variety;

(iii) whether the material has an innate capability of producing entire plants of the variety (e.g. seed, tubers);

(iv) whether the material, could be used as propagating material, through the use of propagating techniques (e.g. cuttings, tissue culture);

(v) whether there has been a custom/practice of using the material for propagating purposes or, as a result of new developments, there is a new custom/practice of using the material for that purpose;

(vi) if, based on the nature and condition of the material and/or the form of its use, it can be determined that the material is “propagating material”;

(vii) the variety material where conditions and mode of its production meet the purpose of reproduction of new plants of the variety but not of final consumption.

The above text is not intended as a definition of “propagating material”.

(see document WG-HRV/3/4 “Report”, paragraph 7).

The WG-HRV agreed to propose to the CAJ, at its eighty-first session in October 2024, to approve the revision of the “Explanatory Notes on Propagating Material under the UPOV Convention”, (UPOV/EXN/PPM/1) as set out in paragraph 5 of document WG-HRV/4/2 (see paragraph 6, above).

**PROSPECTS OF COMMISSIONING A STUDY ON THE "SCOPE OF THE BREEDER'S RIGHT" AND THE RELATIONSHIP WITH THE "EXHAUSTION OF THE BREEDER'S RIGHT"**

The WG-HRV noted the replies to UPOV Circular E-23/071, as set out in paragraphs 9 and 10 and the Annex of document WG-HRV/4/2.

The WG-HRV discussed whether it would be appropriate to select one author or a team of authors to carry out the study. It was agreed that it would be appropriate to select a team of authors in order to capture a diversity of views into the work. It was agreed that the number of authors should be limited to a maximum of four and that one of the authors should be designated to lead the team.

The WG-HRV agreed that the study should include an analysis of the intentions of the drafters of the 1991 Act of the UPOV Convention in relation to Article 14 and Article 16 of the 1991 Act. It was discussed whether jurisprudence from UPOV members should be part of the study. It was agreed that one part of the study would focus on the analysis of the intentions of the drafters of the 1991 Act and a second part would include summaries of court cases from UPOV members bound by the 1991 Act.

The WG-HRV agreed that, in accordance with the discussions during the fourth meeting of the WG-HRV, the Office of the Union would consult the members of the WG-HRV that provided replies to UPOV Circular E-23/071 and propose the basis of a study, including terms of reference, timeline and authors, for consideration by the WG-HRV at its fifth meeting.

# PROPOSALS CONCERNING THE EXPLANATORY NOTES ON PROVISIONAL PROTECTION UNDER THE UPOV CONVENTION

The WG-HRV considered document WG-HRV/2/5 and discussed the proposals of members of the WG-HRV concerning the text in the explanatory notes on provisional protection.

The proposed changes to paragraphs 2 and 5 of the Explanatory Notes on Provisional Protection were not retained.

Members of the WG-HRV supported the idea to introduce a sentence in paragraph 6 of the Explanatory Notes on Provisional Protection indicating that publications of an application for a plant breeders' right refers to publications in an official journal or gazette either in a physical document or in an electronic format. The WG-HRV requested the Office of the Union to draft a text that would capture that element for consideration by the WG-HRV at its next meeting.

Some members of the WG-HRV expressed support for the underlying reasons of the proposals made by the breeders‘ organizations to change paragraph 8 concerning the measures of the explanatory notes , but not to the proposed text. Some members of the WG-HRV stated that since the provision on provisional protection in the 1991 Act of the UPOV Convention provides for a choice on the measures that should be available during the period of the provisional protection, preferences on the implementation should not be introduced in the explanatory notes. The WG-HRV noted that it might be useful to provide in the explanatory notes for the background of, and justification for, the inclusion of the provisions on provisional protection in the UPOV Convention It was noted that UPOV members and future UPOV members may take such information into consideration when developing and implementing the provisions on provisional protection.

It was concluded that there was no agreement for a new text in paragraph 8 concerning the measures and that the present wording should be maintained.

The WG-HRV noted that the organizations representing breeders (ISF, CIOPORA, Croplife International, Euroseeds, APSA, AFSTA, and SAA) offered to provide a text with an explanation of the importance on providing effective protection during the period of provisional protection, to be considered by the WG-HRV, at its fifth meeting.

# DATE AND PROGRAM OF THE Fifth MEETING

The WG-HRV agreed to hold its fifth meeting on March 21, 2024, via electronic means to consider the following:

1. The commissioning of a study, including terms of reference, timeline and authors. The study would include a first part with an analysis of the intentions of the drafters of the 1991 Act of the UPOV Convention in relation to Article 14 and Article 16 of the 1991 Act, and a second part, that would include summaries of court cases from UPOV members bound by the 1991 Act.

2. The UPOV Office would propose a text for paragraph 6 of the Explanatory Notes on Provisional Protection concerning the publication of applications for plant breeders’ rights.

1. The organizations representing breeders (ISF, CIOPORA, Croplife International, Euroseeds, APSA, AFSTA, and SAA) would provide a text with an explanation of the importance on providing effective protection during the period of provisional protection.

[Annex follows]

(dans l’ordre alphabétique des noms français des membres /  
in the alphabetical order of the French names of the members /  
por orden alfabético de los nombres en francés de los miembros)

I. MEMBRES / MEMBERS / MIEMBROS

AFRIQUE DU SUD / SOUTH AFRICA / SUDÁFRICA

Noluthando NETNOU-NKOANA (Ms.), Director, Genetic Resources, Department of Agriculture, Rural development and Land Reform, Pretoria   
(e-mail: noluthandon@daff.gov.za)

Thapelo Martin SEKELE (Mr.), Variety Control Regisration Officer, Scientist Production, Genetic Resources, Plant Breeder's Rights, Department of Agriculture, Land Reform and Rural Deveolpment, Pretoria   
(e-mail: ThapeloS@dalrrd.gov.za)

Allemagne / GERMANY/ Alemania

Beate RÜCKER (Ms.), Head of Division, Federal Plant Variety Office, Bundessortenamt, Hanover   
(e-mail: beate.ruecker@bundessortenamt.de)

Elmar PFÜLB (Mr.), President, Federal Plant Variety Office, Bundessortenamt, Hanover   
(e-mail: postfach.praesident@bundessortenamt.de)

ARGENTINE / ARGENTINA

María Laura VILLAMAYOR (Sra.), Coordinadora de Relaciones Institucionales e Interjurisdiccionales, Instituto Nacional de Semillas (INASE), Secretaría de Agricultura, Ganadería, Pesca y Alimentación, Buenos Aires   
(e-mail: mlvillamayor@inase.gob.ar)

AUSTRALIE / AUSTRALIA

Isabel Louise WARD (Ms.), Assistant Director, Plant Breeder's Rights, IP Australia, Woden  
(e-mail: Isabel.Ward@ipaustralia.gov.au)

AUTRICHE / AUSTRIA

Birgit GULZ-KUSCHER (Ms.), Legal Advisor for Seed Law and Plant Variety Protection Law, Bundesministerium für Land- und Forstwirtschaft, Regionen und Wasserwirtschaft, Wien   
(e-mail: birgit.gulz-kuscher@bml.gv.at)

BRÉSIL / BRAZIL / BRASIL

Stefânia PALMA ARAUJO (Ms.), Coordinator, Plant Variety Protection Office, National Plant Variety Protection Service, Serviço Nacional de Proteção de Cultivares (SNPC), Brasilia  
(e-mail: stefania.araujo@agro.gov.br)

CANADA / CANADÁ

Anthony PARKER (Mr.), Commissioner, Plant Breeders' Rights Office, Canadian Food Inspection Agency (CFIA), Ottawa   
(e-mail: anthony.parker@inspection.gc.ca)

Marc DE WIT (Mr.), Senior Examiner, Plant Breeders' Rights Office, Canadian Food Inspection Agency (CFIA), Ottawa   
(e-mail: Marc.deWit@Inspection.gc.ca)

Ashley BALCHIN (Ms.), Examiner, Plant Breeders' Rights Office, Canadian Food Inspection Agency (CFIA), Ottawa   
(e-mail: ashley.balchin@inspection.gc.ca)

Renée CLOUTIER (Ms.), Examiner, Plant Breeders' Rights Office, Canadian Food Inspection Agency (CFIA), Ottawa   
(e-mail: Renee.Cloutier@inspection.gc.ca)

Chili / CHILE

Manuel Antonio TORO UGALDE (Sr.), Jefe Sección, Registro de Variedades Protegidas, Departamento de Semillas y Plantas, Servicio Agrícola y Ganadero (SAG), Santiago de Chile   
(e-mail: manuel.toro@sag.gob.cl)

CHINE / CHINA

Yehan CUI (Mr.), Chief Agronomist, Development Center of Science and Technology (DCST), Ministry of Agriculture and Rural Affairs (MARA), Beijing   
(e-mail: cuiyehan@agri.gov.cn)

Xiujie ZHANG (Ms.), Division Director, Division of DUS Tests, Development Center of Science and Technology (DCST), Beijing   
(e-mail: zhxj7410@sina.com)

COLOMBIE / COLOMBIA / COLOMBIA

Alfonso Alberto ROSERO (Sr.), Director Técnico de Semillas, Subgerencia de Protección Vegetal, Instituto Colombiano Agropecuario (ICA), Bogotá   
(e-mail: alberto.rosero@ica.gov.co)

CROATIE / CROATIA / CROACIA

Zeljka CEGUR (Ms.), Head of Department, Department for Plant Reproductive Material, Directorate-General for Agricultural Land, Plant Production and Market, Zagreb   
(e-mail: zeljka.cegur@mps.hr)

ESPAGNE / SPAIN / ESPAÑA

José Antonio SOBRINO MATÉ (Sr.), Subdirector General de Medios de Producción Agrícola, Oficina Española de Variedades Vegetales (MPA y OEVV), DG Producciones y Mercados Agrarios, Ministerio de Agricultura y Pesca, Alimentación (MAPA), Madrid   
(e-mail: jasobrino@mapa.es)

Nuria URQUÍA FERNÁNDEZ (Sra.), Jefe de Área de Registro de Variedades, Oficina Española de Variedades Vegetales (MPA y OEVV), Ministerio de Agricultura, Pesca y Alimentación (MAPA), Madrid   
(e-mail: nurquia@mapa.es)

ÉTATS-UNIS D'AMÉRIQUE / UNITED STATES OF AMERICA / ESTADOS UNIDOS DE AMÉRICA

Nyeemah GRAZIER (Ms.), Patent Attorney, Office of Policy and International Affairs (OPIA), U.S. Department of Commerce, Alexandria   
(e-mail: nyeemah.grazier@uspto.gov)

Christian HANNON (Mr.), Senior Patent Attorney, Office of Policy and International Affairs (OPIA), U.S. Department of Commerce, Alexandria   
(e-mail: christian.hannon@uspto.gov)

Ruihong GUO (Ms.), Deputy Administrator, AMS, Science & Technology Program, United States Department of Agriculture (USDA), Washington D.C.   
(e-mail: ruihong.guo@usda.gov)

Florence DOVAL (Ms.), Foreign Affairs Officer, Office of Intellectual Property Enforcement, U.S. Department of State, Washington D.C.   
(e-mail: DovalF@state.gov)

FÉDÉRATION DE RUSSIE / RUSSIAN FEDERATION / FEDERACIÓN DE RUSIA

Olga PANTELEEVA (Ms.), Counsellor, Embassy of the Russian Federation, Bern  
(e-mail: o.panteleyeva@mcx.gov.ru)

GHANA

Diana Asonoba DAPAAH (Ms.), Deputy Attorney General and Deputy Minister of Justice, Office of the Attorney General and Ministry of Justice, Accra   
(e-mail: diana.dapaah@mojagd.gov.gh)

Teddy EDU-YAW (Mr.), Principal IT/IM Officer, Registrar-General’s Department, Ministry of Justice, Accra   
(e-mail: eduyaw@gmail.com)

Audrey NEEQUAYE (Ms.), First Secretary, Permanent Mission, Geneva  
(e-mail: neequayea@ghanamission.ch)

ISRAËL / ISRAEL

Dikla DABBY-NAOR (Ms.), Chairperson, Plant Breeders' Rights Council, Ministry of Agriculture and Rural Development, Beit-Dagan   
(e-mail: diklad@moag.gov.il)

Italie / italy / italien / italia

Alessandro FARACI (Mr.), Patents Examiner, Italian Patent and Trademark Office, Ministry of Enterprises and Made in Italy, Roma   
(e-mail: alessandro.faraci@mise.gov.it)

JAPON / JAPAN / JAPÓN

Minori HAGIWARA (Ms.), Director for International Affairs on Plant Variety Protection, Plant Variety Protection Office, Intellectual Property Division, Export and International Affairs Bureau, Ministry of Agriculture, Forestry and Fisheries (MAFF), Tokyo   
(e-mail: minori\_hagiwara110@maff.go.jp)

NORVÈGE / NORWAY / Noruega

Pia BORG (Ms.), Senior Advisor, Norwegian Food Safety Authority, Brumunddal   
(e-mail: pia.borg@mattilsynet.no)

NOUVELLE-ZÉLANDE / NEW ZEALAND / NUEVA ZELANDIA

Christopher James BARNABY (Mr.), PVR Manager / Assistant Commissioner, Plant Variety Rights Office, Intellectual Property Office of New Zealand, Ministry of Economic Development, Christchurch   
(e-mail: Chris.Barnaby@pvr.govt.nz)

Cecilia REQUEJO-JACKMAN (Ms.), Senior Plant Variety Rights Examiner, Plant Variety Rights Office, Intellectual Property Office of New Zealand, Ministry of Economic Development, Christchurch   
(e-mail: Cecilia.R-Jackman@pvr.govt.nz)

PAYS-BAS / NETHERLANDS / PAÍSES BAJOS

Kees Jan GROENEWOUD (Mr.), Secretary, Board for Plant Varieties (Raad voor plantenrassen), Roelofarendsveen   
(e-mail: c.j.a.groenewoud@raadvoorplantenrassen.nl)

Bernadette REGEER (Ms.), Coordinating policy advisor, Phytosanitary Affairs and Propagating material, DG Agro & Nature, Ministry of Agriculture, Nature and Food Quality, Den Haag   
(e-mail: b.regeer@minlnv.nl)

PÉROU / PERU / PERÚ

Sara Karla QUINTEROS MALPARTIDA (Sra.), Coordinadora de Conocimientos Colectivos y Variedades Vegetales, Dirección de Invenciones y Nuevas Tecnologías, Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI), Lima   
(e-mail: squinteros@indecopi.gob.pe)

RÉPUBLIQUE DE CORÉE / REPUBLIC of korea / REPÚBLICA de corea

Yong Seok JANG (Mr.), Deputy Director, Plant Variety Protection Division, National Forest Seed Variety Center (NFSV), Chungcheongbukdo   
(e-mail: mushrm@korea.kr)

Tae Hoon KIM (Mr.), Senior Forest Researcher, Examiner, National Forest Seed Variety Center (NFSV), Chungcheongbuk-do   
(e-mail: algae23@korea.kr)

Won-Bum CHO (Mr.), Forest Researcher, Plant Variety Protection Division, National Forest Seed Variety Center (NFSV), Chungcheongbuk-do   
(e-mail: rudis99@korea.kr)

Hwan-Su HWANG (Mr.), Forest Researcher, Plant Variety Protection Division, National Forest Seed Variety Center, Korea Forest Service, Chungcheongbuk-do   
(e-mail: hwansu3368@korea.kr)

Kwanghong LEE (Mr.), Researcher, Korea Seed and Variety Service (KSVS), Gimcheon City   
(e-mail: grin@korea.kr)

RÉPUBLIQUE Dominicaine / dominican REPUBLIC / dominikanische REPUBLIK /   
REPÚBLICA Dominicana

Octavio Augusto BERAS-GOICO JUSTINIANO (Sr.), Encargado del Departamento Legal, Oficina de Registro de Variedades y Obtenciones Vegetales (OREVADO), Santo Domingo   
(e-mail: ota470@gmail.com)

RÉPUBLIQUE TCHÈQUE / CZECH REPUBLIC / REPÚBLICA CHECA

Pavla BÍMOVÁ (Ms.), General affairs of DUS testing, National Plant Variety Office, Central Institute for Supervising and Testing in Agriculture (ÚKZÚZ), Brno   
(e-mail: pavla.bimova@ukzuz.cz)

Lenka CLOWEZOVÁ (Ms.), State official, Plant Commodities Department,, Ministry of Agriculture, Praha   
(e-mail: lenka.clowezova@mze.cz)

RÉPUBLIQUE-UNIE DE TANZANIE / UNITED REPUBLIC OF TANZANIA / REPÚBLICA UNIDA DE TANZANÍA

Patrick NGWEDIAGI (Mr.), Director General, Tanzania Official Seed Certification Institute (TOSCI), Morogoro   
(e-mail: dg@tosci.go.tz)

Twalib Mustafa NJOHOLE (Mr.), Registrar of Plant Breeders' Rights, Plant Breeders Rights' Office, Ministry of Agriculture (MoA), Dodoma   
(e-mail: twalib.njohole@kilimo.go.tz)

ROYAUME-UNI / UNITED KINGDOM / reino unido

Kat DEEKS (Ms.), Plant Variety and seeds policy Team Leader, Department for Environment, Food and Rural Affairs (Defra), Cambridge   
(e-mail: katherine.deeks@defra.gov.uk)

Joanne JURY (Ms.), Policy Officer, Department for Environment, Food & Rural Affairs (DEFRA), London   
(e-mail: Joanne.Jury@defra.gov.uk)

Michael BROWN (Mr.), Head of Plant Variety and Seeds (PVS), Animal and Plant Health Agency (APHA), Cambridge   
(e-mail: Michael.Brown@apha.gov.uk)

Sigurd RAMANS-HARBOROUGH (Mr.), Manager of UK Variety Listing and PBR, Plant Varieties and Seeds, Animal and Plant Health Agency (APHA), Department for Environment, Food and Rural Affairs (DEFRA), Cambridge   
(e-mail: Sigurd.Ramans-Harborough@defra.gov.uk)

Hilary PAPWORTH (Ms.), Senior Technical Manager, NIAB, Cambridge   
(e-mail: hilary.papworth@niab.com)

SERBIE / SERBIA / SERBIEN / SERBIA

Gordana LONCAR (Ms.), Senior Adviser for Plant Variety protection, Plant Protection Directorate, Group for Plant Variety Protection and Biosafety, Ministry of Agriculture, Forestry and Water Management, Belgrade   
(e-mail: gordana.loncar@minpolj.gov.rs)

SLOVAQUIE / SLOVAKIA / ESLOVAQUIA

Ján GALBAVY (Mr.), First Secretary, Permanent Mission, Grand-Saconnex   
(e-mail: Jan.Galbavy@mzv.sk)

SUISSE / SWITZERLAND / SUIZA

Eva TSCHARLAND (Ms.), Jurist, Fachbereich Recht und Verfahren, Office fédéral de l'agriculture (OFAG), Bern   
(e-mail: eva.tscharland@blw.admin.ch)

TÜRKIYE / TÜRKIYE

Cagri OVAYURT (Ms.), Agricultural Engineer, General Directorate of Agricultural Research and Policies, Ankara   
(e-mail: cagri.ovayurt@tarimorman.gov.tr)

UNION EUROPÉENNE / EUROPEAN UNION / UNIÓN EUROPEA

Francesco MATTINA (Mr.), President, Community Plant Variety Office (CPVO), Angers   
(e-mail: mattina@cpvo.europa.eu)

Päivi MANNERKORPI (Ms.), Team Leader - Plant Reproductive Material, Unit G1 Plant Health, Directorate General for Health and Food Safety (DG SANTE), European Commission, Brussels   
(e-mail: paivi.mannerkorpi@ec.europa.eu)

José Antonio SOBRINO MATÉ (Sr.), Subdirector General de Medios de Producción Agrícola, Oficina Española de Variedades Vegetales (MPA y OEVV), DG Producciones y Mercados Agrarios, Ministerio de Agricultura y Pesca, Alimentación (MAPA), Madrid   
(e-mail: jasobrino@mapa.es)

Nuria URQUÍA FERNÁNDEZ (Sra.), Jefe de Área de Registro de Variedades, Oficina Española de Variedades Vegetales (MPA y OEVV), Ministerio de Agricultura, Pesca y Alimentación (MAPA), Madrid   
(e-mail: nurquia@mapa.es)

Ángela MARTÍNEZ LÓPEZ (Ms.), Legal Officer, Community Plant Variety Office (CPVO), Angers   
(e-mail: martinez-lopez@cpvo.europa.eu)

II. OBSERVATEURS / OBSERVERS / OBSERVADORES

ARABIE SAOUDITE / SAUDI ARABIA / ARABIA SAUDITA

Ali NAMAZI (Mr.), Head of Plant Varieties, Saudi Authority for Intellectual Property (SAIP), Riyadh   
(e-mail: anamazi@saip.gov.sa)

Fahd ALAIJAN (Mr.), Patent Support Expert, Saudi Authority for Intellectual Property (SAIP), Riyadh   
(e-mail: fajlan@saip.gov.sa)

III. ORGANISATIONS / ORGANIZATIONS / ORGANIZACIONES

ASSOCIATION FOR PLANT BREEDING FOR THE BENEFIT OF SOCIETY (APBREBES)

François MEIENBERG (Mr.), Coordinator, Association for Plant Breeding for the Benefit of Society (APBREBES), Zürich, Switzerland  
(e-mail: contact@apbrebes.org)

ASSOCIATION INTERNATIONALE DES PRODUCTEURS HORTICOLES (AIPH) /   
INTERNATIONAL ASSOCIATION OF HORTICULTURAL PRODUCERS (AIPH) /   
Asociación Internacional de Productores Hortícolas (AIPH)

Mia HOPPERUS BUMA (Ms.), Advisor, Committee for Novelty Protection, International Association of Horticultural Producers (AIPH), The Hague, Netherlands  
(e-mail: info@miabuma.nl)

COMMUNAUTÉ INTERNATIONALE DES OBTENTEURS DE PLANTES HORTICOLES À REPRODUCTION ASEXUÉE (CIOPORA) / INTERNATIONAL COMMUNITY OF BREEDERS OF ASEXUALLY REPRODUCED HORTICULTURAL PLANTS (CIOPORA) / Comunidad Internacional de Fitomejoradores de Plantas Hortícolas de Reproducción Asexuada (CIOPORA)

Edgar KRIEGER (Mr.), Secretary General, International Community of Breeders of Asexually Reproduced Horticultural Plants (CIOPORA), Hamburg, Germany   
(e-mail: edgar.krieger@ciopora.org)

Judith Maria Anneke DE ROOS-BLOKLAND (Ms.), Senior Plant Breeder's Rights Attorney, AOMB Intellectual Property, Eindhoven, Netherlands  
(e-mail: J.deRoos@aomb.nl)

CROPLIFE INTERNATIONAL

Marcel BRUINS (Mr.), Consultant, CropLife International, Bruxelles, Belgium   
(e-mail: marcel@bruinsseedconsultancy.com)

EUROSEEDS

Szonja CSÖRGÖ (Ms.), Director, Intellectual Property & Legal Affairs, Euroseeds, Bruxelles, Belgium   
(e-mail: szonjacsorgo@euroseeds.eu)

INTERNATIONAL SEED FEDERATION (ISF)

Catherine LANGAT (Ms.), Technical Manager, African Seed Trade Association (AFSTA), Nairobi, Kenya  
(e-mail: catherine@afsta.org)

Kim MAESSEN-VAN BUGGENUM (Ms.), Plant Variety Protection Officer, BASF Vegetable Seeds, Nunhem, Netherlands  
(e-mail: Kim.vanbuggenum@vegetableseeds.basf.com)

Frank MICHIELS, Global PVP manager GBI/BG, BASF, Gent, Belgium   
(e-mail: frank.michiels@basf.com)

SEED ASSOCIATION OF THE AMERICAS (SAA) /   
Asociación de Semillas de las Américas (SAA)

Diego A. RISSO (Mr.), Director Ejecutivo, Seed Association of the Americas (SAA), Montevideo, Uruguay  
(e-mail: drisso@saaseed.org)

IV. BUREAU / OFFICER / OFICINA

Yolanda HUERTA (Ms.), Chair

V. BUREAU DE L’UPOV / OFFICE OF UPOV / OFICINA DE LA UPOV

Yolanda HUERTA (Ms.), Vice Secretary-General

Martin EKVAD (Mr.), Director of Legal Affairs

Leontino TAVEIRA (Mr.), Director of Global Development and Technical Affairs

Hend MADHOUR (Ms.), IT Officer

Manabu SUZUKI (Mr.), Technical/Regional Officer (Asia)

Kees VAN ETTEKOVEN (Mr.), Technical Expert

[Fin de l’annexe et du document/  
End of Annex and of document/  
Fin del Anexo y del documento]