

Green Climate Fund

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Report on Activities of the  
Secretariat  
Addendum

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**GCF/B.07/Inf.02/Add.1**

17 May 2014

**Meeting of the Board**

18-21 May 2014

Songdo, Republic of Korea

Agenda item 3

## **Recommended action by the Board**

It is recommended that the Board:

Take note of the information presented in document GCF/B.07/Inf.02/Add.1 *Report on Activities of the Secretariat (Addendum)*.

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## Report on Activities of the Secretariat (Addendum)

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### I. Introduction

1. By decision B.05/11 taken at its October 2013 meeting, the Board of the Green Climate Fund requested the Secretariat:

*“to seek a legal opinion of the Office of Legal Affairs of the United Nations on whether, and if so, under which circumstances, the Fund might qualify for:*

- (i) An institutional linkage with the United Nations; and*
- (ii) A relationship agreement with the United Nations under which the officials of the Secretariat and other persons associated with the Fund can make use of the United Nations Laissez Passer.”*

2. The request for a legal opinion on the aforementioned matter was sent on 26 November 2013 by the Executive Director of the Secretariat to Mr. Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel (Annex I).

3. Mr. David Hutchinson, Principal Legal Officer in charge of the Office of the Legal Counsel responded on 21 February 2014 (Annex II) and focused on the permissibility of a relationship agreement between the Fund and the United Nations. He concluded that “the Fund does not have the same status under international law as the specialized agencies and related organizations that have relationship agreements with the United Nations” and, for that reason, “would not be able to conclude a relationship agreement of the nature concluded between the United Nations and specialized agencies and related organizations.”

4. As regards a possible institutional linkage between the Fund and the United Nations, in his legal opinion Mr. Hutchinson reviewed the question as to whether the institutional linkage which currently exists between the United Nations and the United Nations Framework Convention on Climate Change (UNFCCC) secretariat may apply to the Fund and its officials, and concluded that this was not the case. However, in his legal opinion he did not examine whether it might be possible *de lege ferenda* to approve for the Fund an institutional linkage on similar terms and conditions as those that are applicable to the UNFCCC secretariat and under which the Convention on the Privileges and Immunities of the United Nations (General Convention) would be applicable to officials of the Fund.

5. The Assistant Secretary-General for Legal Affairs, Mr. Stephen Mathias, and his team agreed in a discussion with Mr. Gerd Droesse, Acting General Counsel, on 26 March 2014, to further review this question if the Fund should so request. In this context, the Executive Director sought on 16 May 2014, a supplementary Legal Opinion on the aforementioned question with the request that a response should be conveyed to the Fund as early as possible before the May 2014 Board meeting (Annex III).

6. Board members will be informed immediately of any response received from the Office of Legal Affairs.

**Annex I: Letter from the Executive Director to the United Nations Office of Legal Affairs dated 26 November 2013**  
**Green Climate Fund**

Mr. Miguel de Serpa Soares  
Under-Secretary-General for Legal Affairs  
and UN Legal Counsel  
United Nations Office of Legal Affairs  
United Nations Headquarters  
New York, NY 10017  
U.S.A.

Date: 26 November 2013  
Reference: HC/GD/tj  
Page: 1 of 5

Re: Request for legal opinion

Dear Mr. de Serpa Soares,

1. Under the direction of the Board of the Green Climate Fund (the "Fund"), I wish to request, in my capacity as the Executive Director of the Secretariat, a legal opinion from the Office of Legal Affairs of the United Nations (UN) on the two questions listed in paragraph 11 and the two questions listed in paragraph 14 below.

**Background**

2. The Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (the "Convention"), in its decision 3/CP.17 taken in December 2011, approved the Governing Instrument for the Green Climate Fund (the "Governing Instrument"), and designated the Fund as an operating entity of the financial mechanism of the Convention under Article 11 of the Convention, with arrangements to be concluded between the COP and the Fund to ensure that the Fund is accountable to, and functions under the guidance of, the COP to support projects, programmes, policies and other activities in developing country Parties.

3. The COP, in the same decision, decided that the Green Climate Fund be conferred juridical personality and legal capacity and requested the Board and the host country of the Fund to develop, in accordance with paragraphs 7 and 8 of the Governing Instrument, the legal and administrative arrangements for hosting the Fund, and to ensure that juridical personality and legal capacity are conferred to the Fund.

4. The Green Climate Fund Board (the "Board"), by consensus in an open and transparent process, selected the Republic of Korea to be the host country of the Fund. In June 2013, the Government of the Republic of Korea and the Green Climate Fund entered into the "Agreement between the Republic of Korea and the Green Climate Fund concerning the Headquarters of the Green Climate Fund" (the "Headquarters Agreement"), which was ratified by the Government of the Republic of Korea as a treaty

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## Green Climate Fund

Page 2

under Article 6 of the Constitution of the Republic of Korea, and entered into force in August 2013. The Headquarters Agreement firmly establishes the juridical personality and legal capacity of the Fund in the host country of the Fund and confirms that the Fund is able to enter into agreements with States and international organizations governed by international law.

5. At its meeting in June 2013, the Board, having considered various options, including the adoption of the UN Common System or a multilateral development bank system, decided to pursue a hybrid option as the basis for the administrative framework of the Fund. Thus,

- (i) The privileges and immunities for the Fund's officials were to be consistent with paragraph 8 of the Governing Instrument, with reference to those provided to the International Fund for Agricultural Development and other international financial institutions that operate effectively internationally through appropriate bilateral and multilateral agreements; and
- (ii) The Fund's administrative policies, including on human resources, procurement, travel and finance, were to be based on those of the Asian Development Bank.

6. At the fifth Board meeting in October 2013, the Board decided to establish the fully independent Secretariat of the Fund ("Secretariat"), as provided for under paragraph 19 of the Governing Instrument. The Secretariat will assume its activities in Songdo, Incheon City, Republic of Korea on 4 December 2013, following the termination of the interim arrangements under which the secretariats of the Convention and the Global Environment Facility (GEF) provided technical, administrative and logistical support to the Fund.

7. At the same meeting, the Board also requested the Secretariat to seek a legal opinion from the UN Office of Legal Affairs on whether the Fund might qualify for:

- (i) An institutional linkage with the UN; and
- (i) A relationship agreement with the UN under which the officials of the Secretariat and other persons associated with the Fund can make use of the UN Laissez Passer.

### **Request for legal opinion**

#### **I. Institutional linkage**

8. Taking account of the advice of the Secretary General and the endorsement of the General Assembly, the COP determined, by its decision 14/CP.1, that the Convention secretariat "shall be institutionally linked to the UN, while not being fully integrated in the work programme and management structure of any particular department or programme." This decision, which was confirmed by subsequent COP decisions, shows that an institutional linkage is possible as a matter of principle.

9. The Fund was established by a COP decision as an operating entity of the financial mechanism of the Convention under Article 11 of the Convention and, given this aspect, might qualify for an institutional linkage with the United Nations. However, the status of the Convention secretariat and that of the Fund vary to a certain extent, taking account, inter alia, COP decision 3/CP.17 and the Governing Instrument annexed thereto. Also, unlike the

## Green Climate Fund

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Page 3

Convention secretariat, which follows the UN Common System, the Fund's administrative policies, including on human resources, procurement, travel and finance, are based on those of the Asian Development Bank.

10. It needs to be ascertained whether the aforementioned differences between the Convention secretariat and that of the Fund are relevant to the issue of whether there is a basis for a possible institutional linkage between the United Nations and the Fund.

11. In view of the foregoing, we are seeking a legal opinion from the UN Office of Legal Affairs on the following questions:

A. Whether the Fund may avail itself of an institutional linkage with the UN under which the Convention on the Privileges and Immunities of the United Nations will be applicable to the Fund and its officials, given the Fund Secretariat's "fully independent" status under paragraph 9 of the Governing Instrument and the decision taken by the Board that the Fund's administrative policies, including on human resources, procurement, travel and finance, are to be based on those of the Asian Development Bank?

B. Assuming that the Fund may avail itself of such an institutional linkage, what are the legal requirements and procedures to be followed to give effect to such an institutional linkage between the UN and the Fund?

### II. Relationship agreement

12. There are various organizations with substantially different legal status and administrative frameworks that make use of the UN Laissez Passer under the terms of a relationship agreement with the United Nations (UN).<sup>1</sup> Some of these organizations have not signed the statutes of the International Civil Service Commission and do not form part of, or unilaterally adhere to, the UN Common System.

13. Considering these circumstances, we are seeking a legal opinion from the UN Office of Legal Affairs on the feasibility of, and legal requirements for, a possible relationship agreement between the United Nations and the Fund on terms and conditions which would be similar to those contained in relationship agreements concluded between the UN and organizations which do not participate in the UN Common System, based on the understanding that (a) such a relationship agreement would allow the officials of the Fund to make use of the UN Laissez Passer as the Fund's travel document; and (b) neither the Convention on the Privileges and Immunities of the United Nations nor the Convention on the Privileges and Immunities of the Specialized Agencies would apply to the Fund under such relationship agreement.

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<sup>1</sup> The UN has concluded relationship agreements with the International Atomic Energy Agency, the International Criminal Court, the Organization for the Prohibition of Chemical Weapons, the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization, the International Seabed Authority, and the World Trade Organization.

## Green Climate Fund

Page 4

14. In view of the foregoing, we are seeking a legal opinion from the UN Office of Legal Affairs on the following questions:

A. Assuming that the Fund may enter into such relationship agreement with the UN, what would be the requirements for the officials of the Fund to avail themselves of the use of the UN Laissez Passer under the terms of that agreement?

- (i) Would it be necessary for the Fund to propose that State parties to the Convention adopt and ratify a multilateral agreement which provides for privileges and immunities for the Fund and its officials and authorizes the use of the UN Laissez Passer as the travel document for the Fund's officials?
- (ii) Alternatively, would it be sufficient for the Fund to enter into bilateral agreements with those States where it conducts operations or maintains offices which recognize the use of the UN Laissez Passer as the travel document for the Fund's officials?
- (iii) Would a combination of (i) and (ii) be possible? Thus, would it be possible for the Fund to initially enter into bilateral agreements with those States where it conducts operations or maintains offices which recognize the use of the UN Laissez Passer as the travel document for the Fund's officials, while proposing to the State parties to the Convention to become parties to a multilateral agreement as specified under (i) above.

B. Following the adoption of multilateral or bilateral agreement(s) as specified under subparagraph A above, what would be the requirements and the necessary procedures to be followed for the Fund to enter into a relationship agreement with the UN which allows the use of the UN Laissez Passer as the travel document for the Fund's officials?

15. In accordance with the work plan of the Fund's Board for 2014 transmitted to, and accepted by, the COP (document FCCC/CP/2013/6/Add.1, 20 November 2013), the issue of the Fund's "[l]egal relationships, including securing privileges and immunities for the Fund and its staff", is to be addressed between Board meetings. Consistent with the above, we would greatly appreciate if a legal opinion on these matters could be rendered prior to 15 January 2014. Your support in this matter is greatly appreciated.

## Green Climate Fund

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Page 5

16. We stand ready to respond to any questions and to provide any additional information you may require. Please address any questions you may have to the Fund's Legal Counsel, Mr. Gerd Droesse (E-mail: [gdroesse@gcfund.net](mailto:gdroesse@gcfund.net)), cc: Ms. Teodora Jacinto (E-mail: [tjacinto@gcfund.net](mailto:tjacinto@gcfund.net)).

Very truly yours,



Héla Cheikhrouhou  
Executive Director

cc: Mr. Manfred Konukiewitz / Mr. Jose Maria Clemente Sarte Salceda  
Co-Chairs of the Board of the Green Climate Fund

United Nations  Nations Unies

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TEL.: 1 (212) 963.1234 • FAX: 1 (212) 963.4879

REFERENCE:

21 February 2014

Dear Ms. Cheikhrouhou,

I wish to refer to your letter dated 26 November 2013 to the Legal Counsel in which you ask for our advice on whether the Green Climate Fund (“the Fund”) may enter into a relationship agreement with the United Nations pursuant to which the officials of the Fund may avail themselves of the use of the United Nations laissez-passer (“UNLP”).

We would like to recall that the Fund was established by decision 1/CP.16 of the Conference of the Parties (“COP”) of the United Nations Framework Convention on Climate Change (“UNFCCC”). By paragraph 3 of COP decision 3/CP.17 which recalled the earlier decision, the COP decided, “to designate the Green Climate Fund as an operating entity of the financial mechanism of the Convention, in accordance with Article 11 of the Convention” and decided that the Fund would be “accountable to and function under the guidance” of the COP.

As to whether the Fund may avail itself of an “institutional linkage” with the United Nations and more specifically the requirements and procedures to be followed for the Fund to enter into a relationship agreement with the United Nations, we would like to point out the following.

The United Nations has previously concluded relationship agreements with international organizations. Those international organizations that have negotiated relationship agreements with the Economic and Social Council and concluded such agreements with the United Nations upon approval by the General Assembly, pursuant to Articles 57 and 63 of the Charter are specifically referred to as “specialized agencies”, as provided in Article 57 (2) of the Charter. There are also several other international organizations known as “related organizations” that have concluded

Ms. H la Cheikhrouhou  
Executive Director  
Secretariat of the Green Climate Fund  
Incheon City

relationship agreements with the United Nations in the past and upon approval by a competent principal organ of the United Nations, but outside the framework of Articles 57 and 63 of the Charter. These include the International Atomic Energy Agency (IAEA), the Organization for the Prohibition of Chemical Weapons (OPCW) and the International Criminal Court (ICC).

Currently there exists no relationship agreement between the COP of the UNFCCC and the United Nations and the COP does not have either the status of a United Nations specialized agency or related organization.

As far as the Fund is concerned, by decision 3/CP.17, the COP decided to confer juridical personality and legal capacity on the Fund. Paragraph 11 of the decision provides that the COP “[d]ecides that the Green Climate Fund be conferred juridical personality and legal capacity and shall enjoy such privileges and immunities related to the discharge and fulfilment of its functions, in accordance with paragraphs 7 and 8 of the governing instrument”. Paragraph 7 of the governing instrument of the Green Climate Fund annexed to the decision further provides that “[i]n order to operate effectively internationally, the Fund will possess juridical personality and will have such legal capacity as is necessary for the exercise of its functions and the protection of its interests.”

While COP decision 3/CP.17 did confer juridical personality and legal capacity on the Fund, it also stated that the Fund would be accountable to and function under the guidance of the COP thus establishing the subsidiary nature of the Fund and confirming the fact that it remains part of the UNFCCC process rather than a separate free-standing international organization. As such, the Fund does not have the same status under international law as the specialized agencies and related organizations that have relationship agreements with the United Nations.

Therefore, it is our view that the Fund would not be able to conclude a relationship agreement of the nature concluded between the United Nations and specialized agencies and related organizations.

As to whether it is possible for the Fund to avail itself of the institutional linkage that the UNFCCC secretariat has with the United Nations in order for the 1946 Convention on the Privileges and Immunities of the United Nations (the “General Convention”) to be fully applicable to the Fund and its officials, we wish to recall that the institutional linkage, including the applicability of the United Nations staff regulations and rules to the UNFCCC secretariat, was approved by the General Assembly and the COP.<sup>1</sup> It was approved by the COP pursuant to a proposal submitted by the Secretary-General during the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change and was intended to

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<sup>1</sup> See COP decision 14/CP.1 and General Assembly resolutions 50/115 of 20 December 1995, 54/222 of 27 December 1999, 56/199 of 21 December 2001 and 61/201 of 20 December 2006 which has endorsed an institutional linkage between the secretariat of the Convention and the United Nations.

provide an efficient arrangement for administrative support to the Convention secretariat.<sup>2</sup>

In the light of the fact that staff of the secretariat enjoy the privileges and immunities set out under the General Convention and also fall under the UN Staff Regulations and Rules, they are entitled to use the UNLP

However, we note from paragraph 9 of your letter that the COP and the Board of the Fund have decided on a different set of administrative and financial arrangements for the Fund. The General Convention and UN Staff Regulations and Rules are not applicable to the Fund and the United Nations plays no role in its administrative support.

Consequently, the institutional linkage that currently exists between the United Nations and the UNFCCC secretariat does not apply to the Fund and its officials. In addition, officials of the Fund are not entitled to a UNLP.

You have also sought our views on whether there are any arrangements that can be put in place so that officials of the Fund can avail themselves of the use of the UNLP.

The United Nations' authority to issue UNLPs stems from the General Convention and the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (the "Specialized Agencies Convention"), which sets out the privileges and immunities of officials of the United Nations and Specialized Agencies respectively and the use by those officials of a UNLP.

In the case of "related organizations", to which the General Convention and the Specialized Agencies Convention do not apply, the United Nations only issues UNLPs to those related organizations, such as IAEA, OPCW and the ICC, that have their own multilateral treaty pursuant to which States Parties agree to grant privileges and immunities to officials of these organizations which include a provision concerning the use of the UNLP and that have concluded relationship agreements with the United Nations that provides for the entitlement of those officials of those organizations to use the UNLP.

In answer to the questions you raise in paragraph 14 of your letter, the Fund may propose to States Parties of the UNFCCC to negotiate and adopt a multilateral treaty which establishes the Fund as a separate international organization and that provides for the privileges and immunities for the Fund and its officials and authorizes the use of the UNLP as the travel document for the Fund's officials. The Fund would then need to conclude a relationship agreement with the United Nations that included a provision concerning the entitlement of officials of the Fund to use the UNLP.

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<sup>2</sup> See FCCC/CP/1999/5/Add.4 and A/AC.237/91.

As to whether it would be possible and sufficient for the Fund to enter into bilateral agreements with those States where it conducts operations or maintains offices which recognize the use of the UNLP as the travel document for the Fund's officials, we would point out, as explained above, that there is no multilateral treaty establishing the Fund that provides, inter alia for the privileges and immunities of its officials and there is no relationship agreement between the United Nations and the Fund. Consequently, the United Nations would not be in a position at this stage to issue UNLP's on the basis of such bilateral agreements.

Yours sincerely,



David Hutchinson  
Principal Legal Officer  
in charge of the Office of the Legal Counsel

## Green Climate Fund

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Mr. Stephen Mathias  
Assistant Secretary-General for Legal Affairs  
United Nations Office of Legal Affairs  
United Nations Headquarters  
New York, NY 10017  
U.S.A.

Date: 16 May 2014  
Reference: HC/GD/tj  
Page: 1 of 3

### **Subject: Possible Institutional Linkage between the United Nations and the Fund**

Dear Mr. Mathias,

I refer to the letter conveyed to me on 21 February 2014 by Mr. Hutchinson, Principal Legal Officer in charge of the Office of the Legal Counsel, in response to my letter of 26 November 2013.

We appreciate your detailed analysis of issues relating to a possible relationship agreement between the United Nations and the Green Climate Fund (Fund). We take note that you do not consider such a relationship agreement to be a feasible option, consistent with your view that the Fund has a different legal status in this regard than the specialized agencies and related organizations which have relationship agreements with the United Nations.

You mention, with reference to paragraph 14 of my letter of 26 November 2013, that a relationship agreement might be concluded with the United Nations if the Fund were to “propose to State Parties of the UNFCCC to negotiate and adopt a multilateral treaty which establishes the Fund as a separate international organization and that provides for the privileges and immunities for the Fund and its officials and authorizes the use of the [UN laissez passer] UNLP as the travel document for the Fund’s officials.” I wish to clarify that the agreement referred to in paragraph 14 of my letter was meant to be a multilateral agreement by which State Parties to the United Nations Framework Convention on Climate Change (UNFCCC) would recognize the legal status and privileges and immunities of the Fund and its officials and allow the use of the UNLP by said officials. Negotiating a new constituent agreement for the Fund would not be a viable option at this time.

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cc: Co-Chairs of the Board of the Green Climate Fund  
Mr. Robert C. Orr, Assistant Secretary-General for Policy Coordination and Strategic Planning, United Nations

As regards a possible institutional linkage between the Fund and the United Nations, we fully concur with your assessment that *de lege lata* the Fund cannot avail of the UNFCCC Secretariat's institutional linkage with the United Nations. In accordance with Decision 3/CP.17 and the Governing Instrument, the Fund is separate from and not a part of the UNFCCC Secretariat. Accordingly, currently the Convention on the Privileges and Immunities of the United Nations (General Convention) does not apply to the Fund.

As agreed by you and your team with our Acting General Counsel, Gerd Drosesse, on 26 March 2014, we would greatly appreciate it if you could supplement the Legal Opinion dated 21 February 2014 by reviewing whether *de lege ferenda* an institutional linkage similar to that which currently exists between the UNFCCC Secretariat and the United Nations could also be applied to the Green Climate Fund.

It would appear to us that such an institutional linkage should not *per se* be precluded by the fact that the Fund's administrative policies are in line with those of the Asian Development Bank. It appears that currently in the UN system, there is no direct link between the legal status of an organization and the regime governing its privileges and immunities on the one hand and the administrative rules applied by the organization, on the other hand. Thus, a number of specialized agencies and related organizations are part of the UN system and enjoy privileges and immunities under the General Convention or the Convention on the Privileges and Immunities of the Specialized Agencies, even though they have not signed the Statutes of the International Civil Service Commission. Similarly, it should be possible, in principle, for the Fund to have an institutional linkage with the UN while applying its own administrative rules.

The proposed institutional linkage would define first and foremost the institutional relationship between the Fund and the UN. It would make the Fund part of the UN system and would be consistent with the fact as highlighted by your Office that the Fund was established by the Conference of the Parties (COP) to the UNFCCC and designated by the COP as an operating entity of the financial mechanism under Article 11 of the UNFCCC. Moreover, the institutional linkage would give effect to paragraphs 7 and 8 of the Governing Instrument as it would entail that the General Convention would become applicable to the Fund and its officials.

Assuming that such an institutional linkage is possible, please indicate which procedures would need to be followed to ensure such a linkage. We take note that in case of the UNFCCC Secretariat, the institutional linkage with the UN was endorsed by the General Assembly and was decided, as highlighted by your Office, "by the COP pursuant to a proposal submitted by the Secretary-General during the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change ...." Would a similar procedure be followed for approving an institutional linkage between the United Nations and the Fund?

We greatly appreciate the invaluable support which the Secretary-General of the United Nations is providing to the operationalization of the Fund. It is of crucial importance to ensure that the Fund is covered by privileges and immunities in the State Parties to the Convention. The approval of an institutional linkage would be an important contribution to the quick operationalization of the Fund and we hope that this option will be favourably considered.

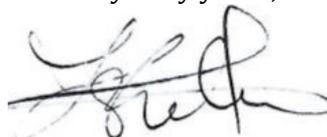
In the view of the foregoing, we request a Legal Opinion of your Office on the issue of applying to the Fund *de lege ferenda* an institutional linkage similar to that which currently exists between the UNFCCC Secretariat and the United Nations.

Assuming that such an institutional linkage is possible, we seek you advice on:

- i. What are the procedures to be followed for establishing such an institutional linkage; and
- ii. To what extent would the Convention on the Privileges and Immunities of the United Nations become applicable to the Fund's Secretariat, Board and other persons associated with the Fund.

We would greatly appreciate receiving your Legal Opinion as soon as possible, so that we can brief the Board of the Fund on the position of your Office and options for the way forward.

Very truly yours,



Héla Cheikhrouhou  
Executive Director