

# **Observer Status and Access to Documents**

## **Comparative Analysis across Selected International Organizations**

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## Foreword by the Editors

The Association for Plant Breeding for the Benefit of Society (APBREBES) was granted observer status to UPOV in October 2010. At the same time, UPOV established a working group to look at rules concerning observers. In such a discussion, we believe the overview provided in this report on the rules concerning observers in UPOV and in other international fora of relevance to UPOV will be useful.

Berne Declaration and Development Fund, both members of APBREBES recommend that the UPOV working group on rules concerning observers would in particular look into:

1. Make all UPOV documents publically available;
2. Invite all observers to join it work, with a view to achieve a balanced representation of the different stakeholder groups;
3. Open consultative committee for observers.

Such changes would be in line with the general trend among many intergovernmental organizations over the last decade to gradually expand transparency and participatory mechanisms, in line with internationally recognized principles of good governance.

The Berne Declaration and the Development Fund thank the author Catherine Monagle for this report.

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## I. Introduction

Member states of the International Union for the Protection of New Varieties of Plants (UPOV) made two decisions in October 2010 at the 44th Ordinary Session of the Council of Union in regard to observer status<sup>1</sup>:

1. Observer status was granted to the Association for Plant Breeding for the Benefit of Society (APBREBES) and to European Coordination Via Campesina (ECVC) for the Council, the Administrative and Legal Committee (CAJ), the Technical Committee (TC) and the Technical Working Parties (TWPs). The observer status for CropLife International was extended to the CAJ, TC and TWPs.
2. A Working Group to review the Rules relating to Observers and access to documents was established, with the first meeting to be held on April 9, 2011.

This report examines and compares rules governing observer status and access to documents, and the implementation of those rules, across selected international organizations. In addition to UPOV, these organizations are:

- The World Intellectual Property Organization (WIPO)
- The Convention on Biological Diversity (CBD)
- The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)

## II. The World Intellectual Property Organization (WIPO)

### Observer Status

WIPO declares that ‘it welcomes the inclusion of stakeholder organizations and interest groups as observers at the formal meetings of Member States. WIPO also seeks to involve NGOs, IGOs, industry groups and all other stakeholders as widely as possible in consultation processes and debates about current issues’<sup>2</sup>.

The General Rules of Procedure set out WIPOs broad parameters governing the accreditation and role of observers to official WIPO meetings. The Rules apply to all WIPO bodies, subsidiary bodies and ad hoc committees of experts convened by the Director General of WIPO<sup>3</sup>, noting that WIPO bodies can also establish Special Rules of Procedure.

Rule 8 of the WIPO General Rules of Procedure<sup>4</sup> establishes that:

- The Director General shall invite such States and intergovernmental organizations to be represented by observers as are entitled to observer status under a treaty or agreement (Rule 8(1)).
- In addition, each body shall decide, in a general way or for any particular session or meeting, which other States and organizations shall be invited to be represented by observers (Rule 8(2)).
- Observers shall be accredited by the competent authority of their State or the competent representative of their organization, in a letter, note or telegram addressed to the Director General; if the represent a State, such communication shall preferably be effected by the Ministry of Foreign Affairs (8(3)).

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<sup>1</sup> UPOV (2010) *Report of the Forty Fourth Council Session* [UPOV C/44/16]

<sup>2</sup> See, *Observers, NGOs, IGOs* at <http://www.wipo.int/members/en/admission/observers.html>

<sup>3</sup> WIPO (1970) *General Rules of Procedure*, as amended 1979, Rule 1

<sup>4</sup> WIPO (1970) *General Rules of Procedure*, as amended 1979, Rule 8

Rule 24 establishes that observers may take part in debates at the invitation of the Chair. They may not submit proposals, amendments or motions. Rule 39 establishes that observers shall not have the right to vote.

In the case of Ad Hoc Committees of Experts, the Director General may at any time invite States or organizations to send observers to follow the work of an ad hoc committee of experts<sup>5</sup>. The expenses of observers shall be borne by the States or organizations that have sent them<sup>6</sup>.

In applying for permanent observer status to WIPO, an intergovernmental organization must supply to the Secretariat (i) information on the organization's structure and objectives, (ii) a copy of its constituent instruments, (iii) a list of its officers, (iv) a list of its members, (v) the composition of the governing body of the organization and (vi) information on its activities and interests, particularly those related to the protection of intellectual property.

International or national non-governmental organizations must supply to the Secretariat (i) the text of its constituent instrument (articles of incorporation, bylaws, etc.); (ii) an indication of the date and place where it was established; (iii) a list of its officers (showing their nationality in the case of an international NGO); (iv) a complete list of its national groups or members (showing their country of origin in the case of an international NGO); (v) a description of the composition of the members of its governing body or bodies (including geographical distribution in the case of an international NGO); (vi) a statement of its objectives; (vii) an indication of the field or fields of intellectual property (e.g., copyright and related rights) of interest to it.

For both types of applications, the Secretariat presents the application to Member States at the Assemblies of WIPO where a decision is taken on extending invitation to of permanent observer status to WIPO. Member States consider such requests once per year at the Assemblies of the Member States of WIPO. It is practice that once an intergovernmental organization is admitted to attend, as an observer, the meetings of the Assemblies, it is also invited to attend, as an observer, meetings of committees, working groups, or other bodies subsidiary to the Assemblies, if their subject matter seems to be of direct interest to that organization.

The extension of invitations of observer status to national non-governmental, as opposed to international non-governmental organizations was considered at the 2002 WIPO Assemblies<sup>7</sup>. When considering applications for national non-governmental organizations the following principles are observed:

- The organization shall be essentially concerned with intellectual property matters within the competence of WIPO and shall, in the view of the Director General, be able to offer constructive, substantive contributions to the deliberations of the Assemblies of WIPO;
- The aims and purposes of the organization shall be in conformity with the spirit, purposes and principles of WIPO and the United Nations;
- The organization shall have an established headquarters. It shall have democratically adopted statutes, adopted in conformity with the legislation of the Member State from which the NGO originates. One copy of the statutes shall be submitted to WIPO;
- The organization shall have authority to speak for its members through its

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<sup>5</sup> WIPO (1970) *General Rules of Procedure*, as amended 1979, Rule 38(4)

<sup>6</sup> WIPO (1970) *General Rules of Procedure*, as amended 1979, Rule 49(2)

<sup>7</sup> WIPO (2002) *Admission of Observers*, Assemblies of the Member States of WIPO Thirty-Seventh Series of Meetings [A/37/8]

authorized representatives and in accordance with the rules governing observer status; and

- The admission of national NGOs to observer status shall be the subject of prior consultations between Member States and the Secretariat.<sup>8</sup>

Potential observers may seek to become ad hoc observers to a particular meeting or body if they do not have and/or do not wish to seek Permanent Observer status. Consequent to the General Rules of Procedure each body of WIPO makes its own decisions regarding which observer states and organizations shall be invited to be represented by observers.

As an example, in the case of the Intergovernmental Committee on Intellectual Property, and Genetic Resources, Traditional Knowledge and Folklore (IGC), decisions are made on the accreditation of observers by Members at the beginning of each IGC session. Accreditation as an observer is granted for that and future meetings of the IGC. In making an application, organizations are asked to describe the main activities and objectives of the organizations, the relationship of the organization with intellectual property matters and to provide an explanation of why the organization is interested in matters under consideration by the IGC.

WIPO currently has 227 International Non-Governmental Organizations and 57 national non-governmental organizations with permanent observer status<sup>9</sup>. These figures include organizations representing a wide range of stakeholder groups including public interest, industry and intellectual property organizations. For example, observers include civil society organizations including ActionAid, Third World Network and Medecins Sans Frontiers, alongside broadcasting unions and trade associations such as Crop Life International. Organizations with permanent observer status to WIPO include organizations whose core mission concerns intellectual property, as well as those with core objectives concerning, for example, the interests of poor farmers in developing countries, and poverty alleviation, that may be impacted directly by intellectual property rules and their application. Many more organizations have accreditation for specific processes. In the case of the IGC, for example, to date over 200 organizations have been granted accreditation, again representing a wide range of interest groups<sup>10</sup>.

While the rules enable WIPO to consider a broad range of organizations for both permanent and ad hoc observer status, in practice, limited funding constrains the ability of many organizations to send delegates to WIPO meetings. In certain cases, measures have been taken to address this constraint through providing financial assistance for participation by organizations that could not otherwise afford to attend, such as the voluntary fund set up to encourage the participation of otherwise accredited observers who are representatives of local or indigenous communities to attend meetings of the IGC and its inter-sessional working groups.

The rules of procedure are broad enough to allow observers to directly address negotiators in meetings, although they preclude voting, making proposals and motions. Observers generally are only able to speak after Members wishing to speak have done so. Observers are also generally able to convene side events at WIPO meetings, an additional way for the expertise and perspectives offered by observers to be accessed by WIPO delegates.

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<sup>8</sup> See *Observers, NGOs, IGOs* at <http://www.wipo.int/members/en/admission/observers.html>

<sup>9</sup> WIPO (Undated) [BIG/158/23] Annex I, II, III

<sup>10</sup> WIPO IGC accredited observers list available at <http://www.wipo.int/tk/en/igc/ngo/accreditedlist.pdf>

## Access to Documents

WIPO does not restrict access to official documents. Meeting information and agendas are posted online in advance of meetings, with reports and draft report, minutes, lists of participants, proposals, policy and research papers and negotiating texts are available online and/or reported on, as they are available. Documents are archived and searchable online<sup>11</sup>.

Documents for official meetings (governing bodies, committees and working groups) are translated into at least English and French, the two working languages of WIPO. For certain meetings, documents are translated into English, French and Spanish, and for others, translated into all the official languages of WIPO. WIPO is considering its language policy, and looking toward expanding language services over time as the budget allows<sup>12</sup>.

## III. The Convention on Biological Diversity (CBD)

### Observer Status

The Rules of Procedure of the Convention on Biological Diversity establish that observer status to the Conference of the Parties, and its subsidiary bodies<sup>13</sup>, of the Convention is open to the United Nations, its specialized agencies and the International Atomic Energy Agency as well as any State not Party to the Convention. This category of observer may, upon invitation of the President, participate without the right to vote in the proceedings of any meeting unless at least one third of the Parties present at the meeting object<sup>14</sup>.

Observer status is also open to any body or agency, whether governmental or non-governmental, qualified in fields relating to the conservation and sustainable use of biological diversity. This category of observer may, again upon invitation of the President, participate without the right to vote in the proceedings of any meeting, including both the Conference of the Parties (COP) and its subsidiary bodies, in matters of direct concern to the body or agency they represent unless at least one third of the Parties present at the meeting object<sup>15</sup>. In practice, this participation generally means the ability to make concise verbal submissions.

Meetings of the COP and its subsidiary bodies are held in public unless otherwise determined by the COP or subsidiary body<sup>16</sup>. Meetings of the Conference of the Parties of the CBD attract a significant number of observer organizations, with several hundred seeking and being granted accreditation to COP 10. COP 10 observers represented intergovernmental organizations, academic institutions, indigenous groups, parliamentarians, local authorities, non-governmental organizations and others<sup>17</sup>. In light of these numbers the CBD Secretariat issued additional guidelines to ensure the conference would proceed smoothly<sup>18</sup>.

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<sup>11</sup> Documents can be searched via the WIPO website search engine available at <http://www.wipo.int/meetings/en/archive.jsp>

<sup>12</sup> WIPO (2010) *WIPO Policy on Languages*, Assemblies of the Member States of WIPO Forty-Eighth Series of Meetings Geneva, September 20 to 29, 2010 [A/48/11 ADD]

<sup>13</sup> Unless otherwise decided by the Conference of the Parties, and with some limited exceptions, the Rules of Procedure apply to subsidiary bodies of the Convention. CBD, *Rules of Procedure for Meetings of the Conference of the Parties to the Convention on Biological Diversity*, Rule 26.5

<sup>14</sup> CBD, *Rules of Procedure for Meetings of the Conference of the Parties to the Convention on Biological Diversity*, Rule 6

<sup>15</sup> CBD, *Rules of Procedure for Meetings of the Conference of the Parties to the Convention on Biological Diversity* Rule 7

<sup>16</sup> CBD, *Rules of Procedure for Meetings of the Conference of the Parties to the Convention on Biological Diversity*, Rule 29

<sup>17</sup> CBD (2010) *Report of the Tenth Meeting of the Conference of the Parties to the Convention on Biological Diversity* [UNEP/CBD/COP/10/INF/41]

<sup>18</sup> CBD Secretariat (2010) *Guidelines for the Participation of Representatives of Observer Organizations at Meetings of the Conference of the Parties of the Convention on Biological Diversity and its Subsidiary Bodies* available at <http://www.cbd.int/doc/meetings/bs/mop-05/other/mop-05-guidelines-observer-en.pdf>

Procedure in particular subsidiary bodies may be adjusted to reflect to the specific needs of that body. In the case of the Working Group on Article 8(J) for example, a working group focused on the knowledge of indigenous and local communities, the custom is to appoint an Indigenous co-chair, a custom deemed to be consistent with the Rules of Procedure<sup>19</sup>. The ABS Working Group negotiating the Nagoya Protocol often worked in a special setting – the inter-regional group – where a balanced group of observers (2 Indigenous and local communities, 2 Industry, 2 Research and 2 Civil Society) were at the negotiation table. The CBD also established a voluntary funding mechanism to support the representation by indigenous and local communities in the meetings of the Convention.

It has been confirmed that the Intergovernmental Committee for the recently agreed *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of the Benefits Arising from their Utilization* will operate according to the same rules of procedure for the Conference of the Parties of the Convention<sup>20</sup> as will the Conference of the Parties of the Nagoya Protocol<sup>21</sup>.

In addition to the formal involvement of non-governmental organizations as observers to CBD meetings, many NGOs convene a diverse range of side events at CBD meetings. The CBD Secretariat pursues broad cooperation and collaboration with NGOs, with the importance of the role of NGO in the Convention and its implementation recognized by the Executive Secretary of the Convention<sup>22</sup>.

### **Access to Documents**

The CBD does not restrict access to official documents. Meeting information and agendas are posted online in advance of meetings, with reports and draft reports, minutes, lists of participants, proposals, policy and research papers and negotiating texts available online and/or reported on, as they are available. Documents are archived and searchable online through the CBD website<sup>23</sup>. Translations into the working or official languages of the United Nations are provided.

## **IV. The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)**

### **Observer Status**

The Governing Body is the decision making body of the International Treaty for Plant Genetic Resources for Food and Agriculture. A range of observers may observe meetings of the body. These include the United Nations, its specialized agencies, the IAEA and any State who is not a Contracting Party. They may participate on any matter, but without a right to vote<sup>24</sup>.

International Institutions that have signed agreements with the Governing Body under Article 15 of the Treaty may participate as observers without the right to vote in

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<sup>19</sup> CBD (2008), *Report of the Fifth Meeting of the Ad Hoc Open-Ended Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity*, presented to the Ninth Meeting of the Parties to the Convention on Biological Diversity Ninth meeting Bonn, 19-30 May 2008 [UNEP/CBD/COP/9/7] at para 25

<sup>20</sup> CBD (2010) Access to Genetic Resources and the fair and equitable sharing of benefits arising from their utilization [UNEP/CBD/COP/10/L.43/Rev.1]

<sup>21</sup> *The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity*, Article 20

<sup>22</sup> See, for example, *Message Of Dr. Ahmed Djoghlaif, the New Executive Secretary of the Convention On Biological Diversity to the Environmental NGOs of our Planet* available at <http://www.cbd.int/doc/speech/2006/sp-2006-02-21-ngo-en.pdf>

<sup>23</sup> For CBD documents see: [www.cbd.int/information/library.shtml](http://www.cbd.int/information/library.shtml)

<sup>24</sup> See, *Observers*, available on the ITPGRFA website at [http://www.planttreaty.org/obs\\_en.htm](http://www.planttreaty.org/obs_en.htm)

sessions of the Governing Body on matters of direct concern to them<sup>25</sup>.

Under Article 19.5 of the Treaty, any body or agency, whether governmental or non-governmental, qualified in fields relating to conservation and sustainable use of plant genetic resources for food and agriculture, that has informed the Secretary of the Treaty of its wish to be represented as an observer at a session of the Governing Body, may be admitted unless at least one third of the Contracting Parties present object<sup>26</sup>. Once approved, observers may participate in the meeting on matters of direct concern to the body or agency they represent<sup>27</sup>.

Prospective observers must, prior to their first session they wish to observe, submit to the Secretariat of the Treaty a brief description of their organization, including the organization's full name and contact details, its main objectives and activities, indicating the organization's qualification in fields relating to the subject-matter of the Treaty<sup>28</sup>. The Secretariat refers this matter to the Governing body for consideration at the beginning of that meeting. All 35 requests for observer status at the third session of the Governing Body of the Treaty were accepted<sup>29</sup>. Observers are able to convene side events at meetings of the Governing Body.

### **Access to Documents**

The ITPGRFA does not restrict access to official documents. Meeting information and agendas are posted online in advance of meetings, with reports and draft report, minutes, lists of participants, proposals, policy and research papers and negotiating texts available online and/or reported on, as they are available. Documents are available through the website of the Treaty. Translations into the working or official languages of the United Nations are provided for official meeting documents.

## **V. The International Union for the Protection of New Varieties of Plants (UPOV)**

### **Observer Status – Rules and Implementation**

UPOV rules permit the granting of observer status to States, intergovernmental organizations and international non-governmental organizations<sup>30</sup>. The rules do not include mention national non-governmental organizations.

As set out in the rules, the granting of observer status in UPOV bodies is as follows:

#### *The Council*

- Observer status is reserved for those organizations with competence in areas of direct relevance in respect of matters governed by the UPOV Convention.

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<sup>25</sup> See, *Observers*, available on the ITPGRFA website [http://www.planttreaty.org/obser\\_en.htm](http://www.planttreaty.org/obser_en.htm)

<sup>26</sup> *International Treaty on Plant Genetic Resources for Food and Agriculture*, Article 19.5

<sup>27</sup> ITPGRFA (2006) *Rules of Procedure of the Governing Body* [IT/GB-1/06/Report] Appendix D Rule VII.2

<sup>28</sup> ITPGRFA (2009) *Participation of Observers in the Fourth Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture*, Third Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture, [IT/GB-3/09/Report] at para 16

<sup>29</sup> ITPGRFA (2009) *Participation of Observers in the Fourth Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture*, Third Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture, [IT/GB-3/09/Report] at para 16. See also, ITPGRFA (2009) *List of Observers who have requested approval to be represented at the third session of the Governing Body in accordance with Rule VII.2 of the Rules of Procedure* [IT/GB-3/09/Inf.13 Rev.1]

<sup>30</sup> UPOV (2005) *Rules Governing the Granting of Observer Status to States, Intergovernmental Organizations and International Non-Governmental Organizations in UPOV Bodies and Access to UPOV Documents* [UPOV C/19/13]

- The Office of the Union is authorized to grant observer status to additional States if it considers that they have officially expressed an interest in becoming a member of UPOV and in participating in the sessions of the Council.
- The Consultative Committee decides on the intergovernmental and international non-governmental organizations to be granted observer status.
- Where agreed by the President of the Council and the Office of the Union, an ad hoc invitation may be made to an intergovernmental or international non-governmental organization to attend a particular Council session<sup>31</sup>.

*The Consultative Committee:*

- normally holds closed sessions restricted to the members of the Union. Observer States and certain intergovernmental organizations may be invited by the Office of the Union to participate within an item of the agenda concerning the preliminary examination of their legislation in order to respond to any questions raised by the Consultative Committee, but would not be present during the discussions of the legislation<sup>32</sup>.

*The Administrative and Legal Committee (CAJ):*

- The Office of the Union is authorized to grant observer status to additional States, which have been granted observer status to the Council, if they have officially expressed an interest in participating in the sessions of the CAJ.
- The Consultative Committee decides on the intergovernmental and international non-governmental organizations to be granted observer status.
- Where agreed by the President of the Council, the Chair of the CAJ and the Office of the Union, an ad hoc invitation may be made to an intergovernmental or international non-governmental organization to attend a particular CAJ session<sup>33</sup>.
- The advisory group to the CAJ (“CAJ-AG”), established in 2005 to assist in the preparation of information materials concerning the UPOV Convention, might invite observers. The CAJ’s terms of reference states that “observer organizations, in particular those representing the interests of breeders, might be invited by the CAJ-AG to present their views on particular provisions of the 1991 Act to assist in [its] work”<sup>34</sup>

*Technical Committee (TC) and Technical Working Parties (TWP):*

- The Office of the Union is authorized to grant observer status to additional States, which have been granted observer status to the Council, if they have officially expressed an interest in participating in the sessions of the TC or the sessions of one or several TWPs. The Consultative Committee takes the decision.
- Where agreed by the President of the Council, the Chair of the TC and the Office of the Union, an ad hoc invitation may be made to an intergovernmental or international non-governmental organization to attend a particular TC session. Such invitations will subsequently be reported to the Consultative Committee<sup>35</sup>.

Organizations wishing to be granted observer status for the council, the CAJ, the TC and TWPs must write a letter to the Secretary General of UPOV requesting observer status in

<sup>31</sup> UPOV (2005) *Rules Governing the Granting of Observer Status to States, Intergovernmental Organizations and International Non-Governmental Organizations in UPOV Bodies and Access to UPOV Documents* [UPOV C/19/13] Rule 2 (a)

<sup>32</sup> UPOV (2005) *Rules Governing the Granting of Observer Status to States, Intergovernmental Organizations and International Non-Governmental Organizations in UPOV Bodies and Access to UPOV Documents* [UPOV C/19/13] Rule 2(b)

<sup>33</sup> UPOV (2005) *Rules Governing the Granting of Observer Status to States, Intergovernmental Organizations and International Non-Governmental Organizations in UPOV Bodies and Access to UPOV Documents* [UPOV C/19/13] Rule 2(c)

<sup>34</sup> UPOV (2005) *Report of the fifty-second session of the CAJ, Geneva, October 24, 2005* [UPOV CAJ/52/5]

<sup>35</sup> UPOV (2005) *Rules Governing the Granting of Observer Status to States, Intergovernmental Organizations and International Non-Governmental Organizations in UPOV Bodies and Access to UPOV Documents* [UPOV C/19/13] Rule 2 (d),(e)

the Council, and any other bodies<sup>36</sup>. As described, the granting of observer status to intergovernmental and international non-governmental organizations is reserved for those organizations with competence in areas of direct relevance in respect of matters governed by the UPOV Convention. The constituent treaty for intergovernmental organizations and the statutes for international non-governmental organizations will form the basis to determine that competence<sup>37</sup>. It is generally for the Consultative Committee, not the Secretariat, to take the decision. The rules do not suggest the Secretariat may filter requests prior to consideration by the consultative committee. Observer status is granted for an unspecified duration unless a particular duration is specified<sup>38</sup>.

Observers may take part in debate at the invitation of the chair but are not permitted to move motions, proposals or amendments or to vote<sup>39</sup>.

UPOV has 42 currently accredited observer organizations to the Council<sup>40</sup>, with smaller subsets of these organizations also observers to other UPOV bodies. A breakdown by category finds that observers include:

- 5 United Nations Organizations <sup>41</sup>
- 2 Regional Intergovernmental Trade Communities/Associations<sup>42</sup>
- 3 Regional Intellectual Property Organizations<sup>43</sup>
- 3 Other Intergovernmental & International Financial Institutions<sup>44</sup>
- 2 Farmers Organizations<sup>45</sup>
- 1 Conservation Union <sup>46</sup>
- 1 Organization focused on Plant Breeding for the Benefit of Society <sup>47</sup>
- 4 Research Organizations (Agricultural/Food Security/Scientific) <sup>48</sup>
- 11 Plant Science, Seed, Horticultural and Agricultural Associations/Federations<sup>49</sup>
- 2 Intellectual Property Associations/Institutes <sup>50</sup>
- 1 Pharmaceutical Industry Associations <sup>51</sup>
- 1 Biotechnology Industry Associations<sup>52</sup>
- 1 General Business Organizations <sup>53</sup>

<sup>36</sup> UPOV (2005) *Rules Governing the Granting of Observer Status to States, Intergovernmental Organizations and International Non-Governmental Organizations in UPOV Bodies and Access to UPOV Documents* [UPOV C/19/13]

<sup>37</sup> UPOV (2005) *Rules Governing the Granting of Observer Status to States, Intergovernmental Organizations and International Non-Governmental Organizations in UPOV Bodies and Access to UPOV Documents* [UPOV C/19/13]

<sup>38</sup> UPOV (2005) *Rules Governing the Granting of Observer Status to States, Intergovernmental Organizations and International Non-Governmental Organizations in UPOV Bodies and Access to UPOV Documents* [UPOV C/19/13]

<sup>39</sup> UPOV (1982) *Rules of the Procedure of the Council October 15 1982* [UPOV INF/7]

<sup>40</sup> (2010) *Report of the Forty Fourth Council Session* [UPOV C/44/16]

<sup>41</sup> Food and Agriculture Organization of the United Nations (FAO); United Nations Development Programme (UNDP); United Nations Environment Programme (UNEP); United Nations Industrial Development Organization (UNIDO); World Intellectual Property Organization (WIPO)

<sup>42</sup> Andean Community; European Free Trade Association (EFTA)

<sup>43</sup> African Intellectual Property Organization (OAPI); European Patent Organisation (EPO); African Regional Intellectual Property Organization (ARIPO)

<sup>44</sup> World Trade Organization (WTO); World Bank; Organisation for Economic Co-operation and Development (OECD)

<sup>45</sup> European Coordination Via Campesina (ECVC); General Committee for Agricultural Co-operation in the European Union (COGECA)

<sup>46</sup> The World Conservation Union (IUCN)

<sup>47</sup> Association for Plant Breeding for the Benefit of Society (APBRES)

<sup>48</sup> International Commission for the Nomenclature of Cultivated Plants of the International Union for Biological Sciences (IUBS) (ICNCP); International Seed Testing Association (ISTA); Biodiversity International (former International Plant Genetic Resources Institute, IPGRI); Consultative Group on International Agricultural Research (CGIAR)

<sup>49</sup> Asia and Pacific Seed Association (APSA); European Seed Association (ESA); International Association of Horticultural Producers (AIPH); International Seed Federation (ISF); Seed Association of the Americas (SAA); Association of European Horticultural Breeders (AOHE); International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA); Committee of Agricultural Organizations in the European Union (COPA); International Federation of Agricultural Producers (IFAP); European Federation of Agricultural and Rural Contractors (CEETAR); CropLife International

<sup>50</sup> Committee of National Institutes of Patent Agents (CNIPA); International Association for the Protection of Intellectual Property (AIPPI)

<sup>51</sup> European Federation of Pharmaceutical Industries' Associations (EFPIA)

<sup>52</sup> Biotechnology Industry Organization (BIO)

<sup>53</sup> International Chamber of Commerce (ICC)

- 4 Industrial Property Unions/Federations<sup>54</sup>
- 1 Industrial and Employers Federations<sup>55</sup>

This breakdown demonstrates the comparatively high number of observers representing private sector interests of various kinds, as opposed to those focused primarily on the public interest in food security and sustainability.

Numbers of international non-governmental organizations actually attending meetings of the UPOV Council from 1999 to 2009 have been small, with generally no more than five international non-governmental observers<sup>56</sup>.

### **Access to Documents**

UPOV has three categories of restricted document – Council, first restricted area and second restricted area.

- Council documents (for regular and extraordinary sessions) are not restricted and available online.
- Documents in the first restricted area are those of the sessions of CAJ, TC and the TWPS. Access is granted to members of the Union and to States or organizations with observer status at the Council, Administrative and Legal Committee. They are not accessible by the public.
- Documents in the second restricted area are documents of the Consultative Committee. These documents are accessible only by members of the Union. They are not accessible by observers or the public.

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<sup>54</sup> International Federation of Industrial Property Attorneys (FICPI); Union of European Practitioners in Industrial Property (UNION); European Federation of Agents of Industry in Industrial Property (FEMIP); Committee of Nordic Industrial Property Agents (CONOPA)

<sup>55</sup> Union of Industrial and Employers' Confederations of Europe (UNICE) (now known as Business Europe)

<sup>56</sup> See Reports of the UPOV Council, available at [http://www.upov.int/en/documents/index\\_c\\_e\\_extr.htm](http://www.upov.int/en/documents/index_c_e_extr.htm)

## VI. Observations and Conclusion

Both the CBD and the ITPGRFA have broad criteria for the accreditation of observers, with observer status open to any body or agency that meets the criteria of being qualified in fields relating to the core focus of the respective instruments. Once granted, observers may participate on matters of direct concern to the organization they represent<sup>57</sup>.

WIPO has increasingly embraced transparency and participation, through an inclusive approach to the accreditation of observers, and through providing timely access to documents. It has a slightly more restrictive approach to observers than the CBD and the ITPGRFA, with WIPO considering the grant of observer status to national non-governmental organizations against specific additional criteria.

All three, WIPO, the CBD and the ITPGRFA have granted observer status to organizations representing many types of interests. In the case of WIPO and the CBD the numbers of observers are substantial. More broadly, these bodies encourage the collaboration of non-governmental organizations in their work and in the implementation of the instruments they administer, and have programs and other mechanisms to encourage such participation. The CBD and WIPO in particular have also explored additional measures to encourage the participation of specific types of stakeholders in meetings that particularly concern them. For example, in the case of the CBD Working Groups on 8(j) and ABS, and in the WIPO IGC, the establishment of voluntary funds and adjustments to standard meeting procedure were designed to encourage the participation of groups representing Indigenous peoples and local communities. Unrestricted and timely access to documents is a feature of the CBD, ITPGRFA and WIPO.

Of the organizations reviewed, UPOV is substantially more restrictive in the granting of observer status, the level of access by accredited observers to particular UPOV bodies, and in access to certain classes of documents. The limited granting of observer status has derived not only from the formal rules of UPOV, but from the interpretation and application of those rules. Compared with an organization such as WIPO, which has similar formal guidelines for the accreditation of international non-governmental observers, UPOV has interpreted its rules narrowly. UPOV has admitted far fewer observers than the CBD and WIPO, and analysis demonstrates that those that have been admitted represent a narrower spectrum of interests. Such a narrow interpretation by UPOV of its own rules was demonstrated in the refusal by UPOV in 2009 to grant observer status to APBEBES and ECVC.

The consequent grant of observer status to these organizations in 2010 may signal a move by UPOV towards practices more in line with those of other intergovernmental organizations, and more consistent with international principles of good governance, including transparency and participation. However, the restriction of observer status to organizations that are international rather than national in nature, the exclusion of observers from the Consultative Committee of UPOV, and restrictions on access to documents by observers and the public continue to mark UPOV apart from those other organizations reviewed in this report. The upcoming review of rules relating to observers and access to documents may present an opportunity for UPOV to further modernize its rules and their implementation.

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<sup>57</sup> Noting that for both the CBD and the ITPGRFA this qualifier on participation is not applicable in the case of the United Nations, its specialized agencies and the International Atomic Energy Agency as well as any State not Party to the Convention, see, CBD, *Rules of Procedure for Meetings of the Conference of the Parties to the Convention on Biological Diversity*, Rule 6.2, and, for the ITPGRFA *Observers*, available at the ITPGRFA website at [http://www.planttreaty.org/obser\\_en.htm](http://www.planttreaty.org/obser_en.htm)

**Table 1: Summary of Rules Relating to Observer Status and Access to Documents in Selected Intergovernmental Organizations**

|  | WIPO  | CBD   | ITPGRFA   | UPOV  |
|--|---|---|---|---|
| <b>Eligibility – Type of Organization</b>      | <ul style="list-style-type: none"> <li>• Observers may be States, Intergovernmental Organizations, International Non Governmental and National Non Governmental Organizations</li> </ul>  | <ul style="list-style-type: none"> <li>• Observers may be United Nations and its specialized agencies, the IAEA, and States not party to the Convention.</li> <li>• Observers may also be any body or agency, governmental or non governmental (see other qualifying criteria)</li> </ul> | <ul style="list-style-type: none"> <li>• Observers may be United Nations and its specialized agencies, the IAEA, and States not party to the Convention.</li> <li>• Observers may also be any body or agency, governmental or non governmental (see other qualifying criteria)</li> </ul> | <ul style="list-style-type: none"> <li>• Observers may be States, international intergovernmental, or international non governmental organizations</li> <li>• Does not include national non governmental organizations</li> </ul> |
| <b>Eligibility – Other Qualifying Criteria</b> | <ul style="list-style-type: none"> <li>• Criteria for accreditation depends on category of observer – additional criteria for national non governmental organizations</li> <li>• All prospective observers identify fields of intellectual property of interest in</li> </ul> | <ul style="list-style-type: none"> <li>• Observers representing any body or agency, (not including United Nations, IAEA, or States not party to the Convention) must be qualified in fields relating to conservation and</li> </ul>   | <ul style="list-style-type: none"> <li>• Observers representing any body or agency, (not including United Nations, IAEA, or States not party to the Convention) must be qualified in fields relating to</li> </ul>  | <ul style="list-style-type: none"> <li>• Competence in areas of direct relevance in respect of matters governed by the UPOV Convention</li> </ul>   |

application, and include information about the nature of the organization

- In the case of national non governmental organizations, guidelines establish that they shall be essentially concerned with intellectual property matters within the competence of WIPO and shall, in the view of the Director General, be able to offer constructive, substantive contributions to the deliberations of the Assemblies of WIPO;
- The aims and purposes of the organization shall be in conformity with the spirit, purposes and principles of WIPO and the United Nations
- May be subject to consultations between the relevant Member State and the Secretariat

sustainable use of biodiversity

conservation and sustainable use of plant genetic resources for food and agriculture

|   |   |  |  |   |
|---|---|--|--|---|
| <b>Who Grants Observer Status</b>       | <ul style="list-style-type: none"> <li>• For permanent observer Status, determined by Members at the WIPO Assemblies</li> <li>• All WIPO bodies have the capacity to invite observers</li> </ul>                  | <ul style="list-style-type: none"> <li>• May be granted observer status at the Conference of the Parties unless one third of contracting parties oppose</li> </ul>   | <ul style="list-style-type: none"> <li>• May be granted observer status at the Governing Body unless one third of contracting parties oppose</li> </ul>  | <ul style="list-style-type: none"> <li>• Consultative Committee (at which observers not permitted) makes decisions on observer status (in most cases). The formal rules do not permit the Secretariat to interpret eligibility or consider requests.</li> </ul> |
| <b>Rules of Procedure for Observers</b> | <ul style="list-style-type: none"> <li>• Not permitted to vote, move motions, proposals or amendments</li> <li>• Capacity to observe and directly address meetings consistent with directions of Chair</li> </ul> | <ul style="list-style-type: none"> <li>• May not vote but may 'participate' in meeting.</li> <li>• Observers (except for UN organizations, the IAEA and States not Party who are not subject to this restriction) may participate on matters of direct concern to the organization represented.</li> </ul> | <ul style="list-style-type: none"> <li>• May not vote but may 'participate' in meeting.</li> <li>• Observers (except for UN organizations, the IAEA and States not Party who are not subject to this restriction) may participate on matters of direct concern to the organization represented.</li> </ul> | <ul style="list-style-type: none"> <li>• Observers may take part in debate at the invitation of the chair but are not permitted to move motions, proposals or amendments or to vote</li> </ul>  |
| <b>Observer Numbers</b>                 | <ul style="list-style-type: none"> <li>• Currently over 250 Permanent Observer Organizations</li> </ul>   | <ul style="list-style-type: none"> <li>• Several hundred granted observer status at COP10</li> </ul>   | <ul style="list-style-type: none"> <li>• All 34 observer requests granted at Third Meeting of Governing Body</li> </ul>  | <ul style="list-style-type: none"> <li>• Currently 42 observers to the Council, less to the other UPOV bodies.</li> <li>• Numbers of observer organizations attending UPOV Council meetings historically small</li> </ul>                                       |

|                            |  |   |   |  |
|----------------------------|--|---|---|--|
| <b>Broader Engagement</b>  | <ul style="list-style-type: none"> <li>• Capacity to convene side events at WIPO Meetings.</li> <li>• Voluntary Fund for Indigenous Participation</li> </ul> | <ul style="list-style-type: none"> <li>• Capacity to convene side events at CBD meetings and encouraged to otherwise participate in the implementation of the Convention</li> <li>• Voluntary Fund for Participation by Indigenous Peoples and local communities</li> </ul> | <ul style="list-style-type: none"> <li>• Capacity to convene side events at ITPGRFA meetings</li> </ul> |  |
| <b>Access to Documents</b> | <ul style="list-style-type: none"> <li>• Unrestricted</li> <li>• Available online</li> </ul>   | <ul style="list-style-type: none"> <li>• Unrestricted</li> <li>• Available online</li> </ul>  | <ul style="list-style-type: none"> <li>• Unrestricted</li> <li>• Available online</li> </ul>            | <ul style="list-style-type: none"> <li>• Three levels of access ranging from open (Council), accessible by Members only (CC), or accessible by Members and Observers (CA), TC, TWS)</li> </ul> |