

< **Comments of Korea in relation to paragraph 8 of UPOV/WG-HRV/3/3** >

1. Regarding sentence 5.(c) in paragraph 8 of UPOV/WG-HRV/3/3 and Japan's proposal in relation to paragraph 5 in WG-HRV/2/4 Corr., the effect of 'planting and growing' or 'planting and ongoing cultivation' seems to expand the scope of breeder's right beyond the existing seven types of acts in respect of the propagating material of the protected variety in Article 14(1)(a). We have concern that the effect of the proposal lies outside the scope of UPOV Convention and it makes Explanatory Notes inconsistent with the Convention or the purpose of Explanatory Notes which is providing guidance concerning Article 14(2) of the 1991 Act. Therefore, we'd like to suggest the deletion of sentence 5.(c).
  
2. In addition, we propose to change sentence 5 and add new sentence after sentence 5.(d) in paragraph 8 of UPOV/WG-HRV/3/3 as follows to make clear the usage of factors and the concept of "unauthorized use";
  
5. The following is a non-exhaustive list of factors that may be considered by members of the Union in relation to the notion of "unauthorized use". Here, the "unauthorized use" can only occur in the territory of the member of the Union where a breeder's right has been granted and is in force.
  - (a) the breeder did not authorize the acts provided in Article 14(1) of the 1991 Act of the UPOV Convention, in respect of the propagating material of the protected variety. *In this context, "unauthorized use" can only occur in the territory of the member of the Union where a breeder's right has been granted and is in force(delete);* \_\_\_\_\_
  - (b) ~ (d) \_\_\_\_\_

The above factors are not intended as a definition of "unauthorized use" and should be considered in the context of the member of the Union concerned and the particular circumstances.