

BIODIVERSITY AND COMMUNITY KNOWLEDGE PROTECTION ACT OF BANGLADESH

29 September of 1998

Text proposed by the National Committee on Plant Genetic Resources

The National Committee on Plant Genetic Resources (NCPGR) has prepared the following text. This is the fourth and the final-draft and the result of an intensive participatory process involving internal consultation among the committee members. The final meeting took place on September 10, 1998 and the final draft incorporated suggestions of the meeting for further improvement of the text.

Biodiversity and Community Knowledge Protection Act of Bangladesh

Preamble

WHEREAS, People's Republic of Bangladesh is a Party to the United Nations Convention on Biological Diversity signed at Rio de Janeiro on 5th June 1992, therefore, there is the need to implement the spirit, principles and relevant provisions of the Convention on Biological Diversity;

WHEREAS, the Convention on Biological Diversity came into force on 29 December, 1993 and became effective in Bangladesh from 12 May, 1994 and it reaffirms and recognizes that States have sovereign rights over their own biological and natural resources (Preamble and Article 15);

WHEREAS, Article 15 of the Convention on Biological Diversity recognizes that the authority to determine access to genetic resources rests with the national governments and is subject to national legislation;

WHEREAS, the Article 7(1) of the Constitution of the People's Republic of Bangladesh affirms that all powers of the Republic belong to the people. It is therefore necessary to provide adequate principles, institutions and mechanisms, which guarantee the inalienable and sovereign rights of the people of Bangladesh over the biological and genetic resources within their national territory;

WHEREAS, States have committed in Article 8 in the Convention of Biological Diversity to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovation and practices;

WHEREAS, the Convention on Biological Diversity is committed to equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices and it is the responsibility of the State to give effect to this content as well as the spirit;

WHEREAS, the national territory of Bangladesh is recognized historically and scientifically as belonging to the origins of biodiversity of the world;

WHEREAS, the conservation, reproduction, enhancement, maintenance, management and sustainable use of biological and genetic resources in Bangladesh is extremely crucial for ensuring food security and survival under stress caused by natural calamities or created by human actions, and the protection and the regulation of access and use is vital for the survival of the people of Bangladesh in a competitive world under severe environmental and ecological crisis;

WHEREAS it is recognized that biological diversity is being reduced by many human activities and if left unprotected can be lost by unauthorized collection and exploitation;

WHEREAS, the communities play vital roles in generating and enhancing biological diversity and related knowledge, intellectual practice and culture and the responsibility of the State is to create legal, administrative and policy environment to facilitate this role;

WHEREAS, strengthening of national capacity in science and technology with regard to biological resources is a national priority in order to achieve technological and economic self-reliance;

WHEREAS, the intrinsic value as well as the ecological, genetic, social, educational, scientific, cultural and aesthetic values of biological diversity and related knowledge of the community is invaluable irrespective of their immediate or future use; it is necessary that the State clearly recognize this value and make sure that this value is not evaluated exclusively in monetary terms in trade, economic transactions or in market prices, separated from the life and livelihood of people or from the common and vital security interest of the whole of the nation; It is the duty of the State to guard, protect and defend this Real Value in clear terms in appropriate laws, regulations and institutional and administrative measures and arrangements.

WHEREAS there is a global tendency towards the affirmation of intellectual property rights over biological diversity, the products and process related to it and it is imperative that Bangladesh protect her resources;

WHEREAS, it is the duty of the State to establish the most appropriate way of regulating the research, collection, exploitation and use of biological and genetic resources as well as related intellectual knowledge and cultural expressions including the entry of such resources into the country.

Now, therefore, I,President of the Peoples Republic of Bangladesh by virtue of the power vested in me by Constitution and Law, do hereby order:

Article 1
Short Title

1. This Act shall be known as the Biodiversity and Community Knowledge Protection Act of Bangladesh.
2. Any laws, regulations and rules or any of their fragments or parts, which are in conflict with this act, must be discarded and this Act shall prevail.
3. All Acts dealing with biodiversity and genetic resources and the related knowledge, practice and culture as well as new innovations shall belong to this Act and shall have to be consistent with this legislation.

Article 2 Objectives

1. The general objectives of this Act shall be,

a) to protect the sovereign rights of the Communities that have knowledge of biodiversity, and have managed, maintained, conserved, reproduced and enhanced biodiversity, genetic resources and traditional knowledge, culture and various forms of practice related to these resources and which are always held in common.

b) to create the legal and institutional environment so that the Communities, realizing the full potential of its benefits, can contribute and continue enhancing biodiversity through innovation, cultural internalization and expressions for a qualitatively rich and sustainable and life.

c) to strengthen the informal knowledge system and the collective innovation of the Communities that prohibit claim for private ownership, private intellectual property rights or privileges that do not exist now, and that are against the moral, intellectual and cultural values of the Communities.

2. The specific objectives of the Act shall be,

a) to ensure the conservation and sustainable use of biological and genetic resources and related knowledge, culture and practice in order to maintain and improve their diversity as a means of sustaining the life support and healthcare system of the people of Bangladesh.

b) to protect biological and genetic resources and the related knowledge, culture and practice from pollution, destruction and erosion;

c) to protect and support the rights, knowledge, innovations and practices of local and indigenous communities and national scientific and research institutions with respect to the conservation, use and management of biological and genetic resources;

d) to provide an appropriate system of access to biological and genetic resources and related knowledge based upon the Prior Informed Consent of the concerned local or indigenous communities and the State;

e) to promote appropriate mechanisms for a fair and equitable sharing of benefits arising from the use of biological and genetic resources and related knowledge and technologies;

f) to ensure participation and agreement of concerned communities in making decisions regarding the distribution of benefits which may derive from the use of biological and genetic resources;

g) to promote and encourage the building of national scientific and technological capacity relevant to the conservation and sustainable utilization of biological and genetic resources;

h) to promote new innovations and discoveries to reproduce, manage and enhance biodiversity and genetic resources;

j) to ensure that the transfer and movement of biological resources and the knowledge of the community take place in transparent manner and in accordance with this Act; and

k) to protect the biological and ecological environment of the country from all pollution, particularly from the potential hazards of biological pollution caused by the release of genetically modified organism in the environment or may be caused by the genetic engineering technology;

3. The Act shall be the principal instrument to guide, inform, determine, control, reinterpret and to give effect, where necessary, to the rights and privileges granted, if any, to new innovations of any form that has used the natural and biological resources including knowledge and culture of the country or of other countries with which Bangladesh has reciprocal recognition of similar Acts, Ordinances or Laws.

4. The Act will provide appropriate institutional mechanisms for the effective implementation and enforcement of this legislation;

Article 3

Commencement and Scope

1. The Act shall come into force on such date as the Government of the People's Republic of Bangladesh may specify by notification in the Official Gazette.

2. This Act shall include all biological and genetic resources and related knowledge as well as their derivatives within the jurisdiction of the country, both in situ and ex situ. It implies all varieties of life forms including plants, animals, fish and aquatic life forms and microorganisms belonging to all genera/species and varieties, wild or cultivated, occurring naturally or modified in any manner whatsoever through any process, and to their cell lines, genetic material, characteristics, traits, products and the processes involved therein.

3. This resultant legislation shall not apply to the traditional use and exchange of biological and genetic resources as well as related knowledge, culture and practices carried out by and between Communities based upon their customary and traditional practices, particularly Local and Indigenous Communities as well as Communities holding Residual Titles.

Article 4

Definitions

To provide legal standing and to limit linguistic ambiguity certain terms are defined here in this Act to give them the effect of law. The interpretation and implementation of the Act will be determined by these definitions.

'Biodiversity' or 'Biological Diversity'

Both meaning the same, indicate the variability among living organisms from all sources including, inter alia, terrestrial, marine, and other aquatic ecosystem and the ecological complexes of which they are part; this includes diversity within species, between species and ecosystems. Examples of living organisms are plants, animals, fish and aquatic species and varieties and micro-organisms, the genes they contain and ecosystem of which they form a part. They are found in all the ecological zones within the boundaries of Bangladesh - whether naturally occurring or modified in any manner including genetically modified,

whether wild or cultivated or domesticated - its parts, products, cell lines, genetic material, properties, and characteristics. For the implementation of this Act the Biodiversity may further be classified into agricultural biodiversity, animal and livestock biodiversity, medicinal plant biodiversity, aquatic biodiversity and other biodiversity.

‘Biodiversity related ‘Knowledge, Intellectual practice and Culture ’

Refers to all knowledges, intellectual practice and cultures related to biodiversity and biological resources and derived through any system including local, popular, informal, indigenous systems, or systems that are beyond structured or stylized presentation and can be in any form - written, spoken, narrative, anecdotal. These knowledges, intellectual practices and cultures can be intuitive and rational, literal and metaphoric, symbolic or graphical, etc. For this Act these knowledges, intellectual practices and cultures are the result of collective innovation. Because of their collective nature they are not exclusive to any one community. All other knowledges shall be considered derived.

'Biological Material'

Refers to the material or any part thereof of plants, animals and micro-organisms, the genes they contain, and in relation to plants or plant varieties, shall include a plant species or category of a lower level or any part thereof or germplasm therein, whether domesticated or not, used in accordance with established customs, cultures, practices, moral values and laws by local communities for a particular purpose that requires a prior knowledge of a particular property of the plant such as food, medicine, fuel wood, construction materials and dye.

'Resources', particularly biological and genetic resources

The 'resource' refers to the totality of the various aspects of the biological material including habitat, its relation with other similar or inorganic entities and its various expressions and embodiments in knowledge, intellectual and cultural practices

"Habitat" means the place or type of site where an organism or population naturally occurs. Biological resources include all biological resources, organisms or parts thereof, populations, or any other biotic components of ecosystems of Bangladesh. Genetic resources means resources related to the genetic materials. The genetic material means any material of plant, animal, microbial or other origin containing functional units of heredity.

Common Property Regimes

Refer to the customs, traditions, community rules, regulations, arrangement or any other forms of relations through which Community ensures access and use of resources that are held in common.

Collectors

Means any individual body of persons, Company, Corporation or Firm or Institution or any one or more of them engaged or involved in the collection of biological and genetic resources and the intellectual and cultural knowledge and practices, whether as a business or in any other forms of activity.

'Commercial Utilization', 'Commercial Transactions'

It means making available any tangible or intangible items, innovation, knowledge or any process or product related to biological and genetic resources for sale in the market for profit or other monetarily gainful purpose. This definition excludes common, traditional and customary exchange and/or transactions within and between Communities if profit making or

monetarily gainful intention is not the implicit or explicit purpose, whether money is used or not.

Ecosystem

Constitutes relations and interactions of plant, animal, microorganism and human beings and their non-living environment as a functional unit, which is dynamic and complex.

'Innovation' or Invention

"Innovation" includes any alteration, modification, improvement of collective and cumulative knowledge or technology, and of the use, properties, values and processes of any biological material or any part thereof, and any, or enhanced, use or value as a result of the said cumulative knowledge or technology, whether documented, recorded, oral, written or in whatever manner otherwise existing including thereof, and shall also include derivatives which utilize the knowledge of Communities in the commercialization of any products as well as to a more sophisticated process for extracting, isolating, or synthesizing the active chemicals in the composition of biological extracts used by the Communities. This knowledge is recognized complete only with its rituals and sacredness as practiced by the community.

'Innovator'

Shall mean the human agency, individual or collective, where the Community/State identifies a source of such innovation, in order to recognize and reward the human agent(s) for playing role in a determinate moment in the otherwise continuous social processes of innovation.

The "Biodiversity and Community Knowledge Protection Act of Bangladesh" deals primarily with community knowledge and collective innovation and community rights. The "Plant Varieties Act of Bangladesh" will deal with introduction of newly innovated plant varieties in order to recognize and reward the role of human agency, individually or in a group.

'Community', 'Local Community' or 'Indigenous Community'

For this Act the 'Community' shall mean a group of individuals who have any of the following characteristics or falls within any of the definitions below:

- a. A group of individuals, whether formal or informal, settled or unsettled, organized or disorganized, monolithic or reticulate, but has a common interest in the utilization, conservation and enhancement of biodiversity, biological and genetic resources and the associated knowledge, intellectual practice and culture.
- b. A group of individuals who have settled together in any geographical area, agro-ecological zones, forests, flood plains, coastal areas or in any eco-cultural system such that their livelihood practices are part of that system.
- c. A group of individuals settle together under a political and administrative unit of local government with jurisdiction and activities related to biological and genetic resources and related knowledge and culture.
- d. A group of individuals who are engaged in a production process and have continuously inherited their production processes and the related knowledge, intellectual practice and culture;
- e. A group of people having a long-standing social organization that binds them together.

f. A group of people whose cultural or religious practices have direct implications for the maintenance and enhancement of particular eco-systems, biological and genetic resources and related knowledge and practice.

g. A group of individuals declared as 'Community' by the National Biodiversity Authority in pursuance of the objectives of Biodiversity and Community Knowledge Protection Act of Bangladesh including, where appropriate, refer to any organization duly registered under the provisions of this Act to represent their interest.

2. Unless mentioned otherwise in this Act Community will always mean any groupings with any or all of the above characteristics or any or all the definitions given above. Also for this Act,

a. The 'Local Community' will imply a 'Community' where a definite locality and place can be associated with it.

b. The 'Indigenous Community' will imply a 'Community' where local history of a community can be traced back at least to 100 years, or to a group of individuals who have distinct cultural and linguistic identities.

3. For clarification: a Community may be a traditional community such as farmers' communities, tribal communities, fishing communities, healers including folk healers, midwives, practitioners of ayurveda, unani, Siddha, bonesetting, and other systems of medicine, indigenous people, women, and other communities such as the scientific community.

The 'State'

The 'State' shall refer to the appropriate government Ministry, Administration or any competent authority assigned constitutionally or legally to act on behalf of the State, as the context implies or admits.

Residual Title

A Community, that lives interactively within an ecosystem and whose lives and livelihoods are results of that interaction and thus constitute the ecology, biodiversity and related knowledge of that system, will be recognized by this Act as the primary "owner" of the biodiversity and genetic resources and related knowledge, practices and innovations on behalf of all the Communities of Bangladesh. The term 'Residual Title' articulates this right as defined by this Act to make it distinct from individual ownership. Communities holding Residual Titles shall have both the usufruct, as well as the custodial and stewardship titles of genetic and biological resources under question. Therefore, in all cases of proprietary disputes over the legal "ownership" of such resources and disputes over benefit sharing, the rights of the Residual Titles holders shall prevail over other Communities or over other citizens of Bangladesh.

Specimen

Specimen shall mean any sample of biological and genetic material and/or any material that has a unit of heredity.

Article 5

General Provisions of the Act

1. The Biodiversity and Community Knowledge Protection Act recognizes and reaffirms that the people of Bangladesh are constituted into diverse communities and localities, diverse life styles and cultures in various ecosystems in accordance with the fundamental premise of biodiversity and genetic resources and the knowledge, intellectual practice and culture related to them.
2. The Act shall provide legal protection to those who may demand that the State protect their lifestyles and livelihood practices from degeneration, erosion and/or destruction.
3. The Act declares and reaffirms that the patenting of the life forms is against the moral, intellectual and cultural values of the people of Bangladesh. Accordingly, the access and use of biological and genetic resources will be guided by these values. Any privileges, protection and/or rewards, if ever extended to new innovations, will have to remain consistent with this particular provision of the Act.
4. This Act shall be the enabling instrument for the people of Bangladesh to exercise their sovereign and inalienable rights, formal and/or informal, over the biological and genetic resources and related intellectual and cultural knowledge. These rights shall be exercised either through traditional and customary laws, practices, values, moral institutions, community arrangements, institutions or through various laws and regulations of the State, including the new provisions enacted by this Act.
5. This Act prohibits violation of Common Property Regimes that include various rights, relations, arrangements and cultural practices whether or not they have legal expressions or recognition through legal precedence by which Communities own, use and have access to biological and genetic resources.
6. This Act shall ensure that no citizen of Bangladesh is prohibited from access and use of biological and genetic resources and the related knowledge, intellectual practice and culture as long as such access and use do not fall outside the cultural, traditional, customary practices and/or do not constitute activity to make economic profit.
7. The Act recognizes that the life supporting and life affirming system of the people of Bangladesh is a matter of national security. This system is traditionally and historically based on biological diversity and constituted by the biodiversity-based regeneration and production activities in order to ensure food, fiber, medicine, energy, construction materials and other vital necessities of life, including nutritional and ecological security, healthy environment and valuable knowledge and culture of survival. Consequently, any development and project activity shall be prohibited and/or deemed illegal if they erode, destroy or become detrimental to the biological and genetic basis of national security.
8. The Act protects and develops systems that are based on biodiversity and genetic resources and related knowledge and culture, such as agriculture, forestry, fishing practices, animal husbandry, medicine and other relevant systems. Any intervention, technological or otherwise, in these systems, causing irreversible damage, destruction, and/or negative short term or long term consequences according to this Act is prohibited and illegal.
9. The Act shall protect and encourage diversity in life and production practices, diverse knowledge and cultural systems, various formal and informal innovations and practices of the Communities, particularly Local and Indigenous Communities and the Communities holding Residual Title, with respect to the conservation, management, use and generation of biological and genetic resources.

10. The Act shall protect, develop and strengthen the integrated, interconnected and unique feature of the biodiversity based agriculture of Bangladesh, which is holistic in spirit and practice and includes fishery, animal husbandry, poultry, use of microbes, forestry and various domesticated and undomesticated plants, animals, birds, fish, microbes and other life forms.

11. The Act shall be the legal basis to protect the biodiversity of forests, wet lands, marine environment, river and other eco-systems.

12. The Act shall be the legal basis to protect the diversity of genera and species of all life forms in general or of particular forms belonging to plants, animals, insects, microbes, fish, birds or others.

13. The Act shall protect and encourage the ingenuity of the various Communities for the national interest as well as for the common good of humanity, particularly the innovative talents of primary food producers such as farming and fishing communities, communities living in forests etc.

14. The Act shall be the legal basis to promote and support different ways of generating knowledge and technology in various forms and contents, by giving priority to the material and cultural development in order to achieve qualitatively higher life standards and happiness of the people of Bangladesh.

15. The Act shall recognize a ‘Community’, a ‘Local Community’ or an ‘Indigenous Community’ as having legal persona and their rights inscribed in this Act as inalienable.

16. The Act prohibits all forms of monopolization of biological and genetic resources and related knowledge and culture

17. By this Act the State shall uphold the Common Property Regimes as against any private claim over the biological and genetic resources and the intellectual and cultural knowledge and practice related to these resources in case of legal conflicts.

Article 6

Establishment of Sovereign Rights of Bangladesh Over Biological and Genetic Resources

1. All the biological and genetic resources within the territory of Bangladesh, or originated in Bangladesh, as well as all related intellectual and cultural knowledge and practices among the people of the country, either existing in tangible forms or in various intangible forms and expressions, belong in perpetuity to the people of Bangladesh and is held for past, present and future members of the country. Therefore all such biological and genetic resources as well as all related intellectual and cultural knowledge and practices are being declared by this Act as wealth held in common and constitute the Common Property Regimes of the country and cannot, therefore, be alienated irrevocably nor can its enjoyment be impaired.

2. The people of Bangladesh, constituted as Communities and living in various geographical locations and localities, shall become the general owners, custodians and stewards of these resources and they will always enjoy individual and collective rights over these resources held

in common as wealth belonging to all the citizens of Bangladesh. In all legal disputes over "ownership", the common ownership will prevail and will be upheld by law.

3. Biological and genetic resources and the related knowledges, practices and culture are commonly owned and used. Therefore all these resources, knowledge and practices cannot be made subject to any exclusive private monopoly rights, and will always remain outside patenting or the patent regime. Any violation of the access and the use rights of citizens of Bangladesh will not be recognized by the State and will be constituted as a violation of this Act.

4. The State will, nevertheless, recognize the original rights of indigenous and local communities, farming and fishing communities, and other communities that are directly linked through their livelihood practices to particular ecosystems and to the related knowledge, innovation and culture specific to that livelihood. These rights will be considered inviolable due to the role of these communities as custodians and stewards, thereby establishing their primary and Residual Title over the resources remaining aware of the rights of women in particular, to

the formal or informal communal systems of innovation through which they produce, select, improve and breed a diversity of crop, fish, poultry and livestock varieties;

the plant varieties, micro-organisms, fish and aquatic life forms, livestock, traditional medicines, agricultural practices and devices, and technologies produced through these systems;

the human genetic diversity;

all species and varieties of life forms and genetic resources covering the whole range of biological diversity of all genera and species, including microorganisms; and

any other life form not explicitly included above.

In determining the access and use rights of the communities the rights of the Residual Title holders will prevail over other Communities.

5. The State shall recognize, establish and protect the rights of the Communities to collectively benefit from their knowledge, innovations and practices acquired through generations (past, present and future) and to receive compensation for the conservation of biological and genetic resources in accordance with the provisions of this Act and subsequent regulations as well as in accordance with the rights and obligations enshrined in the Convention on Biological Diversity.

6. The State recognizes the knowledge and explicit and/or implicit innovations of various Communities of Bangladesh as well as formal and informal contributions of researchers and scientists in maintaining, conserving and broadening the base of genetic variability by way of creating, upgrading, collecting and evaluating and preserving, conserving and keeping biological diversity. All citizens will have unencumbered access to their biological wealth for their survival needs and traditional uses.

7. The State will enact appropriate mechanisms to reward the innovator, as defined by this Act, where it is necessary to recognise the role of any individual or any group for the common good within the context of this Act.

8. The intrinsic, unknown, undisclosed, non-apparent value of the biodiversity, biological and genetic resources and the knowledge and culture related to it will be recognized, known, and articulated by this Act as Real Value. The Real Value can never be evaluated in any form of

economic and trade transactions and cannot be expressed in monetary and/or financially quantitative terms.

9. Access and use of the biological and genetic resources will be guided by consideration for the protection and maintenance of the Real Value as against the value in economic transactions and trade. All economic transactions related to biodiversity and genetic resources and related knowledge of the Community/ies will be based on mutually agreed terms beneficial both to the economic agents and the community. The protection of the Real Value will be treated, after this Act, as the security concern of the people of Bangladesh.

10. Since all innovations or inventions, either individually or collectively generated, are social, and since there can never be any innovation outside society or the community and/or without the utilization of the existing knowledge, intellectual resources and culture, all innovations or inventions shall be deemed by this Act as social, collective or generated by the Community. Nevertheless, individual moments of the social process may be recognized, by the Community, if necessary, in order to reward an individual or a group of individuals or a particular Community for the common social goal of new innovations or invention and progress. Accordingly the Act shall recognize innovations or inventions only through and by the Community.

Article 7

Prior Informed Consent

1. The sovereignty of the State over the biological and genetic resources and the related intellectual and cultural knowledge and practices will always be given effect through the Communities. The State, but only through Communities, shall at all time and in perpetuity be the lawful and sole owners, custodians and stewards of biological resources, knowledge and innovation related to these resources.

2. No biological or genetic resource and no intellectual and cultural knowledge and practices related to them as well as innovations arising out of them, shall be sold, assigned, transferred or dealt with in any way whereby the status of the Communities as the common owners, custodians and stewards of the resource or the innovation, or the integrity of the resource or the innovation, is impaired.

3. The State, local and indigenous community, people's organization or organizations representing their specific interest or the common interest of the Communities shall have the standing or locus to enforce, monitor and further the Communities' innovation, resource and/or innovation and any matters in relation to its utilization, exchange or impairment, whether in Court or elsewhere provided always that the Local community and/or Residual Title holders shall take precedence.

4. The biological and genetic resources and the intellectual and cultural knowledge and practices as well as any innovations arising from these shall not be sold, assigned transferred or dealt in any manner without explicit Prior Informed Consent and effective participation of the Communities concerned. The Communities will always have the right to refuse transaction based on gainful intent or any commercial utilization, exploitation and exchange.

5. The State shall ensure that at least a defined percentage of benefits, not less than 50 percent of the net monetary gain, obtained from a direct or indirect commercial use of biological and

genetic resources in which the Communities are the common owners, sole custodian and stewards be paid to the concerned local community or the group constituted as a Community.

6. The State will ensure that the ecological or environmental costs that are incurred in direct or indirect commercial use of biological and genetic resources are transparently and accurately calculated and the Communities are compensated separately for these costs.

7. Subject to the above paragraphs of this Article, the State shall, through the National Biodiversity Authority, take regulatory measures to establish a system of collective/community intellectual rights and Residual Titles through a transparent process and effective participation of the Communities, which include the following considerations:

(a) identification of the types of common and collective achievements and intellectual rights that are recognized in each case.

(b) identification of the Communities to be recognized as Residual Title holders as defined by this Act.

(c) identification and definition of the requirement and procedure necessary for the recognition of the collective achievements and intellectual rights and the title to the same.

(d) definition of a system of collective biodiversity registration and specific rights and obligation that arise from the entitlement.

(e) criteria and mechanisms for the standardization of procedure related to the tasks described above.

8. The State shall, through the National Biodiversity Authority, provide supports to Communities in order to identify and characterize their livelihood and relations within an ecosystem as well as innovations, achievements and other activities mentioned above.

9. The State shall, through the National Biodiversity Authority, ensure that Communities have the right not to allow the collection of biological and genetic resources and the access to traditional knowledge and technologies in their custody, as well as to demand restrictions upon such activities.

Article 8

Co-ownership of Biological Resources, Knowledge and Innovation

1. Co-ownership with other communities:

(a) Nothing in this Act shall prevent any other Community/ies wherever situated within Bangladesh from establishing their rights by proper legal procedures to the biological resources and/or innovation. In such event the different communities will be co-owners of the resource and/or innovation.

(b) Co-ownership shall carry with it the same rights, duties and obligations as set out above save that, these rights shall be co-terminous and enjoyed together with the co-owners.

(c) All benefits that accrue to one co-owner shall accrue to benefit all other co-owners.

(d) Each co-owner shall hold in trust all rights, obligations, rewards, remuneration, etc. for the other co-owners.

2) Co-ownership with the State:

a) The State shall act as co-owner of the biological and genetic resources of the entire territory of Bangladesh and shall not have power to negotiate access to biological and genetic resources by foreign/commercial interests without the full participation of other co-owners.

b) The State shall ensure payment of royalties or compensations to the Communities where applicable. The State shall also ensure equitable disbursement of such payments where applicable.

3) Regional Cooperation:

a) The principle of co-ownership may be extended to the Communities belonging to other countries on the basis of reciprocal recognition of rights inscribed in this Act, provided that such recognition is promulgated as an act in both the countries.

b) The State, through National Biodiversity Authority or other appropriate representative, shall take all necessary efforts to promote and strengthen regional co-operation to achieve the spirit and objectives of this Act.

Article 9

Free Exchange Amongst Communities

1. Any member belonging to any Community or citizen of Bangladesh shall at all times be entitled to grant free access to its biological and genetic resources and innovations, knowledge and practices without any payment or reward provided always that such resources and innovation is not acquired for commercial purposes and/or profit in cash or kind.

2. Such acquirer shall make the said resource and/or innovation available to any other Community/ies on the same terms.

Article 10

Reclaiming and Regaining Resources

1. This Act may be extended to the biological and genetic materials and/or germplasm or any resources taken out of this country or as denoted by this Act as Specimen, belonging to the people of Bangladesh, whether deposited in International or National Gene Banks or in any other private or public ex-situ or in-situ collection. The State shall not limit its sovereign jurisdiction in this regard in any forms and in any dealings of international relations including Treaties and Agreements.

2. Communities shall always and at any time have the right to reclaim and regain any time the germplasm or other biological resources taken from them and to withdraw the Specimen from a gene bank.

3. Communities shall always enjoy the immediate right of access and use of Specimen deposited in any national or international gene banks and/or other centers.

4. The State shall reclaim all ex-situ collection of biological and genetic materials and resources and related intellectual and cultural knowledge collected before the signing of the Convention of Biological Diversity and establish transparent and direct custody upon them.

6. The Convention of Biological Diversity, being effective in Bangladesh since 12 May 1994, shall also be interpreted to mean the sovereign right and the right to establish direct and transparent custody over the biological and genetic resources and/or germplasm taken out of the country before the enactment of this Act.

Article 11

National Biodiversity Authority

1. A national inter-sectoral body at the highest level, composed of relevant representatives from the public sector, scientific and professional organizations, people's organizations, women's organizations, development and environmental organizations, and representatives of local and indigenous communities, shall be created as a regulatory body to ensure proper implementation and enforcement of the provisions of this legislation.

2. This body will be called as The National Biodiversity Authority and will function as an independent and autonomous body.

3. A Chairperson with a Management Committee of 14 more members will head the National Biodiversity Authority for smooth and efficient implementation of this Act. It shall be constituted as follows:

Seven Ex-officio members

One member for the Parliament

Six representatives from different Communities

The National Biodiversity Authority will select the last six persons from among their own members or from outside, as the situation demands. The following shall be the criteria for selection:

a. A citizen of Bangladesh

b. A competent person by education, technical knowledge and experience as required and demanded by this Act

c. A person with no financial or any other connection, direct or indirect, with interest groups involved in commercial exploitation and/or profitable economic transactions of biological and genetic resources and related knowledge and culture and/or with any involvement in such business.

d. A person who is not working with any company, corporations, business or interest groups of the categories mentioned above for the last 10 years, who provides in writing that he or she shall not seek employment with such groups for at least 5 years after the assignment is over.

e. The responsibility will be honorary and no financial benefit can be derived from the position and the person should remain committed to offer full time to deliver his/her responsibility.

f. In addition to the criteria described above the Chairperson shall be an eminent scientist with considerable social reputation with experience not less than 10 years or a person with proven competence, experience and contribution in the field for not less than 15 years.

4. The seven ex-officio members will be the following:

1. Director General, National Plant Genetic Research Institute
2. Director General, Seed Wing, Ministry of Agriculture
3. Director General, Livestock Sciences
4. Director General, Fisheries Research Institute
5. Director General, Forestry Research Institute
6. Director, Bangladesh National Herbarium
7. A representative from the University Grant Commission not below the rank of a professor

The Director General of the National Plant Genetic Research Institute shall act as the Member Secretary of the National Biodiversity Authority.

5. To conduct executive functions of the National Biodiversity Authority Directors and other executives shall be appointed by the Chairperson. All appointed executives shall remain accountable and liable to the Chairman. The Chairman with the Management Committee shall remain liable to the National Biodiversity Authority.

6. Chairperson shall be changed in every six years and the members of the Members of the Management Committee every three years, except the ex-officio members.

7. For this Act, all decisions taken by the Chairman with the Management Committee shall be constitute the final decision of the National Biodiversity Authority.

8. The National Biodiversity Authority shall also be the implementing agency of the New Plant Varieties Act of Bangladesh as well as other Acts related to biodiversity and innovation in other areas.

9. The National Biodiversity Authority will set up a technical secretariat and/or advisory body, which shall equally be inter-sectoral and composed of representatives as mentioned in Article 10.1.

10. The National Biodiversity Authority shall establish a National Biodiversity Information System.

11. The National Biodiversity Authority shall take necessary measures and regulations to prevent illegal and unauthorized transactions of biological and genetic resources and exploitation of related knowledges and culture.

12. In cases of disputes or conflicts at the national or international level, the National Biodiversity Authority will be responsible for providing legal evidence of prior community knowledge related to biological and genetic resources of the country and the knowledge, culture and practice related to these resources, either through the Community Biological Diversity Registers or National Biological Inventory, or other means.

13. The National Biodiversity Authority shall have, inter alia, the following functions:
(a) ensure that the minimum conditions for agreements with Collectors are strictly observed and complied with,

- (b) ensure that the rights of Communities, wherein the collection of or research on biological and genetic resources are being conducted, be protected.
- (c) verify that the requirement of Prior Informed Consent by the Communities are complied with,
- (d) study and recommend policies and regulations on the utilization of biological and genetic resources including intellectual property rights and community rights in accordance with this Act.
- (e) recommend policies and mechanisms for coordination between the entities and organizations competent in matters of biodiversity, genetic resources and bio-safety;
- (f) establish lists of endangered ecosystems and threatened biodiversity.
- (g) issue and update every year, a report on the threats to the national biodiversity and their possible impacts to the security and the livelihood of the people, and every five years a detailed report on the State of Biodiversity and Genetic Resources and the Knowledge, Intellectual Practice and Cultures of Bangladesh
- (h) establish mechanisms to enable the identification and dissemination of information regarding threats to biological and genetic diversity,
- (i) develop and monitor plans, strategies and policies to conserve and enhance biological diversity and ensure the sustainable use of its components,
- (j) take measures towards the repatriation of biological and genetic materials and resources taken out of the country;
- (k) take measures to regain information, knowledge, technology and intellectual and cultural expressions that are not available within the country;
- (l) monitor the importation and introduction of genetically modified organisms and the research and processes of biotechnology and genetic engineering in order to protect the environment and safeguard the citizens from biological pollution, hazards and dangers of such technologies.
- (m) execute the responsibilities assigned under the Plant Varieties Act of Bangladesh;
- (n) protect new innovations of the Communities from external claims of innovation and intellectual rights and ensure that the rightful innovator(s) are duly recognized and rewarded; and
- (o) perform such other functions as may be necessary to implement this legislation.

14. The National Biodiversity Authority shall have the following powers:

- (a) to take decisions and measures as well as draft and implement rules, regulations and administrative procedures that are required by this Act.
- (b) to determine whether any biological and genetic materials and resources and intellectual and cultural knowledges are being collected, exploited or taken out of the country without the Prior Informed Consent of the Communities, and/or being culturally abused in conflict with their local and indigenous use and practice, and/or commercially exploited against the provisions of this Act.
- (c) to determine whether the individual or the people involved in activities that are illegal according to this Act should be prosecuted under criminal laws or in other courts consistent with the relevant laws of the country without any prejudice of the rights of Communities to seek justice.
- (d) to declare unlawful any materials, research facilities and experiments or processes as mentioned in this Article 11.7(l) related to genetic engineering and genetically modified organisms, that exist within the territory of Bangladesh outside the knowledge of National

Biodiversity Authority and without its explicit written permission and to seize and closed down.

15. The National Biodiversity Authority will conduct all its activities and decision making process in an open and transparent manner for public scrutiny.

16. Any citizen of the country or the Community shall have the standing or locus to challenge any decisions of the National Biodiversity Authority.

Article 12

National Biodiversity Information System (NBIS)

1. The National Biodiversity Information System shall have the following functions:

a) Community Biodiversity Registers:

i. All biological and genetic resources in their diverse manifestations or expressions and the intellectual and cultural knowledge and practices shall be registered, documented and permanently kept in Community Biological Diversity Registers.

ii. The responsibility of documentation and maintenance of the record will be vested in the National Biodiversity Information System.

iii. The National Biodiversity Authority will involve Local Government bodies as well as Communities, particularly local and indigenous communities to develop, maintain and manage information and National Biodiversity Information System will make the documentation up to the date when necessary.

iv. Copy of Community Biodiversity Registers will be kept at the Union and Thana level related to that locality or upon the request of Communities in public offices or libraries as decided by the National Biodiversity Authority.

(b) National Biological Inventory: A complete inventory of all the biological wealth of the nation will be documented with special and detailed emphasis on the species and genetic diversity. The NBIS will immediately make a National List of selected species and varieties that shall be prohibited to take out of Bangladesh.

(c) National Scientific Systems of Identification and Classification: The NBIS shall use all available and appropriate scientific techniques and procedures in order to identify and classify biological and genetic resources, such as, molecular technique of identification

(d) The National Biodiversity Information System shall collect all instances of use or mention of knowledge, practices and cultural expression in any media, including international, national and local language, vernacular, dialect, folk tale, song, drama, epics, punthi, jari, or any other forms of communication. This shall provide the basis to recognize the community/ies' ownership rights to the resource and/ or innovation and will constitute legal evidence of "prior knowledge".

(e) The National Biodiversity Information System shall develop an effective data base for monitoring the causes of the loss of biological diversity.

(f) The National Biological Information System will create other documents, facilities, or instruments that it finds necessary and relevant to maintain an up-to-date system of information about the state of conservation, use, management and research regarding the biological and genetic resources of the country.

2. Nothing in this Act or outside this Act shall prevent Communities who have not registered their resources, knowledge, and innovations from establishing their rights to their resources, knowledge and innovations as recognized and enacted by this Act. In case of conflict of interest the task of the National Biodiversity Authority shall precisely be to defend the community ownership rights of biological resources that lawfully belongs to the citizens of Bangladesh over any and all private claim of ownership.

3. The National Biodiversity Authority will make sure that the National Biological Information System focus adequately the cultural, intellectual, spiritual and ritualistic aspects of documented information so that the nuances of the community's ingenuity are not lost in technicalities and dry "scientific" descriptions.

4. National Biodiversity Authority shall maintain all information, materials and products of National Biological Information System so that they are accessible to any citizen of the country without reservation.

Article 13

General Provisions for Access and Collection

1. Access to biological and genetic resources shall only be given to undertakings being carried out within Bangladesh.

2. Undertakings outside Bangladesh involving the collection of Specimen, knowledge or information collected from the country may only be allowed in cases where the National Biodiversity Authority can ascertain benefits in terms of the enhancement of biodiversity and genetic resources.

3. Conducting research or bioprospecting activities shall be denied if it is done in countries, which are Party to the Convention on Biological Diversity. The Collector who is accused of irregular and unauthorized transaction and is known to have collected Specimen in any country without the Prior Inform Consent of the Community, shall not be permitted any access to the biological and genetic resources of Bangladesh.

4. Access to biological and genetic resources shall be allowed only with the written Prior Informed Consent of the National Biodiversity Authority as well as the concerned Communities. No agreement will be valid unless National Biodiversity Authority has adequately publicized the collection to the Community or Communities from where the biological materials, resources, information, etc are going to be collected.

5. In case of a Community having Residual Titles the National Biodiversity Authority shall ensure that explicit consent to the undertakings has been clearly communicated, understood and agreed by the Community.

6. The National Biodiversity Authority shall make sure that political representatives (i.e. MP, Chairman of Union Parishad) of the Community or the representative citizens belonging to the Community, who are permanently living in the area from where the Specimen are collected, be informed adequately about any proposal for research or bioprospecting activities for commercial purposes.

7. Collector(s) must provide written commitment that all research reports and results associated with the Specimen collected from Bangladesh is provided to the National Biodiversity Authority and the concerned Communities in Bangla language, failing which, access will be denied.

8. The request to have access to biological and genetic resources and intellectual and cultural knowledge of the Communities of Bangladesh shall require written application. The application shall be in Bangla language in a simple and easy style.

9. The requirements and conditions to have access are the followings:

(a) The Collector shall request the National Biodiversity Authority for access to biological and genetic resources by application in writing that contains information, inter-alia;

i. the identification of the applicant and the documents which testify to his/her legal capacity to contract;

ii. detailed and specific information about nature of access sought and Specimen to be collected;

iii. present and potential uses including its sustainability and the risks, which may arise from access and collection;

iv. whether any collection of the biological and genetic resource endangers any component of biological diversity, and/or ecosystem, and/or livelihood of any Community holding Residual Title;

v. the purpose for which access and collection is requested including, where it is appropriate, the type and extent of commercial use expected to be derived from the undertaking;

vi. proposed mechanisms and arrangements for benefit sharing including knowledge, technology and/or financial transfer to Bangladesh to the concerned Communities, and the manner and extent of intended involvement of Bangladesh in the necessary research and development;

vii. assignment of the national scientific counterpart institution, which will participate in the research and be in charge of monitoring the process;

viii. precise sites where the Specimen is/are located as well as the places where the proposed research and development activities will be carried out;

ix. all information about the ex-situ center of conservation in the case of ex-situ genetic resources;

x. clear indication of the primary destination of the resource and its subsequent destinations;

xi. indication of the benefits, whether economic, technical, bio-technological, scientific, cultural social or otherwise, that may derive to Bangladesh and the concerned Communities;

xii. description of the knowledge, innovation and/or practice associated with the undertaking and indicating clear reference to the prior knowledge of the Community;

xiii. presentation of anticipated environmental and ecological impact and impact on the livelihood of the Communities holding Residual Titles;

xiv. any other information deemed relevant by the National Biodiversity Authority.

10. Once the application is completed the National Biodiversity Authority shall keep the application in a place that is easily and readily accessible by any citizen of Bangladesh for a period of at least 30 days.

11. The National Biodiversity Authority shall make sure that the Collector has deposited the application to the relevant Local Government (Union Parishad) in order to make it available

to Communities in the offices of the relevant Union Parishad. The application will not be considered unless it is deposited in the Local Government office and remained available to the local communities to see, read and study for at least thirty days from the day the document(s) are available.

12. Upon determination that the application has fulfilled all the necessary requirements of this Act and subsequent regulations issued for its effective implementation, the National Biodiversity Authority may approve the granting of access to the material requested with or without conditions.

13. An agreement shall be signed between the Collector and the National Biodiversity Authority on behalf of the community/communities as well as the State as soon as the application is granted.

14. The agreement shall always be specific to the Collector who has originally applied. Any form of subcontracting by the Collector will constitute a violation of this agreement unless specifically approved by the National Biodiversity Authority.

15. The agreement signed between the National Biodiversity Authority and the Collector shall contain as a minimum requisite:

(a) terms and conditions of equitable sharing of benefits derived from the contracted activities with specific and detailed agreement on the transfer of technology and the sharing of research results. This will have to be endorsed by the Community/ies involved in the undertakings;

(b) terms and conditions of sharing financial benefits with the Community involved in the undertakings from where the Specimens are going to be collected;

(c) a limit on the sizes of the Specimen that the collector may obtain and/or export;

(d) guarantee of a deposit of subsamples from all Specimens collected with a duly designated governmental entity such as gene banks of BRRI, BARI, BJRI, or any other relevant institutions as instructed by the National Biodiversity Authority;

(e) if a commercial benefit and/or product is derived from such undertaking a commitment by the Collector to inform the National Biodiversity Authority as well as the concerned Community/ies of all discoveries from the research and development;

(f) guarantee by the Collector of the participation of Bangladesh in the economic, social and environmental benefits accruing from the products and processes obtained through the use of biological and genetic resources found in the national territory;

(g) commitment to submit regular status reports and the final report of research and where appropriate the ecological state of the species, varieties or the relevant geographical area of research to the National Biodiversity Authority;

(h) commitment to abide by this Act and other relevant rules and legislation of Bangladesh particularly those regarding sanitary control, biosafety and the protection of the environment, ecology, knowledge and culture;

(i) commitment to abide by the values and customs of the Communities relevant with the nature of the undertaking;

16. The collector cannot under any circumstances transfer the Specimen or any resources, knowledge and information to any third party without the authorization of the National Biodiversity Authority and without the knowledge and consent of the local community/communities with whom the undertaking is related.

17. In cases where commercial benefits derived or commercial products resulted from the undertaking of the Collector a separate agreement will have to be signed with the State and the relevant Communities.

18. No entry of any biological and genetic resources shall be allowed to the country unless the National Biodiversity Authority confirms that a Prior Informed Consent has been obtained from the relevant community(s) of the country of origin,

19. The National Biodiversity Authority reserves the right to unilaterally withdraw its consent and terminate the agreement and/or further use of the biological and genetic resources concerned whenever it has become apparent that the collector has violated any of the mutually agreed terms, or in case where the overriding public interest so demand.

20. The State, in whose jurisdiction the Collector shall operate, in cases of undertakings outside Bangladesh, must guarantee that the Collector comply with the mutually agreed terms and conditions as instituted by this Act and provide indication as to how it intends to enforce it.

21. Any claims by the Collector upon biological and genetic resources obtained or used in violation of the provisions of this Act or mutually agreed terms and conditions shall not be recognized. Any certificate of intellectual property or similar certificates and licenses upon resources or products and processes resulting from any undertakings or access will be invalid and illegal.

22. The National Biodiversity Authority may, when it deems it necessary, establish restrictions to or prohibitions on those undertakings, which are directly or indirectly related to access to or introduction of biological and genetic resources, particularly in cases of:

- i. endangered taxa, species, subspecies, or varieties,
- ii. endemism or rarity;
- iii. adverse effects upon the quality of life including human health or the cultural identity of any Community or Communities;
- iv. Undesirable environmental and ecological impacts difficult to control in urban and rural ecosystems;
- v. danger of genetic erosion or loss of ecosystems, their resource or their components, because of undue or uncontrolled collection of germplasm;
- vi. non-compliance with rules on bio-safety and food security;
- vii. use of resources for purposes contrary to national interest and to international agreements entered into by the country;
- viii. undesirable social, economic and political consequences
- ix. detrimental to the livelihood of the Communities holding Residual Titles

23. If the Collector or its Principal is a foreign person or entity, it must be stipulated that scientists who are citizens of Bangladesh already active in the country must be substantively involved in the research, collection and decision making process. This involvement shall be at the cost of the Collector.

24. The Collector and/or its Principal shall be encouraged to avail of the services of Bangladesh universities, academic institutions and NARS, etc., where applicable and appropriate. The Commercial Collector and/or its Principal shall be required to transfer relevant equipment to a Bangladesh institution or entity.

25. A fixed fee for prospecting must be paid to the National Biodiversity Authority. The Authority will formulate the schedule of fees on consideration like geographical regions, economic importance etc.

26. The maximum term for a Research Agreement involving access and collection of Specimen shall be for three years and renewable upon review by the National Biodiversity Authority.

27. In case of endemic species, the Collector must commit that the technology is made available to one or more designated Bangladesh institution for public purposes without paying royalty to a Collector or Principal, provided, however, that where appropriate and applicable, other agreements may be negotiated.

28. All Specimens for collection as well as any biological and genetic resources are subject to regulation and need authorization before they can leave the country.

29. The National Biodiversity Authority shall issue instruments such as Licenses to Collectors as a proof that the Collector is engaged in lawful activities.

30. The National Biodiversity Authority may at any time revoke such instruments if the collector:

- (a) is carrying on his/her undertaking in a manner detrimental to the interest of the people of Bangladesh or particularly to any Community;
- (b) have insufficient assets to cover his/her liabilities;
- (c) is contravening any of the provisions of this Act; or
- (d) has ceased to carry on the undertaking.

31. National Biodiversity Authority may give the opportunity to the Collectors to be heard for reconsideration according to the rules and procedures to be developed by the National Biodiversity Authority.

32. The National Biodiversity Authority will monitor all undertakings in order to see that the Specimen collected from the Community has been used in accordance with the research protocol

33. The National Biodiversity Authority will have to be informed by the Collector at any point of research if it is seen that the undertaking has potential commercial use. The National Biodiversity Authority will treat the undertaking as belonging to commercial endeavor and will instruct the researcher accordingly. In exceptional cases National Biodiversity Authority may take specific decision on a particular case depending on the nature of the research.

Article 14

Access and Collection for National Scientific Research

1. In order to enhance scientific and technological capacity the access to biological and genetic resources and related knowledge, practices and culture shall be allowed to any citizen of Bangladesh contributing to the national scientific research with clear and transparent objective to scientific, social, economic and cultural development of the people of the country.

2. All intellectual and cultural knowledge, products or outcomes of national research described above shall always remain a public property and Communities will have free and unhindered access to the research results and the benefits resulting thereof irrespective of whether they have been carried out privately or through public institutions.

3. The National Biodiversity Authority may provide comprehensive rules and protocols for public research and academic institutions. In such cases, the university, academic institutions and governmental or semi-government institutions shall ensure that all the terms and conditions stipulated in this Act are complied with by the affiliated scientist or researcher. In all cases, the university or institution or governmental entity must ensure that affected communities have given their Prior Informed Consent for the activities to be undertaken and benefits of the research are equitably shared.

4. The maximum term for a research agreement for public research institutions shall be for five years and renewable upon review by the National Biodiversity Authority.

Article 15

Citation of Award for Innovation and Contribution

1. This Act will not in any way limit the rights of any Community including farmers as innovators and as innovator the right to be recognized and rewarded individually or as a group, or both, for the innovation.

2. Potential awardees shall apply for the Citation of Award under the Biodiversity and Community Knowledge Protection Act of Bangladesh and will be entitled to receive the award through National Biodiversity Authority. The National Biodiversity Authority shall determine the criteria, rules and procedures.

3. This shall not prohibit the farmers to apply for rights stipulated in the Plant Varieties Act of Bangladesh.

4. The individual, a Community, or a juristic person who intends to apply for Citation of Award for the innovation of new variety, or for New Plant Variety Certificate or Commercial Permit shall have to apply according to the Plant Varieties Act of Bangladesh.

Article 16

Access and Collection for Commercial Purpose

1. Access and collection for commercial purpose or any bioprospecting activities with direct or indirect intention for commerce shall have to meet all requirements of general provisions for access and collection stipulated in Article 13.

2. The Collector shall have to provide all necessary documents and proof that he/she or the business organization as a juridical person has met all legal requirements to conduct commercial activities in Bangladesh.

3. The Collector shall have to agree by writing to National Biodiversity Authority that any damage that may be caused knowingly or unknowingly by the commercial activity or activities will be compensated by the Collector within 90 days to National Biodiversity Authority, or to the affected Community as decided and directed by the Authority.

4. The National Biodiversity Authority, in accordance with the nature of collection, shall determine whether the Collector is financially sound to meet damage claims in accordance with the nature of collection.

5. The Collector shall have to pay a fee for commercial collection to be decided by the National Biodiversity Authority

6. In addition to fair and equitable benefit sharing in terms of technology transfer and the sharing of knowledge and scientific skills, at least 50 percent of the commercial profit generated in such activities will have to be shared with the Community/ies.

7. No commercial collection will constitute a legal operation unless the Collector obtains the License for Commercial Collection and displays the document openly and transparently in a place where any citizen has access to examine it. The collector will have show the License for Commercial Collection demanded by any member of the Community/ies from where the Specimen is collected.

Article 17

Funding

1. The funds required in undertaking activities towards implementing the provisions of this Act should be obtained through the establishment of a national trust fund for which resources may include:

(a) allocation of state revenue budget;

(b) a portion of the benefits shared by appropriate and concerned sectoral departments; and,

(c) incomes and fees imposed on bioprospecting agreements for research as well as for commerce.

Article 18

Appeals

Decisions regarding approval, disapproval and/or cancellation of agreements regarding the prospecting of biological and genetic resources may be appealed through appropriate administrative channels. Recourse to the courts shall be allowed after exhaustion of all administrative remedies.

Article 19

Duties, Obligations and Accountability

1. While the duties and obligations of the State have been inscribed in this Act, the communities and the individuals belonging to communities or in their individual capacity as citizen have obligation to protect, defend, maintain and enhance the biological and genetic resources and related knowledge, practice and culture of which they are the human product.

2. National Biodiversity Authority will have the power to take action against Communities, juridical person like company or corporations, etc., if any of their activity/ies constitute violation of this Act.

3. Any individual as citizen, or any Community or any group, as a member of the collective owners, user and custodian of the biological and genetic resources of the country, shall have legal standing to bring public interest litigation in the Supreme Court in case they feel that the rights of the community as enacted in this Act has been violated by any individual, community, group or juridical person including the State or State agencies. The remedial measures the National Biodiversity may undertake in such cases shall not prejudice in any way the decision of the Supreme Court to accept such appeal.

4. The National Biodiversity Authority shall remain accountable to the Parliament. In the absence of active session of the Parliament, it shall remain accountable to the President.

5. In case of a complaint against the Authority by a Community/ies or any members or representatives thereof, the Authority shall take all necessary measures to provide satisfactory answer(s).

6. If all efforts to get a satisfactory resolution from the National Biodiversity Authority fails within 90 days or are not satisfactory to the plaintiff, the issue can be taken to the Supreme Court in session. Neither the National Biodiversity Authority nor the Supreme Court should provide representatives for any ad hoc committee for treatment of the individual case. All such cases must be given due legal hearing by the Supreme Court for redress and transparency.

Article 20

Sanctions and Penalties

1. Without prejudice to the exercise of civil and penal actions, which may arise from violations of the provisions of this legislation and subsequent regulations, sanctions and penalties to be provided may include:

(a) written warning/ show cause;

(b) fines;

(c) automatic cancellation/revocation of the permission for access;

(d) confiscation of collected Specimen, equipment, document or any information recorded in any media;

(e) perpetual ban on prospecting of biological and genetic resources in the country.

2. The violation committed shall be publicized to national and international media and shall be reported by the National Biodiversity Authority to the secretariats and implementing agencies of all relevant international agreements/treaties and regional bodies including UN bodies.

[The penalty section will have to be developed further to make it consistent with criminal and civil laws and procedures]