

PLANT VARIETIES ACT OF BANGLADESH

September 29, 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 a result of 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.

Plant Varieties Act of Bangladesh

Article 1

Short Title

This Act shall be known as the "Plant Varieties Act of Bangladesh".

Article 2

Commencement

1. The Act shall come into force only with Biodiversity and Community Knowledge Protection Act of Bangladesh on such date as the Government of the People's Republic of Bangladesh may specify by notification in the Official Gazette.

Article 3

Scope

1. This Act will be interpreted exclusively within the context, framework, objectives and spirit of and in conjunction with the Biodiversity and Community Knowledge Protection Act of Bangladesh.

2. The scope of this Act is strictly limited to the commercial transactions of plant varieties as long as it does not violate the rights of the Communities stipulated in Biodiversity and Community Knowledge Protection Act of Bangladesh.

3. This Act may be applied to

(a) Any plant variety for which Registration and Commercial Permit is required for economically gainful transactions; and

(b) Newly innovated plant varieties of which the inventor or owner of the invention, or the right holder of the protected plant variety stipulated in this Act, wishes to engage in activities of monetary gains from the commerce of his or her innovation.

4. This Act shall in no way affect Communities as

(a) Owner, user, custodian and steward of plant varieties held in common and

(b) Residual Title holder as stipulated in Biodiversity and Community Knowledge Protection Act, and

(c) Farming community with Farmers' Right as stipulated in this Act.

5. This Act shall in no way affect the rights of farmers to have unencumbered access to biological and genetic resources of Bangladesh and related knowledge, intellectual practices and culture.

6. This Act shall in no way affect the rights to collect, conserve, propagate and use the propagation materials of any variety, irrespective of the privileges granted in accordance with this Act, as long as it is strictly for personal and non-commercial use and not exchanged by the user in the commercial market for monetary or other forms of financial gains.

7. This Act shall not in any way limit the rights of farmers as innovators and the right to be recognized as such and awarded individually or as a group, or both, for the innovation. Farmers can apply for such award under the Biodiversity and Community Knowledge Protection Act of Bangladesh and will be entitled to receive the award through National Biodiversity Authority. This will not prohibit the farmers to apply under this act for rights stipulated in the Plant Varieties Act of Bangladesh.

8. The new plant variety shall be considered as 'innovation' or 'invention' only as stipulated in the Biodiversity and Community Knowledge Protection Act of Bangladesh in order to acknowledge individual moments of the social process of invention or innovation. Accordingly the Act shall ensure that innovations or inventions such as new plant variety is recognized only through and by the Community and not as a claim of privileges and/or rights by any subject outside the social process of knowledge production.

9. Any other Act that is inconsistent with the Plant Variety Act of Bangladesh shall be deemed discarded or applicable only to the extent that it is consistent with this Act.

Article 4

Definitions

In this Act:

"Plant" means any living organism in the Plant Kingdom including Fungus Kingdom excluding bacteria and other microorganism.

"Plant Variety" means a group of plants which has identical or similar genetic and botanical characteristics resulting from a given genotype or combination of genotypes

and having specific, stable properties; it can be distinguished from other plant varieties of the same plant specie by the expression of at least one of the said characteristics.

"Community Variety" means a plant variety which is widely distributed within a particular community within the country, registered in the Community Biodiversity Registry or declared by National Biodiversity Authority as such including any plant variety which has not been registered as a new plant variety.

"Local Variety" means a plant variety, which originates within the country, exists within the country, is registered in the Community Biodiversity Registry, is declared by the National Biodiversity Authority as such and has been widely utilized.

"Wild Specie" means a plant variety in its native habitat that has not been domesticated by any community for direct cultivation.

"Transgenic Plant" means a plant which has undergone the transplanting of gene(s) from other original genetic material which can be animal, plant, or microorganism; the transplanted gene(s) are either original or have been modified by human intervention; resulting in a plant which has characteristics not found in nature.

"Genetics Material" means any material or parent organism containing functional units of heredity from one generation to another generation.

"Propagation Material" means a plant or any other parts of a plant, which can be propagated by agricultural practices where such propagation is required.

"Protection" for this Act shall always mean defined and specific commercial privileges, whether explicitly mentioned or not, approved and granted to an innovator by the National Biodiversity Authority and shall not constitute any generalized intellectual property rights, and may vary from applicant to applicant on the basis of the nature of innovation.

"Agricultural Practice" means practice of farmers in order to generate crops for food, fibers, forestry products, construction materials, fuelwood, fodder, biomass or any biological products produced by direct or indirect intervention in the immediate environment.

"Community" shall mean the same as defined in Biodiversity and Community Knowledge Protection Act of Bangladesh.

"Farmer" means an individual who practices farming, whether subsistence or commercial, excluding a juristic person.

"Competent Official" means a person appointed for a specific function by the National Biodiversity Authority.

Consult Article 4 of Biodiversity and Community Knowledge Protection Act for other definitions.

Article 5

Executing Agency

1. The National Biodiversity Authority shall be the executing agency of this Act.
2. The National Biodiversity Authority shall have the power to make appropriate Rules, Regulations, and Procedures to implement this Act, including setting up administrative bodies and/or institutional infrastructure.
3. The National Biodiversity Authority shall constitute an independent and autonomous body to be known as Bio-safety Commission with the competent citizens of Bangladesh dedicated to safeguard the interest of the people of the country and having no source of financial gain from transgenic products or from commercial organization engaged in production and trade in transgenic products.

Article 6

New Plant Variety

1. The New Plant Variety shall be a plant variety, which must have the following characteristics:
 - (a) be a new plant variety, in other words a hitherto nonexistent plant variety.
 - (b) be a plant variety with consistent specific traits
 - (c) be a plant variety with stable specific traits
 - (d) be a plant variety with distinctive specific traits
2. A plant variety may be considered a New Plant Variety even if no propagation materials thereof have been utilized; whether by sale or distribution through any means within or outside Bangladesh.
3. A propagation material used for more than 6 months prior to the date of filing application stipulated in this Act shall not be considered as a New Plant Variety.
4. A plant variety with consistent specific traits is a plant variety, which has consistent physiological, morphological, anatomical and other properties resulting from genetic expression specific to that plant variety. Minor variations due to production process may only be allowed if there is clear explanation.
5. A plant variety with stable specific traits is a plant variety, which can express the declared specific traits whenever any propagation material of the plant variety is propagated through normal agricultural/farming practices.
6. A plant variety with distinctive specific traits is a plant, which is distinctively different from other plant varieties recognized on the date of filing of the application regarding physiological, morphological, anatomical and any other property resulting from the genetic expression.
7. A plant variety recognized on the date of filing of the application belongs to widespread or common plant varieties including the following:

(a) a plant variety registered by the National Biodiversity Authority in the Community Biodiversity Registry, or registered under the Plant Varieties Act of Bangladesh, or with National Seed Board whether within or outside of Bangladesh, prior to the date of filing of the protection application.

(b) a plant variety, for which application for protection under this Act has been made and which has subsequently been registered.

(c) a plant variety, for which application for protection within Bangladesh has been made but the applicant has subsequently abandoned the application.

8. Nomenclature of the recognized plant variety as well as the New Plant Variety shall be in accordance with the criteria, procedures and conditions prescribed by the National Biodiversity Authority and/or in accordance with the recommendation of the National Seed Board.

Article 7

General Provisions

1. National Biodiversity Authority shall proclaim A New Plant Variety with precise citation of award or defined commercial privileges granted and shall duly maintain all scientific data, documents and supporting materials of the decision such proclamation shall be recorded in the Bangladesh Gazette.

2. For this Act all plant varieties, existing or claimed as newly innovated, constitute the regime of "prior knowledge" of the people of Bangladesh and therefore not eligible for any claim for private intellectual property rights, protection or commercial privilege. It is the sole responsibility of the innovator to prove that Communities recognize an independent human agency over and above the social process of innovation and that the innovation is novel never existed before.

3. Breeding by itself, or cosmetic breedings shall not be eligible for commercial privilege. To be eligible for consideration for such privilege the New Plant Variety must meet definite and useful needs of the people of Bangladesh. The National Biodiversity Authority shall take necessary measure to reject New Plant Varieties having no immediate, direct and substantial benefit to the people of Bangladesh. This shall however not prejudice the right of the innovator to apply for the Citation of Award. A hybrid variety shall be considered for application provided that the parents are available within Bangladesh as a community variety in the public domain.

4. The scientific and technical determination of a plant variety as a New Plant Variety stipulated by this Act, and the recommendations along with all submitted research materials and documents must remain easily accessible by any citizen of the country at least for 3 months before the consideration for proclamation by the National Biodiversity Authority.

5. A New Plant Variety potentially harmful to the environment, ecology, health and the welfare of the public shall not be protected under this Act.

6. A New Plant Variety, which has negative consequences, on the biodiversity and/or the existing biological and genetic resources and the related intellectual and cultural knowledge and practice, including genetic and cultural erosion, will not be protected under this Act.

7. A new plant variety, which is a transgenic plant, shall not be eligible for protection, in other words commercial privileges, unless,

(a) environmental impact assessment is done by relevant agencies/departments determined by National Biodiversity Authority,

(b) bio-safety assessment is done by the Bio-safety Commission to protect Bangladesh from biological pollution,

(c) The owner of the new transgenic variety agrees in writing, along with the application for protection, to pay compensation for hazards and damages, if caused by the use and handling of the transgenic variety. In such cases assessment of such hazards and damages shall be decided by the Bio-safety Commission,

(d) The applicant agrees that the transgenic nature of the new plant variety will be declared to the public and will appear clearly on the label and logo and other related information materials,

(e) It is determined by the National Biodiversity Authority that the applicant is financially sound to meet liabilities in case of hazards.

8. Any innovator who has innovated a New Plant Variety is eligible to apply for protection of the new plant variety. The right to apply for protection can be inherited in accordance with the criteria and procedures stipulated by the National Biodiversity Authority.

9. The right to apply for protection of a New Plant Variety, resulting from research conducted by employee under an employment contract or by a hiring or contracting commissioned research to innovate a new plant variety; shall belong to the employer, if but only if the employment contract does not specify otherwise.

10. Innovation of all New Plant Varieties in any National Public Research Institutions, such as educational institutions run by the government, NARCs, autonomous and semi-autonomous institutions, will be considered automatically as property belonging to the people of Bangladesh. Any innovation done with the financial support of the State or with resources from public finance or development fund will also be considered common property.

11. Innovation of New Plant Variety by any individual, any Non-governmental Organization or any organization that uses or has used local or foreign development funds that are in principle funds donated for the public good, will also be considered as common property and no protection or any commercial privileges can be claimed for those varieties. This shall not prejudice the right of the innovator to apply for Citation of Award.

12. In all cases of innovation of New Plant Varieties that are common property as mentioned above, the National Biodiversity Authority will take necessary action to prevent all claims of intellectual property right on innovations that rightfully belong to the people of Bangladesh.

13. The Act shall always distinguish between the right of innovator for social recognition and adequate financial award to compensate and continue research and the claim for exclusive commercial privileges to make profit from invention or innovation. Nothing in this Act shall limit the right of the innovator to get compensation and adequate financial support from the National Biodiversity Authority in the form of direct grant or other non-exclusive commercial privileges to raise research fund that are not directed to earn profit.

Article 8

Scopes of Application for the Innovators

1. Any juridical person (e.g. individual, Community, Corporations, etc) may apply as innovator either for the New Plant Variety Certificate to protect the innovation, or for National Biodiversity Award for the innovation of a New Plant Variety All applications must include necessary documents for the claim.

2. If more than one innovator collaboratively developed a New Plant Variety, they may jointly make an application.

3. In case any innovator does not wish to apply, cannot be contacted or does not qualify for the application; the other innovator may apply for the certificate or award for the New Plant Variety, which was collaboratively developed, in his/her name.

4. The innovator who has collaboratively developed the New Plant Variety and has not filed the joint application are eligible to file joint application at anytime prior to the gazetted publication of the registration of the new plant varieties approved through New Plant Variety Certificate or National Biodiversity Award.

5. Upon receiving the application, the Competent Officials shall notify the date of examination to the applicant(s) and the other co-applicant, if any.

6. The Competent Officials will determine the dates for applicant and the co-applicant(s) to testify or ask to submit additional documents before such dates can be determined.

7. Upon the completion of necessary examination by the Competent officials a notice shall be sent to the applicants and co-applicant (s) with date/dates.

8. In case of contesting claims the rights with regard to protection or award will be equally shared.

Article 9

Eligibility

1. The following persons are eligible to apply:

(a) A Bangladeshi national, or a juristic person, whose headquarters are situated in Bangladesh; and

(b) Other national(s) or juristic person(s) from a country that recognizes the Biodiversity and Community Knowledge Protection Act of Bangladesh and permits a Bangladeshi national or a juristic person, whose headquarter is situated in Bangladesh, to apply for the protection in within that country;

2. The following person(s) are not eligible to apply:

(a) An individual or juristic person who has violated the Biodiversity and Community Knowledge Protection Act of Bangladesh.

(b) Nationals or juristic person whose headquarter is in a country that is not a signatory to the Convention on Biological Diversity.

Article 10

Rejection of Applications

Applications shall be rejected on grounds of:

1. Non-disclosure of vital information: If any applicant(s) used the following in the innovation but did not disclose the information in the application.

(a) Community Varieties, local or indigenous varieties and/or wild species or any part of the plant varieties or any biological and genetic materials and related intellectual and cultural knowledge from Bangladesh or from countries that are Party to the Convention on Biological Diversity;

(b) Advantage from the local and indigenous knowledge of the present or the past of a Community.

2. Non-indication of origin: If applicants who fail to provide the origin of biological and genetic resources and related intellectual and cultural practices used in the innovation.

3. Invalid contract of benefit sharing: If the biological or genetic resources and related intellectual and cultural knowledge of any Community/ies was used and/or any Community was involved in the innovation, but

(a) No fair and equal benefit sharing contract has been signed between the innovator and the Community/ies

(b) Terms of contract are detrimental to the national interest or against the interest of a Community holding Residual Titles, and

(c) If National Biodiversity Authority does not accept the nature and content of benefit sharing contract because it is against the spirit and content of this Act as well as against Biodiversity and Community Knowledge Protection Act of Bangladesh

4. Abuse of intellectual property rights: Application from applicant(s) who has the history of

(a) claiming intellectual property rights on biological and genetic materials and related intellectual and cultural knowledge belonging to the people of Bangladesh and/or to communities of other countries,

(b) claiming protection on plant varieties that was not the applicant/s innovation, and

(c) If National Biodiversity Authority anticipates any potential abuse.

5. Refusal to return resources: Applicant(s) who did not return the biological resources or genetic materials and related intellectual and cultural knowledge in any form in his/her possession taken from Bangladesh, before the enactment of this law, despite request made by National Biodiversity Authority.

6. None of the rejected applications shall be reconsidered.

7. New application from the same applicant(s) may be considered if satisfactory explanation is provided for the causes of prior rejection.

Article 11

Incomplete Applications

1. The National Biodiversity Authority shall determine the following applications as incomplete:

(a) The financial terms of the benefit sharing contract of the applicant(s) with Community/ies from the commercial and technological gains of the New Plant Variety, applied for protection, is insufficient. The National Biodiversity Authority may assess the gains from the commercial profit potential of the New Plant Variety.

(b) The benefit sharing contract by the applicant, in terms of technology transfer, sharing of scientific and technical knowledge, research communication, skill sharing and in other relevant areas, with the Community/ies is insufficient and inadequate.

(c) The benefit sharing contract between the applicant(s) and Community/ies is not fair and does not reflect the spirit and objective of the Biodiversity and Community Knowledge Protection Act of Bangladesh.

(d) the information provided is inadequate, incomplete or mistaken about materials and intellectual and cultural knowledge, particularly about the origin, that were used in the innovation, or about the Community/ies involved in the innovation, and

(e) application is incomplete for any other reasons.

2. Incomplete applications shall be reconsidered only if they are corrected and remedied to the satisfaction of the National Biodiversity Authority.

Article 12

Procedures for Application

1. Applications shall be filed in simple, readable and widely understandable Bangla to the Competent Official with a fee determined by the National Biodiversity Authority.

2. The application must be submitted in a prescribed form provided by the National Biodiversity Authority.

3. In addition to the information required by this Act as stipulated in other Articles the prescribe form must include:

(a) The name and description of the new innovation

(b) Description in clear and simple Bangla language on how the materials and knowledge were utilized in the innovation, and the process of derivation of the New Plant Variety or other knowledge and intellectual results.

(c) The language, style and structure of the description should be clear and must be presented following the step by step technical process, so that any interested citizen of Bangladesh can learn and apply the knowledge. This is mandatory for technology transfer and, consequently, for the enhancement of the technical capacity of Bangladesh.

(d) A statement to certify that the applicant shall submit propagation material and genetic material of the registering plant to the competent officials for references, upon request.

(e) An agreement on fee and/or shared revenue of not less than 25 percent in case a community variety, a local indigenous plant variety, an indigenous plant variety and/or a wild plant variety has been utilized in the plant innovation process and

(f) Other information as specified by National Biodiversity Authority.

4. The application must include the fair and equitable benefit-sharing contract with Community/ies, where applicable, and the approval of the contract by the National Biodiversity Authority.

Article 13

Granting of the Application

1. Before consideration for granting award or protection the Competent Official shall
(a) examine the New Plant Variety in the laboratory and/or in a field plot to ascertain if the plant variety possesses characteristics and/or properties claimed by the applicant.

(b) examine if the innovation claimed for award has the characteristics and/or properties claimed by the applicant.

2. Examination of the innovation and/or of the New Plant Variety shall be in accordance with the criteria, procedures and conditions as stipulated by the National Biodiversity Authority in accordance with this Act.

3. The applicant(s) shall bear the costs of all examinations according to the rate, procedures and conditions prescribed by the National Biodiversity Authority.

4. Competent Officials shall prepare a report on the examination to the National Biodiversity Authority.

5. National Biodiversity Authority shall consider the report and take action accordingly.

6. The decision/actions taken by the National Biodiversity Authority shall be communicated to the applicant.

7. If the applicant is eligible for New Plant Variety Certificate or National Biodiversity Award, the National Biodiversity Authority shall publish the decision in widely circulated national media.

Article 14

Other Actions on the Application

1. If New Plant Variety Certificate or National Biodiversity Award cannot be issued or awarded to the applicant since they do not meet the requirement of this Act, the National Biodiversity Authority shall

- (a) order abandoning of the application,
- (b) order a Competent Official to notify the applicant.
- (c) order competent officials to notify the applicant of any opposition to the claim.

Article 15

Dispute Settlement

1. Any person may give Notice of Opposition to the decision on New Plant Variety Certificate, National Biodiversity Award, and Commercial Permit taken on any application to the Competent Officials within ninety days from the date of publication of the decision in a national media or at any time during the processing of the application.

2. The Notice of Opposition should clearly indicate that,
(a) he/she is more eligible for the right to apply for the Plant Protection Registration, National Biodiversity Award or Commercial Permit; and
(b) that the decision violates certain specific Article or Articles of Biodiversity and Community Knowledge Protection Act and/or New Plant Variety Protection Act.

3. The Competent Official shall send a copy of the duplicated Notice of Opposition to the applicant and instruct that the applicant file responsive arguments within ninety days from the date of receiving the Notice of Opposition.

4. If the applicant fails to provide responsive argument within the stipulated days the application shall be deemed abandoned. The Notice of Opposition and the arguments shall be filed with the necessary evidences.

5. If responsive arguments are provided by the applicant, more information and evidences may further be submitted by both sides, or both can testify in accordance with the criteria, procedures and conditions stipulated by the National Biodiversity Authority.

6. On the basis of the testimony and the submitted information, evidences and/or documents the National Biodiversity Authority shall make a decision and communicate to the applicant and the opponent.

7. If the National Biodiversity Authority decides that the opponent is entitled to apply instead of the original applicant, the application will be abandoned without prejudice to the right of the applicant to go to Court.

8. After the determination that the opponent is entitled to apply the opponent may proceed to do so in accordance with this Act.

9. If the Notice of Opposition is rejected it shall be deemed as abandoned and the application shall prevail, without prejudice to the opponent's right to take the matter to the Court.

10. If the applicant still remains eligible for Plant Protection Registration, National Biodiversity Award or Commercial Permit the National Biodiversity Authority shall recommend and approve the application. The approved application for Plant Protection Registration shall be submitted to the Parliament for proclamation.

11. The recommendation for Plant Protection Registration for the New Plant Variety and Commercial Permit for propagation materials shall require a payment of a grant fee to be determined by the National Biodiversity Authority.

12. If the grant fee is not paid within the stipulated days, not more than 90 days, or as determined by National Biodiversity Authority, the application shall be deemed abandoned.

Article 16

Period of Plant Protection

1. The highest period of protection or commercial privileges for the new plant variety, shall be

- (a) 7 years for annuals
- (b) 10 years for BI-annuals
- (c) 15 years for perennials
- (d) 25 years for woody plants, utilizing timber

The period shall be calculated from the date of receiving the New Plant Variety Certificate.

Article 17

Citation of Award for New Plant Variety

1. Citation of Award shall constitute one of the forms of National Biodiversity awards for New Plant Variety and shall be administered by the National Biodiversity Authority to encourage and recognize the contribution of Communities, or individual human agency identified and recognized by the Community/ies, in accordance with the Procedures for Application (Article 12) stipulated by this Act.

2. Any innovation in New Plant Variety, whether eligible for New Plant Variety Certificate or not, shall be deemed eligible for "Citation of Recognition" by the National Biodiversity Authority. This shall be awarded as a certificate issued by the National Biodiversity Authority.

3. All innovations eligible for Citation of Award are those innovations that are equally eligible for New Plant Variety Certificate, but for which the applicant does not claim any commercial privilege or protection for personal gain. It is therefore deemed as contribution to the common national wealth of the country.

4. The Citation of Award shall constitute the following:

a. presentation of the Citation of Award as the highest achievement in Science and Technology in the area of biodiversity and genetic resources and related knowledge, intellectual practice and culture and shall be signed by the President of the People's Republic of Bangladesh.

b. a sum of financial award to be decided by the National Biodiversity Authority keeping in consideration of the cost involved in research and the time required for innovation. For similar awards the financial amount may be rationalized, and may be same for all similar awardees. The amount shall be reviewed every five years.

5. The recipient(s) of the Citation of Award, if a citizen of Bangladesh, shall be eligible to be represented in the National Biodiversity Authority if the recipient has never claimed any commercial privilege or protection for any of his or her previous innovation(s).

6. The recipient shall automatically be eligible for research grant from the National Biodiversity Authority and/or the Ministry of Science and Technology or from any other source administered by the Government of the People's Republic of Bangladesh, irrespective of his or her educational background, whether from formal scientific institutions or from informal Community innovation process. The Citation of Award shall everywhere in Bangladesh be deemed as the certificate of competence of the recipient in practical science and technology.

7. A portion of the national fund spent in science and technological innovation and the capacity building shall be earmarked to provide research awards to the recipients of Citation of Award.

Article 18

Fees

1. The recipient of New Plant Variety Certificate shall pay the annual fee in accordance with the criteria, procedures and conditions stipulated by the National Biodiversity Authority within ninety days of receiving the certificate and every year thereafter.

2. If the recipient of New Plant Variety Certificate does not pay the annual fee in due time an additional thirty percent will be charged.

3. If the recipient of the New Plant Variety Certificate does not pay the annual fee and additional charges within ninety days from the expiration date for annual fee payment the registration of New Plant Variety Certificate shall be deemed expired and the variety shall become Common National Wealth.

Article 19

Revocation of Certificate and Permit

1. The New Plant Variety Certificate or the Commercial Permit shall be revoked in the following cases:

(a) The plant variety does not meet the requirement of the characteristics any more as stipulated in this Act

(b) The plant variety cannot be protected as stipulated in this Act

(c) The recipient of New Plant Variety Certificate or Commercial Permit does not submit plant propagation materials or information to the Competent Official within the time limit stipulated by the Competent official.

2. Any party or any interested party may cite the reasons for revocation or the public prosecutor may appeal to the Court to take the necessary legal action.

3. The date of revocation shall be the date when National Biodiversity Authority or the Court takes the decision.

4. In such cases such varieties shall automatically become part of Common National Wealth.

Article 20

Commercial Transaction of Seed

1. All community variety, local and indigenous variety and wild specie registered by National Biodiversity Authority and recorded in National Biological Information System or yet to be registered and recorded but in existence as the common biological and genetic resource of the people of Bangladesh as well as all the knowledge, culture and practice of cultivation related to these varieties, are being stipulated by this Act as protected in perpetuity on behalf of the people of Bangladesh and will be legally treated as protected at all time and in perpetuity confirming that the people of Bangladesh are their sole owners, users, custodians and stewards.

2. Accordingly, any application for New Plant Variety Certificate or for protection claiming intellectual property rights for a plant variety any where in the world that rightfully belongs to the people of Bangladesh, will be considered under this Act as theft, piracy, or attempt to obtain illegal possession of property of the people of Bangladesh. In addition to the penalties stipulated by this Act, such offence is also liable to be tried under criminal law and proceedings of the country.

3. Any plant variety that has not been claimed as an innovation and therefore has not been registered and protected under this Act, but is available in Bangladesh for more

than one year will be considered as belonging to the common property of the people of Bangladesh as stipulated above. In such cases the National Biodiversity Authority will produce such list of plant varieties and publish in public media.

4. In all disputes arising from the claims of intellectual property rights on New Plant Variety the National Biodiversity Authority or any of its authorized representative will act as the juridical person on behalf of the people of Bangladesh and will have the authority to undertake legal actions.

5. The Community shall have all rights, including the right to utilize community varieties, local varieties and wild species or any part of the plant varieties freely, without any hindrance and limitation by virtue of this Act, as well as the Biodiversity and Community Knowledge Protection Act of Bangladesh and other Acts, Laws or Policies.

6. However if any individual, group or a community decides to engage in commercial transaction of plant varieties or materials to propagate plants, it will be permitted by this Act only after receiving a Commercial Permit.

7. Any economic transaction, in a fairly large amount, between farmers where the purpose is to regain mainly the cost of procurement and distribution of plant varieties or the propagation materials of plants, if traditional and customary, will require no Commercial Permit. In that case the individual, group or community engaged in such transaction shall notify the National Biodiversity Authority, stating the following:

(a) That such transactions contribute to food security, are essential for agricultural production and has a positive effect on the overall biodiversity of the locality as well as of the country.

(b) That such transactions do not operate outside the general circulation of seed, propagating materials or plants within and among the farmers, and is not therefore a commercial operation for profit.

A competent official may review such transactions to determine the status of the claim. The limit of such transaction shall be periodically determined by National Biodiversity Authority that will not require such notification.

8. Any individual utilizing a local indigenous plant variety, a common indigenous plant variety and a wild plant variety or any part of the plant variety for the improvement or development for commercial purposes must do the following:

(a) procure Commercial Permit from Competent Officials

(b) pay the fee and follow all procedures to secure the Commercial Permit as stipulated by the National Biodiversity Authority

(c) Must immediately pay 1 percent of the anticipated total sale and agree to pay part of the revenue, equal to no less than 15 percent of the total income gained from utilizing the plant variety in accordance with the criteria, procedures and conditions stipulated by the National Biodiversity Authority.

(d) obtain a clearance from the National Biodiversity Authority assuring that such commercial transactions will not have any negative effect on the biodiversity and the indigenous or local knowledge and culture related to it.

(e) secure an agreement with the local community, from whom the plant variety has been collected, developed and improved, that the benefit of the commercial gain will be equitably shared.

National Biodiversity Authority will ensure that the benefit shared with the community from whom the materials have been collected is fair and equitable.

9. The National Biodiversity Authority shall ensure that such varieties entering into commercial transaction are not claimed for protection as a New Plant variety allowed by this Act, or patented in other countries, or claimed by the commercial user as a variety developed by him or her anywhere in the world. In order to defend the common property of the people of Bangladesh the National Biodiversity Authority shall take all necessary actions and will seek support from the National Biodiversity Authority, whenever needed.

10. If the National Biodiversity Authority determines that any commercial user of community varieties, local varieties and wild species or any part of the plant varieties is projecting, offering hints, or in any other manner trying to establish himself or herself as the originator of such varieties, the permit will be cancelled immediately.

11. The Commercial Permit will not be given to the following applicants:

(a) If National Biodiversity Authority determines that the person applying for commercial use of community varieties, local or indigenous varieties and wild species or any part of the plant varieties thereof may claim innovation of that variety, since he or she has a history of such claims in other countries,

(b) and/or that such or persons did not return the biological resources or genetic materials in his or her possession taken from Bangladesh before the enactment of this law or have violated the Biodiversity and Community Knowledge Protection Act of Bangladesh

12. If the agreement to share revenue with the community from where the materials have been originally collected is not honored by the person engaged in commercial activity, the permit to engage in commerce will be cancelled.

13. The revenue shared by the stipulation in this Act shall belong to the community that conserves, develops or utilizes the community varieties, local varieties and wild plant varieties.

14. In case more than one communities conserve, develop or utilize the plant variety the community which utilizes the plant variety shall receive fifty percent share of the total shared revenue, the remaining shared revenue being deposited in the Plant Protection Fund.

15. In case any individual in the community is the one who conserves, develops and accesses the plant variety; the person shall receive thirty percent of the revenue that the community receives.

16. The plant variety that is eligible for commercial transaction shall have at least the following characteristics as described in Article 6 of this Act:

- (a) be a plant variety that possesses distinctive traits
- (b) be a plant variety that possesses consistent traits

17. A member of a Community which is the originator of the plant variety, or of the Community which conserves, develops or utilizes the local indigenous plant variety, will get priority in receiving the commercial permit to undertake market transaction of that plant variety for commercial gains.

18. Registration for Commercial Permit of community varieties by the community that destroys or is involved in the destruction of the population or the genetic source of the plant variety shall be prohibited.

19. The application for the Commercial Permit shall be filed with the Competent Officials according to the general criteria and procedures stipulated by the National Biodiversity Authority.

20. The application for the Commercial Permit shall contain:

- (a) The fruiting season of the plant variety
- (b) the general utility of the variety
- (c) specific marketing features of the variety that are available from the free exchange of plants to determine the benefits to the enhancement of biodiversity.
- (d) potential dangers of monoculture
- (e) Other information as specified by the National Biodiversity Authority

National Biodiversity Authority shall decide the criteria and procedure for any specific or particular variety whenever need arises.

21. If applied for Commercial permit the Competent Official(s) shall examine the following:

- (a) examine the application according to the claims of the applicant
- (b) prepare description of the plant variety from the plant cultivated in the community.
- (c) examine the traits of the plant variety eligible for Commercial Permit as stipulated in this Act and/or the criteria, procedures and conditions as laid by the National Biodiversity Authority in accordance with this Act.

22. After the completion of the examination the Competent Officials shall report the examination to the relevant authorities.

23. Decisions of acceptance or rejection of the application for the Commercial Permit shall be taken by the National Biodiversity Authority on the basis of the report and

shall be communicated to the Applicant within 7 days of the decision. The decision shall be published in the national media.

24. The Commercial Permit shall remain valid for 5 years. In the absence of new application from the original recipient or his/her assigned agent the rights shall be abandoned and the variety shall become part of the Common National Wealth.

Article 21

Rights of Recipients

1. Only the recipient of the New Plant Variety Certificate and/or assigned representative(s) or agent(s) shall be entitled to commercially produce, sell or distribute, offer, import into Bangladesh or have in possession the New Plant Variety for which the specific certificate has been issued, with the purpose of cultivating the propagation materials of the protected plant.

2. Only the recipient of the Commercial Permit and/or his or her assigned representative(s) or agent(s) shall be entitled to commercially produce, sell or distribute, offer, import into Bangladesh or have in possession the propagation material with the purpose of cultivating the specified variety of the plant.

3. Only the recipients of the New Plant Variety Certificate and Commercial Permit and/or his or her assigned representative(s) or agent(s) shall be entitled to export the propagation materials with explicit permission from the National Biodiversity Authority. The National Biodiversity Authority shall issue such permission ensuring and taking necessary measures that the exported materials will not be claimed for intellectual property by any party except its rightful owners and/or shall not be used unlawfully for any purpose.

4. The above provision shall not apply in following cases within Bangladesh:

- (a) Any act to study, discover, experiment or research to improve, develop or innovate a new plant variety or any act for other scientific pursuit.
- (b) Any cultivation or propagation of the protected plant variety by the farmer in his/her own plots, using the propagation material which he/she produces.
- (c) Any act for personal benefit with no commercial purposes.
- (d) Any act that has been conducted in honest faith.

5. The recipient of the New Plant Variety Certificate and Commercial Permit shall display the assigned number in the logo of the propagation materials and/or on the packaging materials as prescribed by National Biodiversity Authority.

6. In case there are more than one recipient of the New Plant Variety Certificate the assignment or granting of exclusive rights to another party can be done only with consent from the other recipients.

7. The assigning of agents shall also mean transfer or granting of right to others and it must be made in writing and registered to the Competent Officials according to the criteria, procedures and conditions stipulated by the National Biodiversity Authority.

8. Rights of the recipient of the New Plant Variety Certificate and Commercial Permit may be inherited but only according to the criteria, procedures and conditions stipulated by the National Biodiversity Authority.

9. The National Biodiversity Authority shall always retain the power and authority to prohibit and/or withhold rights with regard to any plant variety that has been granted the New Plant Variety Certificate or Commercial Permit in the following cases:

- (a) for the security of food and nutrition and to promote local production of food;
- (b) for the alleviation of poverty, prevention of disease and the protection of health;
- (c) the protection and conservation of the environment and biological diversity;
- (d) to stop and reverse the process of genetic erosion and spread of monoculture;
- (e) for the prevention of trade monopoly;
- (f) to protect the rights of Communities, particularly the rights of Residual Title holders
- (g) in response to any crisis in public order (ordre publica)
- (h) for specific public benefits, welfare of the population or reasons determined by National Biodiversity Authority.

10. New Plant Variety Certificate or Commercial Permit shall be revoked and the rights granted under this certificate abandoned by the National Biodiversity Authority if the plant variety, for which the above were issued

(a) is not commercially available three years after the issuing date in the case of New Plant Variety, unless the recipient can prove otherwise.

(b) is not commercially available within a year after the issuing date in the case of Commercial Permit unless the recipient can prove otherwise.

2. National Biodiversity Authority shall retain the authority and power to abandon the protection of a New Plant Variety if the protected variety is sold at unreasonably high price, or in quantities insufficient to the need of Bangladesh, particularly for the farmer engaged in food production, unless the recipient proves otherwise or takes up remedial measure.

3. All plant varieties abandoned by the National Biodiversity Authority of privileges provided through New Plant Variety Certificate and/or Commercial Permit shall automatically become part of Common National Wealth as stipulated by the Biodiversity and Community Knowledge Protection Act.

Article 22

Farmers' Right and the Plant Protection Fund

1. The farmers comprising a Community shall be entitled to the following Farmers' Right in addition to the rights stipulated in Biodiversity and Community Knowledge

Protection Act, and over and above benefit sharing. For the purpose of this Act any Community engaged in food production, whether living in forest, flood plain, or any agro-ecological zone, or a member of such Community, women and/or men, will be considered as Farmer.

(a) The Competent Official(s) shall always effectively inform the farmers in advance on the access of biological and genetic resources or any part of the local indigenous plant variety, common indigenous plant variety and wild plant variety.

(b) The Competent Official(s) shall always provide the name and address of the recipients of New Plant Variety Certificate, Commercial Permit or Citation of Award mentioning the innovation and/or the name of plant variety for which they were issued including a brief description of innovation, where applicable.

(c) Any farmer shall have unhindered access to the governmental information concerning the application and application procedures, the findings of the examination of the claims and the basis upon which the decision has been taken.

(d) Farmers shall participate in the constitution of National Biodiversity Authority by nominating representatives. At least 1/3 (one third) of the people constituting the National Biodiversity Authority must be farmers' representatives of whom at least half must be practicing farmers of biodiversity based production system.

Farmers shall have the right to:

(e) participate as the plaintiff or file the case as a criminal case or a civil case or other cases for the injured Community or the community whose right is argued, or of which the farmer is a member.

(f) receive just compensation for illegal damage caused by the ruling order or for any act of a person which causes destruction or reduction of biological genetic resources or plant variety or environmental conditions in the Community.

(g) receive the support from the government in conservation, development and improvement of local, indigenous or wild plant variety and/or reintroduction of traditional varieties.

(h) receive support from the government for the maintenance of community gene banks and research related to conservation in normal household conditions.

(i) submit a petition in court to order the prohibition of monocultures or of any act that leads to destruction or reduction of local indigenous plant variety or wild plant variety narrowing the genetic base of Bangladesh Agriculture.

(j) appoint an advisor or a representative to exercise the rights pursuant to this Act.

(k) receive exemption or reduction of import and export tax for equipment and raw materials for use in experimenting or implementing non-commercial plant improvement.

(l) proceed for Court orders withstanding the banning of any pesticides, herbicides or any chemicals, or any genetically modified seed or propagation materials detrimental to ecology, environment, health and safe food production of the Community. The Court shall accept such proceeding as the fundamental right of the Community to protect themselves from any harm.

(m) ask for an equal share of the national budget in science and technology to be equally spent for the development and improvement of local and indigenous varieties and the development of biodiversity based production system.

(n) participate in research with the National Agricultural Research System

(o) proceed for a Court order to stop any research or activities that are harmful and detrimental to the Community.

2. The National Biodiversity Authority shall constitute a "Plant Variety Development Fund" comprising the following money and assets:

- (a) Money or assets received from the fee of the applicants
- (b) Fine collected by virtue of this Act.
- (c) Occasional subsidy from the government.
- (d) National donations including money raised by the farmers.
- (e) Money from interests and benefits earned from this Fund.
- (f) Other money received for the implementation of this Fund.

Money and assets pursuant to the paragraph above shall be deposited in the Fund and do not have to be sent to the Revenue Office. Criteria and procedures in administering the Fund and allocation of the Fund shall be determined by the National Biodiversity Authority.

3. The Fund shall be conducted by a Committee where more than half of the members shall be from the farming Communities. The Committee shall utilize the Fund for the following activities:

- (a) to support and subsidize any activities of the community concerning conservation and development of plant variety.
- (b) to be utilized by local administrative government to support research to conserve and develop plant variety.
- (c) for the Citation of Awards
- (c) for administering the Fund.

Article 23

Duties, Obligations and Accountability

1. All implementing authorities or agencies created by National Biodiversity Authority shall remain accountable to the Management Committee of the National Biodiversity Authority.

2. For duties, obligations and accountability the Article 19 of Biodiversity and Community Knowledge Protection Act of Bangladesh shall be the reference for this Act.

3. Nothing in this Act shall prejudice the right of any citizen to demand redress in the court of law any where in Bangladesh.