

# **Genetic Resource Bill**

## **A Bill Made to Provide for Excess to and Use of Genetic Resources and Sharing of Benefits**

**Preamble** : Whereas, it is expedient to make a legal provision for the conservation and sustainable use of the traditional knowledge relating to genetic resources, genetic material, their use as well as access to such resources, material and traditional knowledge and their use and to make equitable sharing of the benefits arising out of their export, to protect the right of the local communities including indigenous nationalities who have been conserving such resources, material and traditional knowledge relevant to traditional knowledge, skill, innovation, technology and practice and to fulfill international obligation in the capacity of a state party to the Convention on Biological Diversity (1992);

Now, therefore, be it enacted by the Constituent Assembly pursuant to Article 83 of the Interim Constitution, 2007.

### **Chapter 1**

#### **Preliminary**

1. **Short title, Extend and Commencement:** (1) This act may be cited as “the Genetic Resources (access, use and sharing of benefits) Act, 2008.  
(2) This Act shall come into force at once.

(3) This Act shall apply throughout Nepal and also apply to Nepali or Non-Nepali citizens living abroad committing an act which is considered as an offence under this Act.

2. Definitions : Unless the subject or context otherwise requires, in this Act,-

- (a) "Biological diversity" means the variability among organisms, type and total number and inter-relationship among them as well as diversity among animal, plant and micro-organism and their fusion and this word also includes genetic diversity, varietals/ species diversity and eco-systems diversity.
- (b) "Biological resources" means biotic component of ecosystems with potential use or value from where genetic resources or genetic materials can be obtained.
- (c) "Genetic material" means complete or partial part of animal, plant, micro-organism-bacteria or virus containing heredities quality or functional units of heredity existed in Nepal.
- (d) "Genetic resources" means genetic material of actual or potential value existed in-situ or ex-situ conditions within Nepal and this word also includes components or derivatives of such biological resources.

Provided that this word shall not include human biological material.

- (e) "Record" means a record prepared or to be prepared for recording of resources of biological diversity, components thereof, genetic resources, genetic material, and their derivatives and traditional

knowledge of local community relating to their use pursuant to Section 6.

- (f) "Prior informed consent" means prior informed consent to be obtained from the local community concerned on the basis of complete and correct information for the recording to be made pursuant to Section 7 and for the access and use pursuant to subsection (3) of Section 13.
- (g) "Access" means collection, acquisition and possession of biological or genetic resources or genetic material and traditional knowledge, skill, innovation, technology and practice relevant to such resources and material and their components or derivatives in in-situ or ex-situ conditions.
- (h) "Use" means the use of biological or genetic resources or genetic material for study, research, commercial or industrial or any other purpose.
- (i) "Local community" means inhabitant including indigenous nationalities having access to biological or genetic resources or genetic material on the basis of traditional knowledge, skill, innovation, technology and practice or using such resources or material or living in or around of the place of origin of such resources or material.
- (j) "Local bodies" means the local bodies constituted pursuant to Local Self-governance Act, 1999.
- (k) "Traditional knowledge" means the knowledge, skill, innovation, technology and practice existed for a long time in local people or

community regarding conservation or use of biological resources or genetic resources or genetic material.

- (l) "Sharing of benefits" means sharing of financial and other benefits to be received from the use of biological or genetic resource and genetic material and traditional knowledge.
- (m) "Equitable distribution" means sharing of benefits and distribution pursuant to Section 24 for the use of genetic resources or genetic material and for the conservation, promotion and development of such resources and materials or traditional knowledge, skill, innovation, technology and practice relevant to such resources or material.
- (n) "Association" means an association registered pursuant to the prevailing laws.
- (o) "Proposal" means a proposal submitted pursuant to Section 12 for the access to and use and export of genetic resources or genetic material.
- (p) "Offeror" means a person or association submitting a proposal pursuant to Section 12.
- (q) "Agreement" means an agreement to be concluded pursuant to this Act for the access to, use and export of genetic resources or genetic material.
- (r) "License" means a license to be issued pursuant to Section 21 for the access to, use and export of the genetic resources or genetic materials.

- (s) "Council" means the National Genetic Resources Council established pursuant to Section 27.
- (t) "Chairperson" means chairperson of the Council.
- (u) "Member" means a member of the Council.
- (v) "Executive Director" means the Executive Director of the Council appointed pursuant to sub-section (1) of Section 30.
- (w) "Prescribed or as prescribed" means prescribed or as prescribed in the Rule, Bye-laws or Directives found under this Act.

## **Chapter -2**

### **Ownership, Record and Registration of Genetic Resources and Genetic Material**

- 3. **Sovereign Rights over Genetic Resources and Genetic Material:** Sovereign Rights over the Genetic Resources and Genetic Material of Nepal shall rest with the state of Nepal.
- 4. **Ownership over Genetic Resources and Genetic Material:** Ownership of the genetic resources and genetic material existed in Nepal shall rest as follows:
  - (a) In regard to genetic resources and genetic material existed in any building, land, forest or water resources being in ownership or use of a person or institution on such person or institution.
  - (b) In regard to genetic resources and genetic material existed in any building, land, forest or water resources in ownership of more than one person or institution on local community.

(c) In regard to genetic resources and genetic materials other than referred to in clause (a) and (b) on the Government of Nepal.

5. **Right to Traditional Knowledge:** (1) Right to traditional knowledge of the local community shall rest with the local community concerned.

(2) In case where the traditional knowledge used for the conservation and use to genetic resources and genetic material being in ownership of any person, institution or Government of Nepal is based on the local community, priority in the access to, use and sharing of benefits of such genetic resources and genetic materials should be given to the local community.

6. **To Prepare Records:** (1) Any person, local community, institution, local bodies or Government of Nepal may severally or collectively, prepare record of resources of biological diversity of Nepal and its components and genetic resources and genetic material and their derivatives and traditional knowledge of local community that are relevant to them.

(2) Any person, local community, bodies or Government of Nepal, prior to preparing records pursuant to sub-section (1) shall have to give information thereof to the council or such body as prescribed by the council.

(3) Notwithstanding anything contained in sub-section (1), this Section shall not be deemed to have prevented the council to maintain record of the resources of biological diversity of Nepal and its components and genetic resources and genetic material and their derivatives and traditional knowledge of the local people relevant to them.

(4) The record to be maintained pursuant to sub-section (1) and (3) shall have to contain place of origin of the biological diversity, availability, ownership, using method, status, importance and other matters as prescribed including traditional knowledge of the local community relevant to them.

(5) Format of the record and other procedures relating to record shall be as prescribed.

7. **Prior informed Consent:** (1) While preparing record of biological resources, genetic resources, genetic material and traditional knowledge relevant to use of such resources or materials, one should have obtained prior informed consent of the person, institution or local community having ownership over such resources, material or knowledge.

(2) Procedure to obtain prior informed consent pursuant to sub-section (1) shall be as prescribed.

8. **Biological Diversity Record Registration and Publication:** (1) Record of the biological diversity prepared pursuant to sub-section (1) and (3) of Section 6 shall have to be registered with the Council.

(2) Records prepared in such format as prescribed prior to commencement of this Act shall be deemed to have been prepared pursuant to this Act and such record shall have to be registered with the Council within 6 months of commencement of this Act.

(3) One copy of the record of biological diversity registered pursuant to sub-section (1) and (2) shall be kept safely in the Village Development Committee or the Municipality concerned.

(4) A record maintained pursuant to sub-section (3) of Section 6 shall get recognition as registered pursuant to sub-section (1).

(5) Format of the application to be submitted for the registration of record of biological diversity to sub-section (1), fees and other procedures thereof shall be as prescribed.

(6) The record registered pursuant to this Section shall be recognized as a specification to be required to obtain intellectual property right.

(7) Government of Nepal shall publish the summary of the specification mentioned in the record registered pursuant to sub-section (1) and (2) in Nepal Gazette or through electronic or any appropriate media.

Provided that secrecy of the traditional knowledge regarding the using method mentioned in the record shall have to be maintained.

9. **Registration and Record of the Imported Genetic Resources:** Provision relating to registration and use of genetic resources and genetic material imported from abroad to Nepal shall be as prescribed.

### **Chapter -3**

#### **Excess to, Use and Benefit Sharing of Genetic Resources and Genetic Material and Traditional Knowledge Relevant to Their Use**

10. **No Excess to, Use and Export of Genetic Resources and Genetic Material be made without a License:** No one shall get access to, use and export of genetic resources and genetic material without having a license pursuant to this Act.



Provided that no local community shall have to obtain approval or license pursuant to this Act for the use of genetic resources and genetic material through traditional knowledge.

11. **To Apply for Preliminary Study, Scientific Research and Sample**

**Collection:** (1) A person or an institution, wishing to carry out preliminary and scientific research on and sample collection of genetic resource and genetic material, shall have to submit an application for preliminary study and sample collection along with fees and in the format as prescribed having mentioned the following matters:-

- (a) Identification of the applicant and details thereof,
- (b) Objective of the study,
- (c) Proposal of the study,
- (d) Details of biological resource and genetic resources or genetic material and traditional knowledge attempted to be collected,
- (e) Genetic resources and genetic material, their component, derivatives, the place intended to be collected at and time limit, collection process, procedure and quantity,
- (f) Details of resource and means for the proposed activities and personnel to be involved in the work of sample collection,
- (g) Information of previous application, if any,

- (h) Information in regard to right and ownership of the genetic resource and genetic material intended to be studied or to collect sample and traditional knowledge of local community relevant to such resources.
- (i) Expected outcome of the research from financial and scientific point of view.
- (j) Details of the matter of which secrecy is to be maintained, if any and
- (k) Other information as determined by the Council.

(2) The Council, after necessary inquiry into the application submitted pursuant to sub-section (1), if deems appropriate to grant permission for the study or sample collection of genetic resources and genetic material, shall grant permission by prescribing the time, place and other necessary terms and conditions of the study sample collection of the genetic resource or genetic material.

(3) While granting permission to export genetic resource and genetic material for scientific research pursuant to sub-section (2), the council shall grant permission prescribing necessary terms and conditions having concluded an agreement with the applicant.

(4) The study report, outcome of the scientific research, production made as per the permission granted pursuant to sub-section (2) and (3) and the remaining samples, if any, should be furnished to the council.

(5) No any person or institution may claim intellectual property right merely on the basis of study or sample collection pursuant to this Section.

12. **To Submit Proposal for License** : Any person or institution desirous to get access to, use and export of genetic resources and genetic material shall have to submit a proposal to the council for license in the prescribed format having mentioned therein the following particulars along with a technical report as well as a report relating to sharing of benefits and preliminary study report prepared pursuant to sub-section (4) of Section 11 of fee as prescribed:-

- (a) Identification of the offeror and details thereof,
- (b) Objective of the proposal,
- (c) Details of the previous proposal, if any,
- (d) Details of the report of preliminary study and sample collection,
- (e) Comprehensive details of the genetic resource and genetic material and traditional knowledge intended to get access to, use and export of,
- (f) Genetic resources and genetic material, their component, derivatives, the place intended to be collected at and time limit, collection process, procedure and quantity,
- (g) Details relating to conservation of species, varieties intended to get access to, use and export of,
- (h) Resource, means to be required for access, use and export and details of the personnel to be involved in such work,
- (i) Adverse impact likely to be caused to the environment from the access, use and import and initial arrangement of the remedies to be applied for the minimization of such impact,

- (j) Necessary information in regard to right and ownership of genetic resource intended to get access to and use and export of and traditional knowledge of the local community relevant to such resource,
- (k) Expected financial and scientific out-come from the access, use and export,
- (l) Details of the matter of which secrecy is to be maintained, if any and
- (m) Other information as determined by the Council.

13. **Provision Relating to Public Hearing** : (1) The Council, after having necessary inquiry in regard to the proposal submitted by the offeror pursuant to Section 12, shall have to publish the notice relating to public inquiry in at least two national and local newspapers in the prescribed format by forwarding the details mentioned in the proposal and other particulars as prescribed to the concerned local bodies, local communities and institutions for public hearing.

(2) After having received the information pursuant to sub-section (1), the concerned Village Development Committee or the Municipality shall call a meeting of the local inhabitants for public hearing by giving a time limit of maximum 15 days and an information thereof shall also be given to the district level offices.

(3) If the participants of the meeting called pursuant to sub-section (2) grant prior informed consent to implement the proposal submitted by the offeror pursuant to Section 12 or on the basis of the response made in that respect, the concerned Village Development Committee or the

Municipality shall make necessary recommendation to the council by taking a decision on that matter.

(4) Notwithstanding anything contained in sub-section (2) and (3), in case genetic resource or the genetic material demanded in the proposal extend beyond the border of two or more than two Village Development Committees or Municipalities or Districts, the Council by developing appropriate procedure, may make arrangement for public hearing through appropriate local bodies for obtaining prior informed consent or to take response of the local community on access to, use of and export of the genetic resources or genetic material.

(5) Presence of the offeror or his/her representative in the public hearing to be conducted pursuant to this Section shall be mandatory.

14. **Environmental Impact Assessment**: (1) Before entering into an agreement, the Council shall take a decision as to whether initial environment assessment or environmental impact assessment is to be carried out or not as per the prevailing laws depending on the nature of work.

(2) While carrying out initial environment assessment or environmental impact assessment, procedures stipulated in the prevailing law shall have to be applied.

15. **To Give Priority** : In case proposal from more than one person or institution is received for getting access to, use and import of genetic resources or genetic material of the same kind or nature, priority should be given to the proposal of reliable party whose proposal would be appropriate from technical point of view and more beneficial in benefit

sharing after having studied the technical, environmental and benefit sharing report and having negotiation with the offeror.

16. **Discussion on the Proposal** : (1) the Council may constitute a negotiation committee to discuss with offeror taking into account the technical and benefit sharing report attached with the proposal submitted pursuant to Section 12, recommendation received from the local bodies pursuant to sub-section (3) of Section 13 and environment impact assessment pursuant to Section 14.

(2) The negotiation committee to be formed for discussion on the proposal pursuant to sub-section (1), shall comprise of technician of the concerned field, expert in the field of law and management, representatives of the concerned local bodies, local communities including women, indigenous nationalities and *Dalits*.

(3) In the negotiation committee to be formed to discuss on the proposal submitted in regard to access to, use and export of the genetic resources or genetic material being in ownership or in possession of any person or institution, representative of the concerned person or institution shall also be included.

(4) The negotiation committee, prior to discussing on the proposal, shall do practice as follows:-

- (a) To do detailed study and analysis of the report on technical, environmental and benefit sharing report attached with the proposal.
- (b) To be clear on the recommendation received from the local bodies pursuant to sub-section (3) of Section 13.

(c) To fix subject matter for negotiation with the offeror and to make strategy benefiting own party in the benefit sharing,

(d) To prepare preliminary draft of the agreement taking into account all aspects of the proposal.

(5) After having completed the practice pursuant to sub-section (4), the negotiation committee shall discuss with the offeror.

(6) Points agreed upon during discussion on the proposal shall have to be recorded in the minute book.

(7) Subject to the provision referred to in the minute recorded pursuant to sub-section (6) of Section 7, the negotiation committee shall submit a recommendation report along with its concrete opinion suggestion in regard to the agreement.

(8) The Council shall take necessary decision in regard to the agreement within thirty days from the date of submission of the recommendation report by the negotiation committee pursuant to sub-section (7).

17. **Agreement not to be concluded:** While concluding an agreement it should not be concluded with following effect:-

(a) Being in contrary to the prevailing laws relating to environment and biological diversity,

(b) Causing adverse impact to the human being, animal and plant and their health,

(c) Causing degradation to soil and production,

- (d) Causing adverse effect to food safety,
  - (e) Causing negative impact to the livelihood of the local communities including indigenous nationalities.
18. **To give information** : (1) When the Council takes a decision to conclude an agreement with the offeror, a notice having mentioned necessary time limit to be present for the conclusion of an agreement should be given.
- (2) In case the council decides not to conclude agreement with the offeror, information thereof should be given to the offeror.
19. **To Conclude Agreement** : If the offeror comes to conclude agreement within the time limit prescribed in the notice given pursuant to Section 18, the Council shall conclude agreement subject to the decision stipulated in the minute maintained pursuant to sub-section (6) of Section 16.
20. **Matters to be mentioned in the Agreement**: Following matters shall have to be mentioned in the agreement to be concluded pursuant to Section 19:-
- (a) Detailed description of the genetic resources, genetic material or traditional knowledge for the access, use and export of which license is required,
  - (b) Type and quantity of the genetic resources and genetic material for the access, use and export of which license is required,
  - (c) Area, place, country, time and period intended to get access to, use and export of genetic resources and genetic material,



- (d) Type of technology, invention, process and method of technology handling that is to be used for access to, use and export of genetic resources and genetic material,
- (e) Provision relating to biological safety to be applied in getting access to, use and import of genetic resources and genetic material,
- (f) In the case of genetic resources and genetic material belonging to a particular community or an individual provision relating to prior consent of the owner of such resources and benefit to be received by them,
- (g) Provision relating to participation in the end product,
- (h) Provision relating to restriction to use biological or genetic resources for other objectives except the proposed one,
- (i) Royalty and fees to be paid to the Government of Nepal for getting access to, use and export of the biological resources, genetic resources, genetic material and traditional knowledge.
- (j) Type of benefit to be received from the use of genetic resources, genetic material and traditional knowledge and nature of equitable distribution,
- (k) If the license is to be handed over to any third party, provision relating to that,
- (l) Provision relating to technology transfer,
- (m) Dispute resolution mechanism and renew of the agreement, and
- (o) Other matters prescribed by the council.

21. **To grant License** : The Council shall grant license to the offeror in the format as prescribed after the agreement is concluded pursuant to Section 19.
22. **Monitoring of the Agreement**: It shall be the responsibility of the council to monitor as to whatever the obligation under the agreement has been fulfilled or not.
23. **Right over Biological and Genetic Resources and Intellectual Property**: (1) Any person or institution, obtaining license for access to, use and export of genetic resources and genetic material in Nepal having fulfilled procedures stipulated in this Act as well as in the Regulation and Directives framed under the Act, may acquire intellectual property right over any substance or the process of its use as per the prevailing laws subject to the agreement concluded pursuant to Section 19.
- (2) Notwithstanding anything contained in sub-section (1), nobody may register publicly known traditional knowledge or genetic resources or genetic material naturally available in Nepal as intellectual property or claim over them.
24. **Sharing and Distribution of Benefits** : (1) Sharing and distribution of benefits to be received to the parties to the agreement from the access to and use of genetic resources shall be as set forth in the agreement.
- (2) Out of the benefit to be received to Nepal pursuant to sub-section (1), sharing and distribution of financial benefit shall be as follows:-
- (a) If the owner of the resource is the Government of Nepal,-
- (1) fifty percent to the Government of Nepal,

(2) Thirty percent to the council,

(3) Twenty percent to the local community, person or institution.

(b) If the owner is local community, person or institution,-

(1) Fifty-one percent to local community, person or institution,

(2) Twenty-nine percent to the council

(3) Twenty percent to the Government of Nepal.

(3) The local body concerned shall get ten percent of the benefit to be received by the owner of the resource pursuant to sub-section (2).

(4) The benefit to be received by the local community pursuant to sub-section (2) shall be distributed through the local body which the community belongs to.

(5) Other procedures in regard to sharing of benefits shall be as prescribed by the Council.

25. **Sharing of Benefits Received from the Access, use and Export Before the Commencement of this Act:** (1) The Council shall conclude necessary agreement with the concerned party for the sharing of benefits received from the access to and use of genetic resources and genetic material located out of Nepal for ex-situ or miscellaneous form and purpose before the commencement of this Act.

(2) If any body, before the commencement of this Act having obtained permission, had exported genetic resources and genetic material by getting access to or use of the same, such person or institution shall

have to regularize the act of access to, use and export of genetic resources and genetic material within one year from the date of commencement of this Act by following procedures prescribed by the Council.

(3) If any body, before the commencement of this Act, with or without having license, had got access to, use and export of genetic resources and genetic material in or outside Nepal, the Council shall proceed necessary action and conclude agreement with such person or institution to share benefit received from such access, use and export.

26. **Government of Nepal or the Council may get Access to, use and export of Genetic Resources and Genetic Material:** Notwithstanding anything contained elsewhere in this Act, if the Government of Nepal or the Council itself wants to get access to, use and export of genetic resources and genetic material situated in or outside Nepal for ex-situ or miscellaneous form and purpose, it may do so by fulfilling the following procedures :-

- (a) By preparing a proposal pursuant to Section 12 and keeping record thereof with the Council,
- (b) By fulfilling the procedure pursuant to Section 13,
- (c) By having environmental impact assessment pursuant to Section 14, and
- (d) By having sharing and distribution of benefits received from the access to, use and export of genetic resources and genetic material.

## Chapter – 4

### National Genetic Resource Conservation Council

27. **Establishment of Council**: (1) There shall be a National Genetic Resource Conservation Council for the conservation, promotion and sustainable use of genetic resources and genetic material of Nepal and traditional knowledge relevant to such resources and material and equitable sharing of benefits arising from the access to, use and export of such resources and material and conservation of traditional knowledge of local community preserving such resource and material.
- (2) The Council shall be an autonomous and corporate body with perpetual succession.
- (3) The Council while carrying out its business shall maintain coordination with the National Genetic Resource Coordination Committee.
- (4) Secretarial of the Council shall be located at Kathmandu valley and it may establish its office in other places of Nepal.
- (5) The Council may obtain, use, sell or dispose otherwise movable and immovable property as an individual.
- (6) The Council may sue and be sued by its name.
28. **Constitution of Council** : (1) The Government of Nepal, by a notification in Nepal Gazette, shall constitute a National Genetic Resource and Conservation Council comprising fifteen members as follows:-
- (a) Secretary, Ministry of Forest and Soil Conservation - Chairperson

- (b) Six persons including one woman nominated by the Government of Nepal from among such persons having worked at least for ten years as an expert in the field of environmental science, biology, botany, agriculture science, forestry and environmental law one from each group - - Member
- (c) Three persons one each from women, farmers and *Dalits* nominated by the Government of Nepal from among the persons having worked at least ten years in the field relating to uplift of farmers, women and *Dalits* - - Member
- (d) Two persons including at least one woman having experience of at least ten years in the development of indigenous nationalities - - Member
- (e) Gazetted first class officer one each from the Ministry of Forest and Soil Conservation and Ministry of Agriculture and Cooperatives looking after the field of biological diversity and environment - - Member
- (f) Executive Director, National Genetic Resource Conservation Council - - Member Secretary

(2) Term of office of the members, except the ex-officio members, of the council shall be of three years.

(3) Facility and terms and conditions of service of the Executive Director and facility of the members of the Council shall be as decided by the council it-self and approved by the Government of Nepal.

(4) Procedure relating to meeting and decision of the Council shall be as prescribed.

(5) Government of Nepal may, at any time, remove the members appointed pursuant to Clause (b), (c), (d) and (f) from the post on any of the following reasons:-

- (a) If one is convicted of a criminal offence involving moral turpitude,
- (b) If one becomes physically or mentally incapable to work,
- (c) If it is found to be in contrary to public interest to continue him/her in the office because of misuse of his/her office,
- (d) If one is unable to carry out function or fulfill duty because of conflict of interest with the Council,
- (e) Prior to removing from the post pursuant to Clause (a), (c) and (d) of sub-section (5), the concerned office-bearer shall not be barred from reasonable opportunity to defend himself/herself.

29. **Functions, Duties and Powers of the Council** : (1) Functions, duties and powers of the council shall be as follows:-

- (a) To frame necessary policies, plans and programmes regarding conservation, promotion and sustainable use of genetic resource, genetic material and traditional knowledge

relevant to their use and implement or cause to be implemented the same,

- (b) To frame necessary policies, plans and programmes regarding granting permission to get access to, use and export of genetic resources, genetic material and traditional knowledge relevant to their use and implement or cause to be implemented the same,
- (c) To frame necessary policies, plans and programmes in regard to monitoring to fulfill the obligation under the agreement concluded pursuant to the license granted to get access to, use and export of genetic resources, genetic material and traditional knowledge relevant to their use and implement or cause to be implemented the same,
- (d) To frame necessary policies, plans and programmes in regard to equitable sharing of benefits arising from the access to, use and export of genetic resources, genetic material and traditional knowledge relevant to their use and implement or cause to be implemented the same,
- (e) To frame necessary policies, plans and programmes for the protection of the knowledge of the local community who has been using genetic resources, genetic material and traditional knowledge relevant to the use of such resource and material and implement or cause to be implemented the same,
- (f) To keep record and register biological diversity, prescribe fees for preliminary study, sample collection and access to,



use and export of genetic resources, genetic material and traditional knowledge relevant to their use.

(2) The Council shall collect and analyze scientific data by means of study and research and keep itself up-to-date and professional in order to frame policies, plans and programmes stipulated in sub-section (1).

(3) The Council shall conduct awareness and information oriented and observation programmes regarding access to, use and export of genetic resources, genetic material and traditional knowledge relevant to them.

(4) The Council, in carrying out functions, fulfilling duties and exercising powers pursuant to this Section, may work as a liaison body with foreign government and international organizations.

(5) The Council shall furnish annual report of activities carried out by it to the National Genetic Resource Coordination Committee.

30. **Executive Director and other Employees:** (1) There shall be an Executive Director as an executive chief of the Council.

(2) Government of Nepal shall appoint the Executive Director on the basis of open competition from among the experts relevant to the disciplines set forth in clause (b) of sub-section (1) of Section 28.

(3) Term of office of the Executive Director shall be of five years.

(4) Functions, duties and powers of the Executive Director shall be as prescribed.

(5) Employees shall be there in the Council as per requirement.

(6) Terms and conditions of service and facilities of the employees of the Council shall be as prescribed by the Council.

31. **Fund of the Council:** (1) There shall be a separate fund of the Council.

(2) Following amounts shall be deposited in the fund pursuant to sub-section (1):-

- (a) Grant amount appropriated by the Government of Nepal for the Council is annual budget,
- (b) Amount received as loan, donation and grant from any person or institution,
- (c) Amount received from a foreign government or international organization,
- (d) Amount received as per Section 24 and from any other source.

(3) The Council shall have to obtain prior permission of the Government of Nepal before obtaining any amount pursuant to clause (c) of sub-section (2).

(4) Expenses of the Council shall be made from the fund under sub-section (2).

(5) Fund and account of the Council shall be operated as per the prevailing laws of the Government of Nepal.

32. **Books of Account and Audit:** (1) The Council shall have to keep the books of account of its income and expenditure as per the prevailing laws.

(2) Audit of the Council shall be made from the Department of Auditor General.

33. **May form sub-committees:** (1) In case where the council has to take decision in exercise of the power conferred upon it by the Act, rules and directives framed under the Act, it may form sub-committees comprising experts of the concerned field to submit a report after having detailed study on the subject matter.

(2) Functions, duties, powers and procedure as well as remuneration and other facilities to be received by the coordinator and members of the sub-committees formed pursuant to sub-section (1) shall be as prescribed by the council.

34. **Delegation of Authority:** The Council may delegate some of its authority conferred upon it pursuant to this Act and rules and directives framed under this Act to the sub-committee formed pursuant to Section 33 or Chairperson, member, executive director and officer level employee of the Council.

## **Chapter – 5**

### **Investigation of cases and Punishment**

35. **Government of Nepal to be a Plaintiff:** A case to be an offence under this Act shall be initiated being the Government of Nepal a Plaintiff and such case shall be deemed to have been included in Schedule -1 of the State Cases Act, 1992.
36. **Case Hearing Authority:** (1) The district court shall have original jurisdiction to hear and settle cases to be an offence under this Act.

(2) The Court, in hearing cases pursuant to sub-section (1), may seek necessary advice from the experts of the concerned field.

37. **Offence, Punishment and Compensation:** (1) If the following act is done, it shall be deemed to have been committed an offence under this Act:-

(a) If preliminary study and sample collection of genetic resources and genetic material is carried out without obtaining permission under Section 10.

(b) If any body carries out following act without obtaining a license under Section 21:-

(1) Access to genetic resources and genetic material,

(2) Use of genetic resources and genetic material,

(3) Export of genetic resources and genetic material.

(c) Except in matters contained in clause (a) and (b), if access to, use and export of genetic resources, genetic material and traditional knowledge relevant to their use is made in contrary to the provision of this Act or rules framed under this Act.

(2) The case hearing authority may punish a person who commits an offence under sub-section (1) as follows, taking into account the nature, degree, seriousness of the offence as well as age, conduct and profession of the accused:-

(a) Punishment with fine not exceeding one hundred thousand rupees or with imprisonment for a term not exceeding one

year or with both to a person committing an offence under clause (a) and sub-clause (1) of clause (b),

(b) Punishment with fine not exceeding two hundred thousand rupees or with imprisonment for a term not exceeding two years or with both to a person committing an offence under sub-clause (2) of clause (b) of sub-section (1),

(c) Punishment with fine not exceeding one million five hundred thousand rupees or with imprisonment for a term not exceeding three year or with both,

(d) Punishment with fine not exceeding fifty thousand rupees or with imprisonment for a term not exceeding one month or with both.

(3) In case the offence is established pursuant to sub-section (1), the court shall issue an order to recover compensation from the offender for real loss or damage caused to the victim.

## **Chapter – 6**

### **Miscellaneous**

38. **Biological Diversity Committee may be Formed:** (1) Government of Nepal by a notification published in Nepal Gazette, may form biological diversity committees in national, district and local level.

(2) Functions, duties and power of the biological diversity committees formed pursuant to sub-section (1) shall be as prescribed in the same notification.

39. **Matters Contained in this Act Shall be as per This Act**: Matters contained in this Act shall be dealt as per this Act and in regard to the rest matters it shall be dealt as per the prevailing laws.
40. **Power to Frame Rules**: Government of Nepal may frame necessary rules to carry out the purpose of this Act.