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PREAMBLE

WHEREAS, Bhutan has a long tradition of living in harmony with nature, which is reaffirmed by the resolution of the Parliament to maintain a minimum of sixty percent of country's land under forest cover in perpetuity;

AND WHEREAS, environmental sustainability is an essential element of the Development Philosophy – “Gross National Happiness,” conceived by His Majesty the King;

AND WHEREAS, Bhutan respects international environmental laws and has acceded to major international environment and sustainable development instruments;

AND WHEREAS, there is a need to create institutional mechanisms to protect its fragile mountain ecosystem;

AND WHEREAS, in dedication to the visionary aspirations of our beloved Kings and in reverence to the moral, cultural and ecological values passed down by our forefathers and to ensure sustainable socio-economic development.

BE IT ENACTED by the National Assembly of Bhutan in its 87th Session held on 6th day of the 5th month of the Female Fire Pig Year of the Bhutanese calendar, corresponding to 21st June, 2007 as follows:-

CHAPTER I
PRELIMINARY

Short Title, extent and commencement

1. This Act may be called:
 - a) The National Environment Protection Act, 2007.
 - b) It shall come into force on the 16th day of the 6th month of the Female Fire Pig Year of the Bhutanese calendar, corresponding to 31st July 2007.
 - c) It extends to the whole of Bhutan.

Repeal

2. All other Acts and regulations governing the use of land, water, forests, minerals and other natural resources shall be consistent with this Act. The provisions of all existing laws relating to environment, which are inconsistent with this Act, are hereby repealed.

CHAPTER II
PRINCIPLES APPLICABLE TO ENVIRONMENTAL PROTECTION

Purpose

3. An Act to provide for the establishment of an effective system to conserve and protect environment through the National Environment Commission or its successors, designation of competent authorities and constitution of other advisory committees, so as to independently regulate and promote sustainable development in an equitable manner.

Environmental Principles

4. The people and the Government in succession shall perpetually strive to consider and adopt its developmental policies, plans and programs in harmony with the following environmental principles:

Fundamental right and duty

5. A person has the fundamental right to a safe and healthy environment with equal and corresponding duty to protect and promote the environmental wellbeing of the country.

Inter-generational equity

6. The present generation must ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

Middle Path Strategy

7. In order to achieve sustainable development, natural resources such as forest, water, air, biodiversity, soil, minerals and the overall integrity of the environment shall not be degraded. In line with the Government's Middle Path Strategy, economic development and environmental conservation shall receive equal priority.

Precautionary Principle

8. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation.
9. A developmental activity shall be strategically planned and executed in harmony with the carrying capacity of the country's sensitive ecological settings and geographical terrains.
10. A person taking natural resources from the environment or deriving economic benefits is responsible to ensure sustainable use and management of those resources and their ecology.

Principle of 3Rs

11. Every activity shall be planned and implemented in a way which will cause the least possible change in the environment; present the least environmental risk; minimize the consumption of space, raw materials, and energy during construction, production, distribution and utilization to the greatest extent possible including consideration of the principles of reduce, reuse and recycle; and forestall or limit environmental impact from the start.

Polluter Pays Principle

12. A person polluting the environment or causing ecological harm is responsible for the costs of containment, avoidance, abatement, medical compensation, mitigation, remediation and restoration.
13. State authorities and local governments, institutions, persons, businesses, and the organizations safeguarding the interests of all of the above shall cooperate for the protection of the environment. The right and responsibility to co-operate shall extend to all aspects of achieving the environmental objectives.
14. The uniformity of the system of environmental protection shall be guaranteed by the Government, the local governments and the private sector through appropriate policies, plans and programs such as environmental assessment processes, regulations, incentives, fiscal policies and other instruments.

Right to information

15. Every individual has the right to be informed about the state of the environment and all activities which are being proposed that could affect the environment.

Access to justice

16. Any individual whose right to a safe and healthy environment has been affected or is likely to be affected shall have the right to seek legal redress.

Sovereign rights principle

17. The state has sovereign rights over renewable and non-renewable natural resources within the limits of its national jurisdiction.
18. Conservation of natural resources shall be based on a participatory approach aimed at achieving an equitable sharing of the costs and benefits of conservation among resource users.

Principle of payment for environmental services

19. A person using or extracting natural resources shall be liable to pay for ecosystem/environmental services.

CHAPTER III

CONSTITUTION, FUNCTIONS AND POWERS OF AUTHORITIES

National Environment Commission

20. The National Environment Commission shall be an independent authority and the highest decision-making body on all matters relating to the environment and its management in the country. The Commission shall exercise the jurisdiction and powers and discharge the functions and duties conferred or imposed by or under this Act.
21. The Commission shall consist of such number of members, not exceeding nine and unless the rules otherwise provide, the Commission shall consist of the following:

- a) Prime Minister/Minister of a relevant Ministry nominated by the Prime Minister shall be the Chairperson,
- b) four - five other members who shall be highest ranking officers representing relevant ministries to be nominated by the Chairperson;
- c) three representatives of civil society/eminent persons;
- d) Head of the Secretariat as member secretary.

Terms of office of Chairperson and other members

- 22. The Chairperson and other members shall hold office for such period, not exceeding five years, as may be specified by the Government and shall be eligible for reappointment.
- 23. In any discussion, the Chairperson or other members shall not have any financial or other interest that may or is likely to affect their functions prejudicially.
- 24. Notwithstanding anything contained in section (22), a member may resign by submitting resignation to the Chairperson in writing with a minimum of one month's notice;
- 25. In the event of the occurrence of a vacancy in the office of the Chairperson, one of the members may be nominated/elected by the Commission as the interim chairperson until a new Chairperson is appointed.
- 26. When the Chairperson is unable to discharge his/her functions owing to absence, illness or any other cause, the Chairperson may authorise one of the members in writing to discharge the functions of the Chairperson on his/her behalf, until the Chairperson resumes his duties.

27. The terms and conditions of service of the Chairperson and other members shall be such as may be prescribed by the Government:

Provided that the terms and conditions of service of the Chairperson or any other member shall not be varied to his/her disadvantage after his/her appointment.

28. The members of the Commission shall make a declaration of fidelity and secrecy in such manner as may be prescribed.

Role of the Commission

29. The role of the Commission or its successor agency is to set the policies and to coordinate the actions required to:

- a) Implement the principles enshrined in this Act;
- b) Protect and promote a safe and healthy environment;
- c) Prevent, control and abate environmental harm, including pollution;
- d) Ensure conservation and sustainable use of natural resources;
- e) Institutionalize the environmental assessment process as an integral part of the development planning process through implementation of the Environmental Assessment Act, 2000 and;
- f) Negotiate and enforce bilateral and multilateral environmental agreements.

Powers and functions of the Commission

30. Subject to the provisions of this Act, the Commission shall have the responsibility for laying down the policies, plans and guidelines for environmental protection, sustainable development and proper utilization of natural resources. The Commission shall:
- a) take measures to prevent environmental harm and protect environmental quality in the manner set out in section (53) and (54);
 - b) designate any ministries, organisations, agencies or committees as the Competent Authority to carry out its functions;
 - c) enforce and implement policies, plans and programmes for environmental protection;
 - d) adopt strategies, plans and action programmes for achieving specific environmental protection objectives;
 - e) recommend ratification of bilateral and multilateral environmental instruments to the Parliament for subsequent enactment;
 - f) adopt regulations and rules including standards for environmental quality, emission limits and products, in consultation with other relevant agencies as authorized under this Act;
 - g) issue directives to relevant agencies or bodies for one or more of the following purposes:

- i. Restorative, corrective or mitigating measures;
 - ii. Environmental planning, protection and management within certain areas, zones, regions or nationwide;
 - iii. Promotion of environmental education, research or studies;
 - iv. Promotion of environmentally friendly and energy efficiency technologies; or
 - v. Mainstream environment into the national Policy, Plan and Program;
 - vi. Any other matter in specific or general deemed important for the betterment of environmental quality or sustainable management and use of natural resources.
- h) comment on all draft legislation, programmes, policies, plans and proposed activities prepared by other government agencies which are likely to have a impact on the environment and the sustainable use of natural resources;
- i) constitute advisory committees consisting of experts in the field of environment, sustainable development and related fields at the national or local level to make recommendations on different aspects of environment protection and sustainable development;

- j) hear and review any case of inconsistencies and conflict between one or more sectoral legislation and/or provisions of this Act with a view to harmonizing the conflicting provisions. The Commission shall initiate hearing or reviewing on its own or when matter is referred to it by the sectoral authority involved. Following hearing and review, the authorities involved shall agree on amendments to the sectoral legislation in question, to be tabled in the next session of the Parliament for enactment. In the interim, the Commission may issue an interim order, which shall be in force till the next session of the Parliament;
- k) recommend to the Parliament to declare;
 - i. any species of plant and/or animal as endangered species including their habitat and thus protected in consultation with relevant agencies and organizations;
 - ii. any part of the country to be a national park, wildlife reserve, nature reserve, protected forest, biosphere reserve, critical watershed and such other categories meriting protection.
- l) shut down any activities without compensation when false or misleading information is provided `based on which environmental clearance was issued;

- m) discharge such other functions prescribed under this Act;
 - n) discharge any other functions and tasks assigned to it by the Government;
 - o) advise the Government on matters relating to emerging environment issues.
31. In the exercise of its functions under this Act, the Commission may give such directions or pass such orders as are necessary, for reasons to be recorded in writing to the Secretariat or other Competent Authority. Notwithstanding anything said hereinabove shall preclude the Commission from its cardinal responsibility of enforcing and administering the provision of the Act. The Commission may delegate, subject to such conditions and limitations as may be specified, such of its powers and functions under this Act as it may deem necessary or expedient, to any officer or other authority.

Meetings of the Commission

32. The Commission shall meet on a quarterly basis and at such time and place as the Chairperson of the Commission may deem fit. The Chairperson may convene special sessions as and when required.
33. The Chairperson of the Commission shall preside over the meetings of the Commission.
34. The quorum for holding meeting of the Commission shall be two-third of its total members.
35. The decisions will be taken by simple majority.

Proceedings before the Commission to be judicial proceedings

36. The Commission shall be deemed to be a civil court and proceeding before the Commission shall be deemed to be a judicial proceeding when the Commission decides to hear cases before it. However the Commission may decide to establish environmental tribunal and communicate their decision to the Government and Chief Justice for its constitution.

Procedure of the Commission

37. Subject to the provisions of this Act, the Commission shall have powers to:
- a) regulate the procedure and conduct of the business;
 - b) delegate its powers or functions to such persons or authorities as prescribed in the rules or regulations made under this Act.
38. The Commission shall, for the purposes of hearing cases, carrying out any inquiry/investigation or for any other purpose under this Act, have the powers to:
- a) summon and enforce the attendance of any witness and examine him;
 - b) order the discovery and production of document or other material object producible as evidence;
 - c) receive evidence on affidavit;

- d) requisition any public record from any court or office;
 - e) issue any payment for the examination of witnesses, and;
 - f) any other matter which may be prescribed.
39. The Commission may sue or be sued for any act or omission of its powers and duties under this Act.

Secretariat of the National Environment Commission

40. The Secretariat is responsible for implementing the policies, regulations and directives issued by the National Environment Commission, and for administering the provisions of this Act by virtue of it being the custodian of common seal of the Commission responsible for carrying out day to day function.

Duties of the Secretariat

41. The duties of the Secretariat shall include:
- a) administering the provisions of the Environmental Assessment Act, 2000 and its Regulations;
 - b) monitoring of the state of the environment, including ambient air and water quality and land use changes;
 - c) monitoring of compliance with regulations established under this Act;
 - d) providing guidance to other government agencies and stakeholders concerning actions required to achieve environmental protection objectives, including specific measures for compliance with environmental clearances;

- e) development and maintenance of an effective environmental information system, including recordkeeping of all administrative decisions taken by the Secretariat;
- f) in consultation with relevant agencies and stakeholders, facilitation of the development and implementation of bilateral and multilateral environmental agreements, conventions, treaties, or declarations that have been ratified by the Parliament;
- g) reporting to the NEC concerning the state of the environment and status of implementing the policies, regulations and directives issued by the NEC;
- h) encouraging and supporting research, and;
- i) preparation and publication of periodic state of environment reports and other environmental information aimed at increasing public awareness for fostering compliance.

Powers of the Secretariat

42. The powers of the Secretariat shall include:
- a) in consultation with other relevant agencies and stakeholders, preparation of other draft acts, rules and regulations and standards needed to implement this Act, for consideration and adoption by the Commission;
 - b) establishment of implementing rules for specific regulations adopted by the Commission and as authorised by the Commission through those regulations;

- c) recommending to the Commission, legislative and other measures to be taken where there is eminent risk to the environment or public health;
- d) pursuance of enforcement actions as needed, including on-the-spot fines for non-compliance with the terms and conditions of environmental clearances, and;
- e) administering of EA Act 2000 and its Regulations.

Competent Authorities

- 43. Government agencies, including ministries and local authorities delegated with specific functions relevant to environmental protection and its management under this Act shall be designated as Competent Authorities. They shall carry out their duties and exercise powers in coordination with the Secretariat.

Competent Authority at Dzongkhag Level

- 44. Dzongkhag Environment Committees shall be constituted as Competent Authorities at the Dzongkhag Level and shall be chaired by the Dzongdag.
- 45. Each Committee shall consist of at least seven members representing planning, agriculture, forestry, engineering, industry, civil society and local government.
- 46. Each Committee shall be supported by an environmental officer appointed by the Secretariat.

Duties and powers of the Competent Authorities

47. The duties and powers of the Competent Authorities shall include:
- a) Issuance of environmental clearances for projects listed as being under their competence as per the Environmental Assessment Act, 2000 and its regulations;
 - b) Review of non-listed projects prior to forwarding their opinion to the Secretariat or any other relevant Competent Authority;
 - c) Compliance monitoring of the conditions of environmental clearance and taking necessary action for non-compliance;
 - d) Gathering and forwarding environmental information on a regular basis to the Secretariat;
 - e) Enabling public participation in environmental decisions, including assessments carried out under the Environmental Assessment Act, 2000 and its Regulations;
 - f) Monitoring the quality of the environment;
 - g) Informing the Secretariat of any deterioration or risk of deterioration of the quality of the environment;
 - h) Making recommendations to the concerned Ministries, Local Governments, and/or to the Secretariat concerning any measures that need to be taken to protect the quality of the environment; and

- i) Carrying out such other functions as per the terms of reference issued by the Commission from time to time.

Environmental Tribunal

48. The Government may establish an Environmental Tribunal to hear specific environmental disputes, when the Commission decides not hear the disputes.
49. An Environmental Tribunal shall consist of three expert members of high integrity, knowledge and experience in the field of environmental adjudication, to be appointed by the Government including at least one person who is qualified to be appointed as a judge of the High Court or a retired judge of the High Court or Supreme Court as chairperson on the recommendation of the Chief Justice of Bhutan. Persons in situations of conflict of interest with respect to the specific dispute to be decided shall be disqualified.
50. A duly constituted Environmental Tribunal shall be a quasi-judicial authority with the power to hear, take evidence, investigate, issue summons, request information and pass its decision on the issues heard before it.
51. The terms and conditions of service of the members shall be such as may be prescribed by the Government, provided that the terms and conditions of service of the Chairperson or any other member shall not be varied to his disadvantage after his/her appointment.
52. A decision taken by the Environmental Tribunal may be appealed to the High Court.

CHAPTER IV
PROTECTION OF ENVIRONMENTAL QUALITY

Commission to take measures to prevent environmental harm

53. Subject to the provisions of this Act, the Commission may take all such measures as it deems necessary or expedient for the purpose of protecting the environment and preventing, controlling and abating environmental harm or pollution.
54. In particular, and without prejudice to the generality of the provisions of section (53), such measures may include measures with respect to all or any of the following matters, namely:
 - a) coordination of actions by the Dzongkhag Environment Committees and other authorities made under this Act or the rules made thereunder;
 - b) laying down standards for emission or discharge of environmental pollutants (including noise pollution) from various sources whatsoever, provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;
 - c) laying down, after consultation, restrictions and procedures on the disposal of waste;

- d) examination of, and restrictions with regard to, any industries, operations or processes or class of industries, operations or processes in any area as are likely to cause environmental pollution;
- e) laying down standards and procedures for labelling and best environmental practices with regard to any industries, operations or processes or class of industries, operations or processes;
- f) laying down procedures and safeguards for the handling of hazardous substances;
- g) carrying out investigations and research relating to problems of environmental pollution;
- h) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;
- i) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;
- j) collection and dissemination of information in respect of matters relating to environmental pollution;
- k) ensure reasonable amounts of water for environmental flows to protect the fresh water biodiversity and maintain ecosystem functions;

- l) standards laid down as per sub-section 54 (b) shall be reviewed and revised at regular intervals based on the new scientific findings, changing time and technology, which shall be strictly implemented and enforced.

Handling of hazardous substances

55. No person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed under national and international instruments.

Discharge of environmental pollutants

56. No person shall discharge or emit or be permitted to discharge or emit any pollutants in excess of such standards as may be prescribed.

Environmental Standards for Products: Technologies, and Management Practices

57. Polluting products and technologies that can cause adverse impacts on the environment in the absence of appropriate treatment or design may be regulated under this Act, via environmental standards established by the Commission or certification by recognised international standards organizations, in consultation with other relevant agencies and stakeholders concerned.
58. The Government may encourage voluntary eco-labelling or eco-auditing schemes through fiscal incentives and other means.
59. The Commission may issue regulations, guidelines or codes concerning:

- a) environmental codes of best practices for specific sectors;
- b) standards for environmental auditing and management systems;
- c) environmental labelling in order to encourage production and marketing of environmentally friendly products or services, or to promote environmentally friendly and energy efficiency technologies;

Waste Management

- 60. With the aim of achieving a more sustainable approach to resource use and a reduction in the quantity of waste going to disposal, the Commission may require producers to take responsibility for the costs of the management of their products when they become waste, by diverting end of life products to re-use, recycling or other forms of recovery and safe disposal.
- 61. Producers/industries shall be fully responsible for safe and proper disposal of their waste.
- 62. It shall be mandatory for any proponent to provide comprehensive information in the project document, on types and quantities of waste including sound management plan for safe and proper disposal.

Environmental emergencies

63. Environmental emergencies, including any industrial accident or accidental spillage or leakage resulting in a significant release of a hazardous substance into the environment, shall be notified to the nearest government authority which shall in turn take the necessary measures for damage control including alerting the public affected and inform the Secretariat.
64. On receipt of information with respect to the fact or apprehension on any occurrence of the nature referred to in section (63), whether through intimation under that section or otherwise, the Secretariat shall, as early as practicable, cause such remedial measures to be taken as necessary to prevent or mitigate the environmental harm or pollution if the nearest authority is unable to take necessary measures.
65. The expenses, if any, incurred by any authority or agency with respect to the remedial measures referred to in section (63), together with interest (at such reasonable rate as the Commission may, by order, fix) from the date when a demand for the expenses is made until it is paid, may be recovered by such authority or agency from the person concerned.

**Other Matters concerning Environmental Protection,
including Emerging Issues**

66. On the basis of information gathered during environmental monitoring, through representations from citizens and stakeholders, new scientific studies, and other sources of information, the Commission may decide whether additional measures are needed to protect the environment and conserve the natural resources of the country.

CHAPTER V

PROTECTION OF FOREST, BIODIVERSITY AND ECOSYSTEM INTEGRITY

Stewardship of the Environment

67. Every Bhutanese is a trustee of the country's natural resources and environment for the benefit of the present and future generations and it is the fundamental duty of every citizen to contribute to the protection of the natural environment, conservation of the rich biodiversity and prevention of all forms of ecological degradation.

Forest Coverage, Protected Areas and Vulnerable Ecosystems

68. The Commission shall ensure that, in order to conserve the country's natural resources and to prevent degradation of the fragile mountain ecosystem, a minimum of sixty percent of Bhutan's total land shall be maintained under forest cover for all time. Any changes in the present national forest cover and protected areas shall be made only by the Parliament.

69. In order to ensure sixty percent forest cover in perpetuity in line with Section 30(i), the Commission shall constitute a high-level committee comprising of relevant stakeholder agencies, such as Department of Forestry, to:
- a) periodically review existing policies, plans and programs and recommend necessary changes in policies, plans and programs, including implementation and enforcement mechanisms.
 - b) initiate aforestation and re-forestation programs in degraded and barren land to enhance forest cover.
 - c) review policies and programs on forest fire management and recommend measures to curb forest fire in the country.
70. The Commission shall ensure and promote the use of clean energy and alternative technologies in order to reduce use of fuel wood/timber from primary forest. Such innovative practices of reducing the burden on natural resources shall be supported with incentives as per section 78.
71. The Commission, in consultation with other relevant agencies shall ensure conservation and protection of wetlands, alpine regions, watersheds, and other vulnerable ecosystems in addition to the existing protected areas.

Protection of Genetic Resources

72. The Commission, in consultation with relevant agencies shall establish regulatory controls over import and use of genetically modified organisms (GMOs) including living modified organisms (LMOs) and products containing GMOs and introduction of alien species.
73. Keeping in mind intergenerational equity and sustainable utilization of natural resources, the Commission shall study and recommend to Parliament any proposals for bio-prospecting and other commercial extraction and export from the country, of any in-situ and ex-situ plant and animal genetic resources.

Research and Monitoring

74. In recognition of the importance of scientific research in the field, the Commission shall initiate scientific research and ensure that long-term biological monitoring and research frameworks are established in order to monitor and assess biological trends and processes to measure ecosystem integrity and species survival.

Chapter VI
ENVIRONMENTAL FINANCING AND INCENTIVES

Financing of Environmental Protection

75. The Government shall allocate sufficient funds to enable the Commission, its Secretariat, the advisory committees, and the Competent Authorities to exercise and discharge the powers, duties and functions effectively under this Act.
76. The Commission and its Secretariat may receive such sums of money through the Government by way of grants, donations, gifts or loans from any sources as per the existing laws of the country.
77. The Government may establish any environmental protection funds as may be deemed appropriate.

Financial Incentives and Charges for Environmental Compliance

78. In order to promote environmentally friendly technologies, code of best practices and eco-labelling, the Government may establish fiscal incentives for environmental protection and compliance, including:
 - a) Provision of tax incentives for environmental services and/or manufacture of environmentally friendly products;
 - b) Reductions in customs and other duties for the import of environment friendly and energy efficiency technologies;

- c) Grants or co-financing for civil society or public sector environmental protection or nature conservation projects.
 - d) Provision of incentives for reducing, recycling and reusing waste.
79. The Government may levy charges, including:
- a) Charges or fees for utilization of natural resources; and
 - b) Taxes or charges for raw materials or products posing specific environmental risks.
80. The Commission may establish mechanisms for valuation of natural resources and apply the values established to legal and economic instruments, such as payments for environmental services designed to be shared equitably among resource users, the costs and benefits of conservation and sustainable use of the resource.

CHAPTER VII
RIGHT TO ENVIRONMENTAL INFORMATION AND CITIZENS'
PARTICIPATION

Right to Environmental Information

81. All citizens have a right of access to environmental information. The Commission and its Secretariat shall therefore:

- a) promote environmental education, advocacy and awareness;
- b) regularly publish information on the environment, including periodic state of the environment reports;
- c) make environmental information available in electronic databases which are easily accessible to the public through public telecommunications networks, including:
 - i. Reports on the state of the environment;
 - ii. Texts of legislation on or relating to the environment;
 - iii. As appropriate, policies, plans and programmes on or relating to the environment, and environmental agreements; and
 - iv. Other information available in electronic form that may facilitate the application of this Act.
- d) encourage operators whose activities have a significant impact on the environment to inform the public voluntarily of the environmental impact of their activities and products.

National Environmental Information System

82. The Commission may establish a national environmental information system for the purpose of gathering, processing, analysing, and disseminating data on the state of the environment of the Country. It shall be organised in such a manner as to enable:

- a) Tracking of changes (both qualitative and quantitative) in the utilization, loading and state of the environment, and any resulting impacts;
 - b) Recognition and analysis of any emerging issues with respect to the environment so as to enable timely response;
 - c) Determination of the causes of environmental impacts and;
 - d) Identification of appropriate corrective and remedial measures to be taken.
83. The national environmental information system shall include data gathered via:
- a) Regular monitoring of the quality of air and water, according to the quality standards and sampling/evaluation methodologies established by the Commission;
 - b) Monitoring of compliance with environmental clearances and other regulations established under this Act;
 - c) Reports submitted by users of the environment on their environmental performance; and
 - d) Independent studies and researches.
84. The Secretariat shall be responsible for organising and managing the national environmental information system.
85. The Commission and its Secretariat shall have authority to issue directives requiring agencies, institutes, organisations, stakeholders and persons to furnish information or reports relating to any aspect of the environment and its utilization that such person or organization is deemed to possess.

Citizens' Right of Participation in Environmental Decisions

86. Citizens are entitled to participate in decision-making processes concerning the environment, when the Government deems appropriate to hold public consultations, including:
- a) Contributing views during the process of drawing up policies, plans and project formulation and implementation;
 - b) Consulting the public during environmental impact assessment process before the issuance of environmental clearance. Provided that the larger interest of the community/country shall prevail over individual interest; and
 - c) Commenting on draft legislation or regulations under preparation to implement this Act.
87. The public concerned shall be informed in a, timely and effective manner, either by public notice or individually as appropriate, on any environmental decision-making procedure, when all options are open and effective public participation can take place.

Access to Justice

88. Any person aggrieved by a decision taken under this Act may appeal to the Commission. The person aggrieved may challenge the substantive and procedural legality of any decision, act or omission.
89. This right of access to a review procedure shall apply in particular to any person who considers that:

- a) a request for information has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with; and
 - b) a decision, act or omission has otherwise impaired his or her rights.
90. The Commission shall ensure that such a person has access to an expeditious procedure for reconsideration by the Commission or review by the Environmental Tribunal.
91. An appeal against the decision of the Commission may be made to the High Court.

CHAPTER VIII
PROCEDURE FOR INSPECTIONS AND VERIFICATION

Procedure for entry and inspection. –

92. Subject to the provisions of this section, any person empowered by the Commission in this behalf shall have a right to enter, at all reasonable times with such assistance as he/she considers necessary, any place other than a house/human dwelling where an individual is residing and/or rearing his/her family:
- a) for the purpose of performing any of the functions of the Commission entrusted to him/her;

- b) for the purpose of determining whether and if so in what manner, any such functions are to be performed or whether any provisions of this Act or the rules made thereunder or any notice, order, direction or authorisation served, made, given or granted under this Act is being or has been complied with;
 - c) for the purpose of examining and testing any equipment, industrial plant, record, register, document or any other material object or for conducting a search of any premise in which he/she has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committed and for seizing any such equipment, industrial plant, record, register, document or other material object if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder or that such seizure is necessary to prevent or mitigate environmental pollution.
93. Every person carrying on any industry, operation or process of handling any hazardous substance shall be bound to render all assistance to the person empowered by the Commission under section (92) for carrying out the functions under that section and if he fails to do so without any reasonable cause or excuse, he shall be guilty of an offence under this Act.

94. If any person wilfully delays or obstructs any persons empowered by the Commission under section (92) in the performance of his functions, he/she shall be guilty of an offence under this Act.

Procedure for taking samples

95. The Commission or any officer empowered by it in this behalf, shall have power to take, for the purpose of analysis, samples of air, water, soil, raw materials, finished products and any other substance from any factory, premises or other place in such manner as may be prescribed.
96. Subject to the provisions of section (95), the person taking the sample shall:
- a) serve on the occupier or his/her agent or person in charge of the place, a notice, then and there, in such form as may be prescribed, of his/her intention to have it so analysed;
 - b) in the presence of the occupier or his/her agent or person, collect a sample for analysis;
 - c) cause the sample to be placed in a container or containers which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his/her agent or person;
 - d) send without delay, the container or the containers to the laboratory established or recognised by the Commission.

Environmental laboratories

97. The Government may establish one or more environmental laboratories or recognise one or more laboratories or institutes as environmental laboratories under this Act.
98. The Commission may lay down regulations and procedures to specify:
- a) the functions of the environmental laboratory;
 - b) the procedure for the submission to the said laboratory of samples to be tested, and;
 - c) such other matters as may be necessary or expedient to enable that laboratory to carry out its functions.

CHAPTER IX ENFORCEMENT, OFFENCES AND PENALTIES

Obligation of environmental compliance

99. All agencies, institutions, associations and persons shall comply with the obligations set forth in this Act and other relevant environmental legislation and regulations. The duty to comply shall *inter alia* comprise the following general duties:

- a) to provide any information required by regulation or by duly issued directive;
- b) to ensure that all information provided is accurate and not misleading;
- c) to cooperate during an environmental compliance inspection, and not wilfully delay, prevent or obstruct an officer on duty from entering a facility;
- d) to comply with all conditions set forth in a duly issued environmental clearance or any other issued order, and;
- e) not to use or extract natural resources without a permit.

100. The Secretariat shall have primary responsibility for monitoring compliance and for enforcing the obligations of this Act.

Environmental offences

101. A violation or infringement of any of the obligations set forth in the provisions of this Act shall constitute an offence and may be subject to penalty according to the Bhutan Penal Code or as per penalties set forth under section 104.

Penalties for civil offences

102. For a civil offence under this Act the penalty may comprise one or more of the following:
- a) payment of a fine ranging in amount from one to twelve man-months of the minimum National Wage Rate;
 - b) order to take mitigating, corrective or restorative measures as may be deemed necessary to prevent further damage being caused to human health and/or environment;
 - c) reimbursement of any costs incurred by an authority because of the offender's failure to take the notified measures in time;
 - d) payment of compensatory costs for rectifying any damage to persons or property caused by the offence;
 - e) suspension or revocation of an environmental clearance, in part or in whole;
 - f) in the event of the offence being continued after stop order, a fine equivalent to ten man-months as per the minimum National Wage Rate per day till the day such offence is discontinued; and

- g) shut down any industries without compensation when an offence continues after stop order.
103. The assessment of a penalty for a civil offence under this Act shall be based on the:
- a) cost of environmental damages caused;
 - b) frequency of the offence committed;
 - c) impact on the human health and the environment;
 - d) intention of the offender; and
 - e) extent of achieved or intended economic advantage from the offence.

Penalties for criminal offences

104. When the Bhutan Penal Code does not expressly provide penalties for criminal offences then depending on the magnitude of the offence and the intention of the offender, a criminal penalty of imprisonment ranging from one month to one year may be applied in addition to cost of the environmental damages.

When express penalty not provided

105. When an express penalty for an environmental offence is not provided under this Act or regulations, the offender shall be liable as per the provisions of other existing laws.

CHAPTER X
MISCELLANEOUS

Members, officers and employees of the Commission to be public servants

106. All the members, officers and other employees of the Commission, when acting or purporting to act in pursuance of any provisions of this Act or the rules made or orders or directions issued thereunder shall be deemed to be public servants.

Multilateral and bilateral environmental agreements

107. Multilateral and bilateral environmental agreements ratified by the Parliament shall be enforceable as any other domestic laws, retrospectively as well as prospectively.

Power to make rules

108. The Commission may make rules for carrying out the purposes of this Act.

Amendment

109. When necessary, the Commission shall submit a report and proposals for any amendments to this Act to the Parliament.

Authoritative Text

110. In case of difference in meaning between the Dzongkha and the English texts, the Dzongkha text shall prevail.

Definitions

111. In this Act, unless the context otherwise requires:

- (1) **Activity** means *any human activity including policies, plans, programmes and projects.*
- (2) **Agency** means a ministry, department, municipality established under the Bhutan Municipal Act, 1999 or any autonomous public body of the Government of Bhutan or companies incorporated under the Companies Act 2000.
- (3) **Air pollution-** means an undesirable change in the physical, chemical and biological characteristics of air which will adversely affect plants, animals, human beings and inanimate objects;
- (4) **Applicant** means a person seeking a development consent or environmental clearance from a competent authority or the Secretariat.
- (5) **Authority-** means the National Environment Commission, Secretariat, Competent Authority or their officers on duty under this Act.
- (6) **Act** means the National Environment Protection Act, 2007.

- (7) **Balanced socioeconomic developmental activities-** means a social or economic developmental program that is planned and executed with minimum of adverse impact on the human health and environment.
- (8) **Beneficial use** - means a use of the environment or any portion thereof that is conducive to public benefit, welfare, safety or health.
- (9) **Commission** means the National Environment Commission
- (10) **Competent Authority**-means any agency designated as competent authority by the Commission to carry out its functions.
- (11) **Concerned people** means individuals, groups and communities whose interests may be affected by a project
- (12) **Development consent** means the approval issued or renewed by a competent authority in the form of a license, lease, or permit for land use or construction.
- (13) **Developmental activity** - means developmental projects and programs that may be of national or local level, planned or ad hoc, having impact on the human health and environment.

- (14) **Effluent-** means any substance whether liquid, solid or gaseous which directly or indirectly alters the quality of any segment or element of the receiving environment so as to effect any beneficial use adversely or is hazardous or potentially hazardous to health;'; and
- (15) **Emission control limit** means the mass or volume of pollutant expressed in terms of certain specific parameters, concentration and/or level of an emission that a project or its activities may not exceed during one or more periods of time
- (16) **Emission** means the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in the project into the air, water or land
- (17) **Environment** - means the physical factors of the surroundings of human beings including the earth, soil, water, atmosphere, climate, sound, odors, tastes and the biological factors of animals and plants of every description including the complex web of interrelationships between the abiotic and biotic components which sustain life on earth.
- (18) **environmental activities** – means any programs or projects for restorative, preventive or improvement of environment

- (19) **Environmental assessment** - means all procedures required under Bhutanese law to identify means to ensure that the activities of a project are managed in an environmentally sound and sustainable way
- (20) **Environmental clearance** means the decision issued in writing by the Commission or Competent Authority to commence implementation of a project, which includes terms to ensure that the project is managed in an environmentally sound and sustainable way
- (21) **Environmental harm** means direct or indirect:
- a. harm to the environment involving removal or destruction of, or damage to –
 - i. native vegetation or;
 - ii. the habitat of native vegetation or;
 - iii. indigenous aquatic or terrestrial animals;
 - b. alteration of the environment to its detriment or degradation or potential detriment or degradation
 - c. alteration of the environment to the detriment or potential detriment of an environmental value; or
 - d. alteration of the environmental of a prescribed kind

- (22) **Environmental impact assessment report**- means a written analysis of the predicted environmental developmental activity and containing an environmental cost-benefit analysis
- (23) **Environmental management plan** means a plan which specifies the environmental, health and safety terms for the design, construction, operation, and decommissioning of a project
- (24) **Environmental terms**- means any terms of the environmental clearance and waste disposal license; codes of best practices, standard norms or guidelines that may be attached with the developmental consent, the national effluent standards or predetermined degree determined hazardousness of any substance or materials.
- (25) **Facility** means a place of production, processing or a service unit that may be a point source for emission or discharge of pollutants
- (26) **Holder** means the recipient of an environmental clearance under Chapter III of the EA Act 2000
- (27) **Industrial facility**- means an establishment providing any nature of Socio-economic services.
- (28) **Industrial plants**- means manufacturing industries of any goods and services

- (29) **Knowing standard**- means what an ordinary and reasonable person should have known of what may happen, resultant to one's commission or omission of an act in the ordinary course of life.
- (30) **Land** – means and includes messuages, buildings and any easements relating thereto.
- (31) **Litter**- means unwanted waste materials whether a by product which has arisen during a manufacturing process or a product which has passed its useful working life and has been discarded.
- (32) **Local Government**- means Geog Development Committee, Dzongkhag Development Committee, Municipal Committee, Urban Committee, Town Committee or Village Committee and includes any committee created and established by or under any law to exercise, perform and discharge powers, duties, and functions corresponding or similar to the powers, duties and functions exercised, performed and discharged by any such Committee;
- (33) **Materials**- any chemical or organic substance, unused raw materials or residue.
- (34) **Monitoring** means a program of systematic, objective and quantitative measurements, observations and reporting of projects that may have environmental impacts

- (35) **Noise pollution**- means the presence of sound at a level which causes irritation, fatigue, hearing loss or interferes with the perception of other sounds and with creative activity through distraction
- (36) **Person** means any individual, legal entity or agency whether registered or not registered under the Companies Act 2000.
- (37) **Plan** means a coordinated set of policies and programs, based on the political decisions of the Government of Bhutan, intended to achieve specific objectives within a specified time period.
- (38) **Point source** means a facility discharging emission or effluents of any nature into the environment
- (39) **Pollutant**- means any substance whether liquid, solid or gaseous which directly or indirectly alters the quality of any segment or element of the receiving environment so as to effect any beneficial use adversely or is hazardous or potentially hazardous to health; and,

- (40) **Pollution-** means any direct or indirect alternation of the physical, thermal, chemical, biological, or radioactive properties of any part of the environment by the discharge, emission, or the deposit of wastes so as to effect any beneficial use adversely or to cause a condition which is hazardous or potentially hazardous to public health, safety, or welfare, or to animals, birds, wildlife, aquatic life, or to plants of every description;
- (41) **Prescribed-** means prescribed by statutory regulations.
- (42) **Program** means a set of coordinated activities of public or private to achieve specific objectives of a plan
- (43) **Project** means an activity which may have significant effects on the environment
- (44) **Remedial Measures-** developmental activities undertaken by the polluter to reduce adverse environmental effects or reclamation of affected areas.
- (45) **Government** means the Government of Bhutan
- (46) **Sector based guidelines** means guidelines issued as code of best practices by relevant sector or agencies.

- (47) **Strategic Environmental Assessment** means a systematic process for evaluating the environmental consequences of a proposed policy, plan or program of the Government
- (48) **Secretariat** means the Secretariat of the National Environment Commission
- (49) **Taking** means physically removing or extracting natural resources from its original place of growth and deposition
- (50) **Toxic chemical** means a substance characterized by definite molecular composition which has harmful effects on living materials or which can create hazardous changes in the environment.
- (51) **Waste** means includes any matter prescribed to be waste and any matter, whether liquid, solid, gaseous, or radioactive, which is discarded or intended to be discarded.
- (52) **Water bodies** means shall include territorial rivers, lakes, ponds and wet earths of national or historic significance within the political boundaries of the Kingdom.
- (53) **Wetland** means Land where an excess of water is the dominant factor determining the nature of soil development and the types of animals and plant communities living at the soil surface. It spans a continuum of environments where terrestrial and aquatic systems intergraded.
- (54) **Multilateral and Bilateral environmental agreements** means treaties, conventions, covenants, executed between two or more countries including their protocols.