Environmental Assessment Act, 2000



Royal Government of Bhutan
National Environment Commission
Tashichho Dzong, Thimphu

PREAMBLE

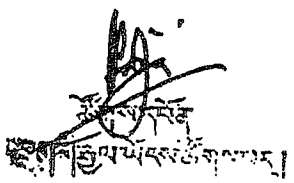
For centuries Bhutanese have preserved their natural resources and lived in harmony with nature. His Majesty the King Jigme Singye Wangchuck has always emphasized that development must not take place at the expense of our natural resources. It is because of this political will and our traditional reverence for nature that Bhutan is today blessed with a rich natural environment.

Aware of the problems that uncontrolled economic development can cause, and recognizing the importance of sustainable development for Bhutan with its fragile mountain ecosystems and extremely high level of biodiversity, the Royal Government has chosen the "middle path" of sustainable development. This is development that recognizes the need to raise the living standards of the present population without compromising the country's cultural integrity, historical heritage or the quality of life for future generations.

In dedication to the visionary aspirations of our beloved Kings and in reverence to the moral, cultural, and ecological values of our forefathers.

And to ensure that socio-economic development in Bhutan is consistent with the "middle path" of sustainable development.

This Act is hereby adopted.



Chapter I
General Provisions

Purpose

1. This Act establishes procedures for the assessment of potential effect of strategic plans, policies, programs and projects on the environment, and for the determination of policies and measures to reduce potential adverse effects and to promote environmental benefits.

Title, Extent and Commencement

2. This Act shall be called the Environmental Assessment Act, 2000.

3. It shall enter into force on 13th day of 5th month of the Iron Dragon Year corresponding to the 14th day of July, 2000.

4. It shall extent to the whole of the Kingdom of Bhutan.

Scope

5. This Act applies to strategic plans, policies, programs and projects which may have an impact on the environment.

Definitions

6. Under this Act:

6.1 **Act** means the Environmental Assessment Act, 2000.

6.2 **Agency** means a ministry, department, municipality established under the Bhutan Municipal Act, 1999 or any autonomous public body of the Royal Government of Bhutan.

6.3 **Applicant** means a person seeking a development consent or environmental clearance from a competent authority or the Secretariat.

6.4 **Competent** Authority means any agency of the Royal Government which has the power to issue a development consent for a project.

6.5 **Concerned people** means individuals, groups and communities whose interests may be affected by a project.

6.6 **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.

6.7 **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.

6.8 **Emission control limit** means the mass, 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.

6.9 **Environment** means the complex web of interrelationships between the abiotic and biotic components which sustains life on earth, including the social, health and cultural aspects of human beings.

6.10 **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.

6.11 **Environmental clearance** means the decision under Chapter III of this Act, issued in writing by the Secretariat or the competent authority, to let a project proceed, which includes terms to ensure that the project is managed in an environmentally sound and sustainable way.

6.12 **Environmental management plan** means a plan which specifies the environmental, health and safety terms for the design, construction, operation, and decommissioning of a project.

6.13. **Environmental terms** means the requirements and conditions which the project must comply with, as stated in the environmental clearance issued by the Secretariat or the competent authority, and any related requirements in the development consent.

6.14 **Existing project** means a project that received a development consent or began operation before the entry into force of this Act.

6.15 **Holder** means the recipient of an environmental clearance under Chapter III.

6.16 **Kingdom** means the Kingdom of Bhutan.

6.17 **Monitoring** means a program of systematic, objective and quantitative measurements, observations and reporting of projects that may have environmental impacts.

6.18 **Person** means any individual, legal entity, or agency.

6.19 **Plan** means a coordinated set of policies and programs, based on the political decisions of the Royal Government of Bhutan, intended to achieve specific objectives within a specified time period.

6.20 **Program** means a set of coordinated activities of the Royal Government of Bhutan to achieve specific objectives of a plan.

6.21 **Project** means an activity which may have significant effects on the environment.

6.22 **Royal Government** means the Royal Government of Bhutan.

6.23 **Screening** means the determination by the Secretariat or the competent authority of how the environmental assessment process under *Chapter III* of this Act shall be applied to a project.

6.24 **Secretariat** means the Secretariat of the National Environment Commission, or its successor as may be decided by the Royal Government.

6.25 **Strategic Environmental Assessment** means a systematic process for evaluating the environmental consequences of a proposed policy, plan or program of the Royal Government.

Chapter II

Environmental Clearance

Environmental concerns

7. The Royal Government shall ensure that environmental concerns are fully taken into account when formulating, renewing, modifying and implementing any policy, plan or program, as per regulations that may be adopted according to Article 32.2

Environmental clearance

8. The issuance of an environmental clearance shall be prerequisite to the issuance of a development consent.

9. A project of the Royal Government that does not require a development consent may commence only after receiving an environmental clearance from the Secretariat.

10. The environmental clearance shall set out environmental terms for the project. When a development consent is required, the environmental clearance shall be attached to and be an integral part of it.

Chapter III

The Environmental Assessment Process

General procedure

11. Any person who seeks to carry out a project that requires a development consent shall include in the application to the competent authority a description of the potential environmental effects of the project.

12. The competent authority may accept the application when it determines that the information provided is sufficient for screening and environmental assessment of the project under this Act.

13. Except for listed projects under Article 33.1, the competent authority shall forward the application and related information regarding the project to the Secretariat for screening.

14. The Secretariat shall screen the project when it determines that the information provided in the application is sufficient to identify the potential environmental effects of the project.

15. If the Secretariat cannot, on the basis of the information provided by the applicant, identify the potential environmental effects of the project, or if the information provided is not sufficient to demonstrate that the project satisfies the terms in Article 18, the competent authority shall ask the applicant to prepare environmental assessment documents according to terms of reference approved by the Secretariat.

16. The applicant shall ensure that concerned people and organizations are informed and consulted before submission of the environmental assessment documents to the competent authority.

17. When it determines that the environmental assessment documents are complete, the competent authority shall forward them to the Secretariat.

18. The Secretariat may issue the environmental clearance when it is satisfied that:

    18.1 The effects of the project on the environment are foreseeable and acceptable;

    18.2 The applicant is capable of carrying out the terms of the environmental clearance;

    18.3 The project, alone or in connection with other programs or activities, contributes to the sustainable development of the Kingdom and the conservation of its natural and cultural heritage;

    18.4 Adequate attention has been paid to the interests of concerned people; and,

    18.5 The project is consistent with the environmental commitments of the Kingdom.

When development consent is not required.

19. Any agency that seeks to carry out a project that does not require a development consent shall submit an application to the Secretariat for an environmental clearance. The application shall include a description of the potential environmental effects of the project.

20. The Secretariat shall screen the project and may issue an environmental clearance when it determines that the information provided in the application is sufficient to identify the potential environmental effects of the project, and that the project satisfies the conditions in Article 18.

21. If the Secretariat cannot, on the basis of the information provided by the applicant, determine that the project satisfies the terms in Article 18, it shall ask the applicant to prepare environmental assessment documents according to terms of reference approved by the Secretariat.

22. Prior to submission of the environmental assessment documents, the agency shall ensure that concerned people and organizations are informed and consulted.

Validity, modification and renewal

23. The environmental clearance for a project shall be reviewed and may be revised and renewed at least every five years, unless a shorter period is stated in the environmental clearance.

24. The holder must notify the competent authority, or the Secretariat in the case of projects not requiring a development consent, of any changes planned in the operation of the project which may have effects on the environment. The terms of the environmental clearance may be modified accordingly.

25. Notwithstanding Article 23 and 24, the Secretariat or the competent authority may review and modify the terms of the environmental clearance whenever the following circumstances may arise:

    25.1 Unacceptable risks to the environment resulting from the project which were not known at the time the environmental clearance was issued,

25.2 The availability of improved and cleaner technology, or

25.3 To bring the project into compliance with changes to the laws of the Kingdom.

Chapter IV
Information

26. The applicant shall provide any information in their possession or obtainable by them, which the Secretariat or the competent authority, determines is needed to carry out their duties under this Act.

27. Any agency holding information needed by applicants to fulfill their obligations under this Act shall make it available upon request within a reasonable time.

28. When a decision on the environmental clearance has been taken, the Secretariat or the competent authority shall make a public announcement of the decision and make the following information available to the public:

28.1 A description of the project;

28.2 The environmental terms;

28.3 A description of measures to avoid or mitigate potential adverse impacts and enhance positive impacts of the project;

28.4 The main reasons and considerations on which the decision is based, including the basis for the acceptance or rejection of views and arguments presented by other authorities and concerned people;

28.5 A non-technical summary of the information under Sub-articles 28.1 to 28.4

29. Documents related to environmental clearances shall be kept on record at the office of the Secretariat or the competent authority and made available to the public upon request, as per established practice.

30. The applicant or the holder may request that specified information be kept confidential if dissemination would cause substantial harm to their commercial and industrial interests.

31. An agency may refuse to provide information to the public if it determines that it is confidential under national law and accepted legal practice regarding commercial and industrial confidentiality, intellectual property, and the safeguarding of the public interest.

Chapter V

Functions and Powers

The National Environment Commission

32. The National Environment Commission shall:

32.1 Supervise the activities of the competent authorities and Secretariat, provide guidance and ensure the implementation of this Act;

32.2 Adopt regulations defining requirements for strategic environmental assessment of policies, plans and programs of the Royal Government;

32.3 Adopt regulations specifying the time frame within which existing projects shall achieve compliance with this Act;

32.4 Adopt regulations and guidelines on public information, consultation, mediation and appeals, and on incentives for persons who may inform authorities about emergency situations under Article 48;

32.5 Adopt regulations concerning decision-making and appeal procedures under this Act, where procedure do not exist under other laws;

32.6 Adopt regulations concerning administrative sanctions, fines, and the payment of compensation for environmental damage resulting from projects that have received and environmental clearance under this Act;

32.7 Bring complaints to the Department of Legal Affairs for the prosecution of violations of this Act.

33. The National Environment Commission may:

33.1 Adopt a list of project for which the competent authority shall screen and issue the environmental clearance;

33.2 Adopt emission control limits for projects under this Act.

33.3 Adopt fine schedule, which may be reviewed and revised.

33.4 Hear and decide disputes under this Act.

The Secretariat

34. The Secretariat shall:

34.1 Decide on issuance of environmental clearance to projects under Chapter III;

34.2 Monitor and control compliance with the terms of environmental clearances;

34.3 Inform the competent authority of any violation of the terms of environmental clearance, or of any other potentially dangerous activities of a project under Article 40;

34.4 Report annually to the National Environment Commission on the implementation and enforcement of this Act, and propose necessary amendments to it.

35. The Secretariat, in consultation with the concerned competent authorities, shall issue regulations and guidelines concerning:

35.1 Terms of reference for environmental assessments, environmental management plans, and other environmental assessment documents;

35.2 Information to be included in the application for environmental clearance or development consent;

35.3 Fee schedules to cover the costs of administering this Act;

35.4 Monitoring and controlling compliance;

35.5 Emergency response;

35.6 Reporting on the implementation and enforcement of this Act;

35.7 Any other matters necessary for the implementation and enforcement of this Act.

36. The Secretariat shall have the powers and duties of the competent authority under Article 39 for the environmental clearance of projects under Articles 19 to 22.

37. When the applicant is a competent authority as defined under this Act, the Secretariat shall be the competent authority to issue environmental clearance and shall have the powers and duties defined under Article 36.

38. The Secretariat may appoint an Environmental Assessment Advisory Board to provide technical advice on the environmental assessment and the environmental terms for a project.

The Competent Authority

39. The competent authority shall:

39.1 Attach environmental terms to the development consent which may contain applicable codes of best practices;

39.2 Ensure that concerned people and agencies are adequately consulted before issuance of a development consent, as per regulations and guidelines that may be adopted under Article 32.4;

39.3 Monitor, control and enforce the terms of the environmental clearance attached to development consents, including ordering sanctions and compensation for environmental damage;

39.4 Report annually to the Secretariat on implementation, monitoring and enforcement of this Act.

39.5 In consultation with the Secretariat, adopt regulations on environmental health and safety standards; codes of best practice; instructions; application forms; guidelines, and other documents and information materials concerning the implementation of this Act.

Chapter VI

Monitoring and Control

Compliance

40. On becoming aware of non-compliance with the environmental terms or other activities related to a project that may be dangerous to the environment, the Secretariat shall notify the competent authority and may set a time limit for taking remedial measures.

41. When the competent authority fails to take action to remedy the situation within the time limit, the Secretariat may notify the Chairman of the National Environment Commission, assume the powers of the competent authority under this Act, and take any necessary action.

42. In case of non-compliance with the terms of an environmental clearance, the competent authority or the Secretariat shall, by registered letter, notify the holder and order the project to comply with the environmental terms. They may direct it to take necessary measures using personnel and facilities approved by the competent authority or the Secretariat by a set time limit.

43. When the holder fails to comply with the order within the time limit, the competent authority or the Secretariat may take necessary corrective, protective and preventive measures to restore and maintain compliance with the terms of the environmental clearance.

Right of access

44. Officers of the Secretariat or the competent authority may, without prior notification, enter the site of a project in order to ensure compliance with the terms of the environmental clearance or to control an emergency under Article 47, and may:

    44.1 Make visual inspections and spot checks;

    44.2 Interview employees, occupants or persons on the site;

    44.3 Collect samples in presence of the holder, their agent or the occupant of the site;

    44.4 Inspect and take copies of relevant data or documents;

    44.5 Take necessary measures to control immediate risks to the environment.

45. The holder, the manager or occupant at the site of the project shall provide full cooperation to officers acting under Article 44.

46. When necessary to achieve compliance with this Act, the competent authority or the Secretariat may call upon the assistance of any agency or law enforcing body, who shall provide full cooperation to officers acting under Article 44.

Emergencies

47. When immediate action is needed to prevent or control serious risk to the environment from a project, the competent authority and the Secretariat shall, without prior notice to the holder, take necessary measures to prevent or control the risk, including immediate suspension or closure of the project or any activity of the project.

48. Any person who becomes aware of activities of a project that are likely to lead to serious risk to the environment shall immediately notify the competent authority, the Secretariat or the nearest local authority. The authority that receives such information or a court of law that may summon and hear such person for corroborative reasons, shall keep confidential the identify of the informing person.

Chapter VII

Offenses and Penalties

Offenses

49. The following actions shall constitute an offense under this Act:

49.1 Establishing, commencing or carrying out a project without the required environmental clearance;

49.2 Altering or interfering with devices installed as per the environmental terms;

49.3 Giving false or misleading statements or information regarding an application for or compliance with the environmental clearance to any officer acting under this Act;

49.4 Failure to comply with an order issued under Article 42;

49.5 Failure to provide information according to Articles 26 or 27;

49.6 Wilfully delaying or preventing access to the project site in violation of Article 44;

49.7 Failure to extend cooperation to officers of the competent authority or the Secretariat according to Article 45 and 46;

49.8 Obstruction of an officer or employee of the competent authority or the Secretariat in execution of their duties under this Act;

49.9 Failure to report according to Article 48.

49.10 Failure to comply with the terms of the environmental clearance;

49.11 Issuance of an environmental clearance in violation of the procedures and requirements of this Act;

49.12 Failure to comply with any other provision of this Act, regulations or rules under it.

Compensation and Sanctions

50. Whoever commits an offense under this Act may be subject to sanctions, held liable for payment of compensation for environmental damage resulting from their action, as well as subject to prosecution for any related criminal offense.

51. Sanctions under this Act include suspension or revocation of environmental clearance, in part or in whole, and payment of a fine.

52. The head of any agency that has been found to have committed and offense under Articles 49 and 58 shall be subject to administrative sanction as per the Royal Civil Service Commission Rules, 1990.

53. The head of any agency or the Managing Director or owner of a legal entity that has been found to have committed an offense under Articles 49 and 58 may be held jointly or severally liable for any damage which occurs as a result of the offense.

54. The determination of liability for offenses committed under this Act shall take the following factors into account:

    54.1 Magnitude of the offense;

    54.2 Frequency of the offense;

    54.3 Actual or potential impact on the environment;

    54.4 The culpability of the offender;

    54.5 The extent of the achieved or intended economic advantage from the offense.

Jurisdiction

55. A Court of law or any specialized court or tribunal, which may be established by the Royal Government having original jurisdiction shall hear the cases under this Act.

56. When the penalties for offenses committed under this Act are also covered by any other law, the penalties shall be determined as per this Act.

Publication of offenders

57. The competent authority or the Secretariat may publish the name, business office, offense and penalty imposed of any person who is found liable for an offense under this Act and who commits the same offense again. Publication may be in the newspaper, broadcast media or in other manner that the Secretariat or competent authority deems fit.

Chapter VIII

Performance of Duties

Performance of Duties

58. The officers of the competent authorities and the Secretariat shall carry out their duties in good faith and for the purpose of implementing the requirements of this Act.

Chapter IX

Appeals and Dispute Resolution

Interagency conciliation

59. Where more than one agency is affected by a proposed project, the head of the Secretariat may convene a meeting of concerned agencies to seek a common solution.

Dispute Resolution

60. In case of a dispute under this Act, the concerned parties shall first attempt to settle the matter amicably and in good faith through informal dialogue.

61. In the event of failure to settle the dispute amicably, any party may appeal to the National Environment Commission, which shall have discretion to hear or refuse the case.

Chapter X

Miscellaneous Provisions

Publication

62. All regulations and guidelines adopted under this Act shall become effective three months after publication of an announcement in the national press or of the full text in the official gazette of the Royal Government.

Liability and Costs

63. The applicant/holder shall bear all costs associated with meeting the requirements under this Act.

64. The competent authority or the Secretariat, as the case may be, may recover the costs of measures taken under Articles 43, 44.5 or 47 from the holder.

Revision of this Act

65. When necessary and on the basis of the report of the Secretariat, the National Environment Commission shall submit a report and proposals for the amendments of this Act to the National Assembly.

Interpretation

66. In case of differences, in interpretation of this Act in one or more of languages, the interpretations in Dzongkha text shall be final and binding.