

The Environment Protection Act, 2019 (2076)

Date of Authentication

2076.06.24 (11th October, 2019)

Act No. 9 of the year 2019 (2076)

An Act Made to Amend and Consolidate Law Relating to Environment

Preamble:

Whereas, it is expedient to amend and consolidate the prevailing law on environmental protection in order to protect the fundamental right of each citizen to live in a clean and healthy environment, provide the victim with compensation by the polluter for any damage resulting from environmental pollution or degradation, maintain a proper balance between environment and development, mitigate adverse environmental impacts on environment and biodiversity and face the challenges posed by climate change;

Now, therefore, the Federal Parliament has made this Act.

Chapter-1

Preliminary

1. **Short title and commencement:** (1) This Act may be cited as the "Environment Protection Act, 2019 (2076).
(2) This Act shall commence on the eighth day of the date on which it is authenticated.
2. **Definitions:** Unless the subject or the context otherwise requires, in this Act:
 - (a) "Adaptation" means the prevention or mitigation of further loss and damage upon projecting potential impacts and risks of climate change.
 - (b) "Emission" means emission of greenhouse gas or any other gas, smoke or dust on the environment from any certain area in a certain period.
 - (c) "Fund" means the environment protection fund referred to in Section 31.
 - (d) "Climate change" means a gradual change of climate of the earth which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition

to natural climate variability observed over comparable time periods.

- (e) "Climate change management" means the mitigation or adaptation of problems arising as a result of climate change, and this term also includes a totality of acts including policies, strategies, making institutional mechanisms, provision of finance, capacity building.
- (f) "Hazardous substance" means any substance enlisted in the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal, and **explosives, inflammable, perpetual and substances with corrosive properties and substances that are intended to be in use for the first time upon be processed from raw materials not re-used which cause adverse impact on the environment.**
- (g) "Biological diversity" means eco-system diversity, species diversity and genetic diversity.
- (h) "Prescribed" or "as prescribed" means prescribed or as prescribed in the rules framed under this Act.
- (i) "Mitigation" means reduction or prevention of emission of greenhouse gas as a result of human activity.
- (J) "Pollution" means the activities that significantly degrade, damage the environment or harm the beneficial or useful purpose of the environment, by changing the environment directly or indirectly as a result of wastes, chemical, heat, noise, electrical, electro-magnetic wave or radioactive ray.
- (k) "Proposal" means a proposal prepared in regard to the carrying out of such development work, physical activity that may bring about change in the existing environmental conditions or any plan, project or programme which changes the land use.
- (l) "Proponent" means a person or governmental, semi-governmental or non-governmental agency or institution that makes application for the approval of a proposal or that has got approval for the implementation of the proposal.
- (m) "Initial environmental examination" means an analytical study or evaluation to be conducted to ascertain as to whether, in

implementing a proposal, the proposal does have significant adverse impacts on the environment or not, and with respect to the measures to be adopted for avoiding or mitigating such impacts by any means.

- (n) “Supplementary environmental impact assessment” means an environmental impact assessment to be made again vis-à-vis a proposal submitted in order to make revision partly in physical infrastructure, design or form, transfer or alter a structure, add a forest area or increase the project capacity on the environmental impact assessment proposal which has been already accepted.
- (o) “Council” means the national council on environment protection and climate change management referred to in Section 32.
- (p) “Provincial Ministry” means the Ministry of a Provincial Government responsible for environment related matter.
- (q) "Wastes" means the liquid, solid, gas, slurry, smoke, dust, radiated element or substance or similar other materials disposed in a manner to degrade the environment.
- (r) "Ministry" means the Ministry of Forest and Environment of the Government of Nepal.
- (s) "National heritage" means any such object, physical structure, site, plant or animal related with the environment available within Nepal as is likely to be important to the human being from natural, cultural, historical, archaeological, scientific, spiritual, aesthetic or social point of view.
- (t) "Environment" means the interaction and inter-relationship among the components of natural, cultural and social systems, economic and human activities and their components.
- (u) “Environmental study report” means a report prepared with respect to the brief environmental study, initial environmental examination or environmental impact assessment.
- (v) "Environmental impact assessment" means detailed study and evaluation to be made to ascertain as to whether, in implementing a proposal, the proposal does have significant adverse impacts on the environment or not, and as to the measures to be adopted for avoiding or mitigating such impacts.

- (w) “Department” means the Department of Environment under the Ministry.
- (x) “Concerned body” means the body referred to in sub-section (2) of Section 3 which is responsible for taking action and decision on the environmental study report.
- (y) “Brief environmental study” means a study to be made briefly as to the measures to be adopted for avoiding or mitigating the adverse effects on the environment as a result of implementation of any proposal.
- (z) “Local Level” means a Rural Municipality or Municipality.

Chapter-2

Environmental Study

3. **Environmental study report to be prepared:** (1) A proponent shall prepare such an environmental study report of such a proposal as may be prescribed.

(2) The environmental study report prepared pursuant to sub-section (1) shall, in fulfillment of the process as prescribed, be submitted to the following body for approval:

- (a) To the prescribed body, in the case of a brief environmental study report or initial environmental examination of a development project with national priority, a project to be implemented upon its investment being approved by the Investment Board, a project of national pride, a development or construction work or project falling under the jurisdiction of the Federation in accordance with the prevailing, a project requiring construction work to be done in more than one Provinces or a project specified by the Government of Nepal, and to the Ministry in the case of the environmental impact assessment,
- (b) To the body prescribed by the concerned Provincial law in the case of a proposal relating to development, construction work or project pertaining to a matter falling under the jurisdiction of the Provincial Government,
- (c) To the body designated by the concerned local law in the case of a brief environmental study report or initial environmental

examination report on a proposal relating to development, construction work or project pertaining to a matter falling under the jurisdiction of the Local Level, and to such body of the Provincial Government as prescribed by the Provincial Government in the case of an environmental impact assessment report.

(3) Notwithstanding anything contained in sub-section (1) or (2), nothing shall bar the approving of environmental study reports submitted for approval at the time of commencement of this Act in accordance with the legal provisions in force at the time of submission of such reports.

(4) Notwithstanding anything contained elsewhere in this Section, there shall not be required an environmental study report for reconstructing as such a heritage considered an ancient monument, in accordance with the law relating to ancient monuments.

(5) In preparing an environmental study report, the proponent shall hold, as prescribed, a public hearing as to the proposal.

(6) Other provisions relating to the submission of an environmental study report shall be as prescribed.

4. Detailed analysis of alternative to be made: (1) The proponent shall make detailed analysis of possible adverse effects on the environment from the implementation of such a proposal and various alternatives that can be adopted for mitigation such effects, and recommend the alternative that is appropriate for the implementation of the proposal and the grounds and reasons why that alternative is implementable.

(2) In preparing the environmental study report pursuant to sub-section (1), the proponent shall set out, inter alia, the possible short-term, mid-term and long-term adverse effects on the environment from the implementation of the project and the method and process to be adopted for mitigation thereof.

5. Scoping and work schedule: (1) Prior to preparing the environmental study report of any proposal pursuant to this Act, the scope of such a proposal, in the case of a brief environmental study and initial environmental examination, and scope and work schedule, in the case of an environmental impact assessment shall be approved by the concerned body.

(2) Other provisions on the scoping and preparation of the work schedule referred to sub-section (1) and approval thereof shall be as prescribed.

6. **Standards and quality to be maintained:** (1) In preparing an environmental study report pursuant to this Act, the proponent shall so prepare it in the form as prescribed that the standards and quality determined by the Government of Nepal are maintained.

(2) If the report is submitted contrary to the standards or quality referred to in sub-section (1) or without complying with such standards, the consultant who has prepared such a report shall not be allowed to prepare an environmental study report for a period not exceeding five years.

7. **Environmental study report to be approved:** (1) If an environmental study report prepared in the context of the implementation of any proposal pursuant to Section 3 is received, the concerned body shall make necessary inquiry into the report.

(2) The concerned body may form a committee comprising a representative of that body, representatives of the relevant bodies concerned with the proposal and subject expert as required, to inquire into the environmental study report received pursuant to sub-section (1) and furnish advice and suggestions.

(3) If, in inquiring into the environmental study report received pursuant to sub-section (1), it appears that further environmental study has to be made in relation to such a proposal, the concerned body shall give order to the proponent to make, or cause to be made, the initial environmental examination in the case of the brief environmental study or the environmental impact assessment in the case of the brief environmental study.

(4) The proponent shall make further study in pursuance of the order given pursuant to sub-section (3) and submit a report thereof to the concerned body.

(5) If, in making inquiry pursuant to this Section, it does not appear that the implementation of such a proposal causes significant adverse impacts on the environment, the concerned body shall approve such environmental study report, upon specifying the terms and conditions to be observed by the proponent, as required.

(6) Other provisions relating to the approval of the environmental study report shall be as prescribed.

8. **Proposal not to be implemented:** No person shall implement, or cause to be implemented, any proposal without having the environmental study report approved pursuant to this Act.
9. **Strategic environmental analysis:** (1) Prior to the implementation of such policy, program or project as may be specified by the Government of Nepal by a notification in the Nepal Gazette, the strategic environmental analysis shall be carried out in relation to such a policy, program or project.
- (2) Other provisions relating to the strategic environmental analysis shall be as prescribed.
10. **Environmental management plan:** (1) Prior to the implementation of a proposal, the proponent shall prepare an environmental management plan as prescribed.
- (2) In preparing the environmental management plan pursuant to sub-section (1), the proponent shall set out, inter alia, which of the measures to mitigate environmental adverse impacts will be adopted in the course of building the project and which of such measures will be adopted after the completion, or in the course of implementation, of the project.
- (3) If it does not appear that the measures to mitigate environmental adverse impacts set out by the proponent in the environmental management plan pursuant to sub-section (2) are effective, the concerned body may give necessary direction to adopt other effective measures, and the concerned proponent shall bear the expenses incurred in the implementation of the direction so given by the concerned body.
- (4) The proponent shall make a clear action plan for the implementation of environmental management plan prepared pursuant to sub-section (1) and implement it accordingly, and submit its progress report to the concerned body in every six months after the commencement of the project implementation.
- (5) In adopting the measures to mitigate environmental adverse impacts in the course of implementation of the environmental management plan referred to in sub-section (1), priority shall be given to the operation of the program through the local community which affected from the implementation of the proposal.
11. **Supplementary environmental impact assessment to be made:** (1) If it is required to make some revision in the physical infrastructure, design or form, transfer or alter the structure of any project of which the environmental impact assessment report has been approved pursuant to Section 7, add the forest area or

increase the capacity of the project, the proponent shall make a supplementary environmental impact assessment in order to ascertain whether the operation of such work causes adverse impacts on the environment or not, and whether such impacts can be done away with or mitigated by any means or not.

(2) The proponent shall, in order to make the supplementary environmental impact assessment pursuant to sub-section (1), make an application to the concerned body, along with an analysis of the reasons for making changes in various components of the project and possible adverse impacts on the environment from such changes, a comparative table according to environmental indicators and other necessary justifications.

Provided that where the concerned body has given order to the proponent to submit a supplementary environmental impact assessment report, the proponent need not make an application.

(3) If the content is found reasonable upon inquiring into the application received pursuant to sub-section (2), the concerned body may give permission for a supplementary environmental impact assessment study as prescribed.

(4) Other provisions relating to the supplementary environmental impact assessment shall be as prescribed.

- 12. To make environmental examination after commencement of service:** (1) The Ministry or prescribed body shall, not later than six months of the date of completion of two years of the commencement of production or distribution of the service or goods **or of the** implementation of a proposal requiring the environmental impact assessment pursuant to this Act, make analysis of the adverse impacts on the environment as a result of the implementation of such a proposal, measures adopted to mitigate such impacts, effectiveness of such measures, adverse impacts that could not be mitigated or occurrence of any unprojected/**unforeseen** adverse impacts and maintain undated records of the environmental examination report.

(2) If the Ministry or prescribed body does not see, upon making necessary study, in coordination with the concerned body with respect to the environmental examination report referred to in sub-section (1), that the measures adopted to mitigate the adverse impacts on the environment are not adequate, it may give appropriate order to the proponent to do away with or mitigate such adverse impacts.

(3) It shall be the duty of the proponent to implement the order given by the Ministry or prescribed body pursuant to sub-section (2).

- 13. Power to prevent:** (1) If any person executes a project without having the environmental study report approved pursuant to this Act or contrary to the approved environmental study report, the concerned body may immediately prevent the project from being executed.

(2) Where a project is prevented from being executed pursuant to sub-section (1) and such prevention results in any harm to the proponent, the proponent shall not be allowed to make a claim of compensation for such harm.

(3) Notwithstanding anything contained in sub-section (1), if the proponent of the project prevented from being executed gets the environmental study report to be approved pursuant to this Act or makes improvement in the project execution in accordance with the approved environmental study report, the concerned body may release the prevention made pursuant to sub-section (1).

- 14. Power of the Government of Nepal or Provincial Government to make environmental study:** (1) The Government of Nepal or Provincial Government may, on its own, **map out** any area or place and make the environmental study of that area.

(2) The concerned body shall, on the basis of the **descriptions** obtained from the study referred to in sub-section (1) shall prepare descriptions as to such development, construction works or projects that can be executed in such area in the future and work that is not appropriate for execution in such area.

(3) The concerned body shall maintain records of the descriptions obtained from the study referred to in sub-section (1) and the descriptions referred to in sub-section (2).

(4) The concerned body shall make public the descriptions referred to in this Section, and the concerned proponent, body and party concerned shall act in consistent therewith.

Chapter-3

Control of Pollution

- 15. Control of pollution:** (1) The Government of Nepal may, by a notification in the Nepal Gazette, determine necessary standards for the mitigation or doing away with the impacts of pollution from any motor vehicle, device, equipment,

industrial enterprise, hotel, restaurant or other place or goods or activity or effects from the disposal or emission of any hazardous substance.

(2) No person shall create pollution in such a manner as to cause significant adverse impacts on the public life, public health and environment or do, or cause to be done, any act contrary to the standards determined by the Government of Nepal pursuant to sub-section (1).

(3) No person or group that visits a mountain or **high hill area** for expedition, trekking, sightseeing or any other purpose shall do, or cause to be done, any such act that may cause adverse impacts on the environment by making pollution contrary to the standards determined by the Government of Nepal.

(4) If it appears that any one has caused adverse impacts on the environment by doing any act contrary to sub-section (1) or (2), the Department may give direction to the relevant person, group or institution to take measures for mitigation of or **doing away with** pollution, prescribe necessary terms or prohibit the carrying out of any act in a manner to cause adverse impacts on the environment.

(5) If it appears that the use of any substance, fuel, tool, machine or equipment has caused or is likely to cause significant adverse impacts on the environment, the Department may request the Ministry for necessary action.

(6) If a request is received from the Department pursuant to sub-section (5), the Ministry may, in necessary consultation with the concerned body or other stakeholders, prevent the use of such substance, fuel, tool, device or equipment or the production, import, sale, distribution or storage of such materials, and a notice on such prevention shall be published in the Nepal Gazette.

(7) The Department shall, from time to time, carry out monitoring and evaluation as to compliance with the standards determined pursuant to sub-section (1).

(8) Other provisions relating to the control of pollution shall be as prescribed.

16. Export and import of hazardous substance: (1) No hazardous substance of any kind shall be imported into Nepal.

(2) Notwithstanding anything contained in sub-section (1), any such specific kind of hazardous substance that does not cause significant adverse

impacts on the human health and environment as specified by the Government of Nepal by a notification in the Nepal Gazette may be imported.

(3) A producer of a hazardous substance or person or body established under prevailing law may export hazardous substance by obtaining permission from the Ministry.

(4) Grounds, criteria for issuance of, and other provisions relating to, permission to export a hazardous substance pursuant to sub-section (3) shall be as prescribed.

(5) A hazardous substance imported contrary to this Act shall be sent to the same country from which it has been imported.

17. Management of a hazardous substance: (1) The person or body that produces a hazardous substance shall be responsible for managing such a hazardous substance.

(2) In collecting, storing, processing, selling, distributing, disposing or transporting a hazardous substance, the concerned person or body shall make its proper management in a manner not to cause adverse impacts on the environment.

(3) The concerned person or body shall manage the hazardous substance pursuant to sub-section (1) at his or her own cost.

18. Power to establish laboratories: (1) The Government of Nepal or Provincial Government may establish laboratories, as required, to carry out test or examination relative to environment protection and pollution control or prescribe any laboratory recognized by the Government of Nepal to carry out test or examination relative to environment protection and pollution control.

(2) Provisions relating to the operation and management of the laboratory established pursuant to sub-section (1) shall be as prescribed.

19. To allow collection of samples: (1) If the concerned body intends to study, test, examine or analyze the pollution or wastes to be or likely to be generated from any industry, factory, mechanical equipment like a machine and motor vehicle, the concerned owner or relevant person shall allow to collect samples of the pollution or wastes generated from such industry, factory, mechanical equipment like a machine and motor vehicle.

(2) Other provisions relating to the collection, study, examination, test or analysis of samples pursuant to sub-section (1) shall be as prescribed.

20. Power to issue pollution control certificate: (1) The Ministry or Provincial Ministry may provide a pollution control certificate, as prescribed, to any industry that makes a significant contribution to the control of pollution.

(2) Other provisions relating to the pollution control certificate shall be as prescribed.

21. Environmental inspector: (1) The environmental inspector shall carry out monitoring and inspection as to whether or not acts to be performed in accordance with the environmental study report approved pursuant to Section 7 have been performed effectively and standards relating to pollution control and environmental protection have been complied with.

(2) Notwithstanding anything contained in sub-section (1), in cases where the environmental inspector is not available, the following body may designate the following officer or employee as the environmental inspector and depute such officer or employee for monitoring and inspection:

- (a) The Ministry may designate any officer employee of the Government of Nepal or Provincial Government, as to whether or not acts to be performed in accordance with the environmental study report referred to in clause (a) of sub-section (2) of Section 7 have been performed effectively and standards relating to pollution control and environmental protection have been complied with,
- (b) The Provincial Ministry may designate any officer employee of the Provincial Government, as to whether or not acts to be performed in accordance with the environmental study report referred to in clause (b) of sub-section (2) of Section 3 approved pursuant to Section 7 or the environmental impact assessment report referred to in clause (c) of sub-section (2) of Section 3 have been performed effectively and standards relating to pollution control and environmental protection have been complied with within its Province,
- (c) The Local Level may designate any employee of the Local Level, as to whether or not acts to be performed in accordance with the environmental study report referred to in clause (c) of sub-section (2) of Section 3 approved pursuant to Section 7 have been performed effectively and standards relating to pollution control and

environmental protection have been complied with within its Local Level.

(3) Other provisions relating to the environmental inspector shall be as prescribed.

22. Functions, duties and powers of the environmental inspector: (1) The functions, duties and powers of the environmental inspector shall be as follows:

- (a) To inspect as to whether or not disposal of hazardous substances has been made or pollution has been caused contrary to this Act or the rules framed under this Act,
- (b) To inspect as to whether or not the acts of mitigation, avoidance or control of pollution have been carried out in accordance with this Act or the rules framed under this Act,
- (c) **To inspect on site as to whether or not work has been performed consistent with** the terms prescribed in the approved environmental study report while executing the proposal,
- (d) To inspect as to where the matters prevented pursuant to Section 13 or 15 have been complied with.

(2) In the course of making inspection pursuant to sub-section (1), the environmental inspector may, by giving a prior notice to the concerned person, body or proponent, inspect, examine or investigate any house, land, building, factory, industry, motor vehicle, industrial device, tools, machinery, animal, object, records, document or other goods or object.

(3) It shall be the duty of the concerned person, body or proponent to render assistance to the environmental inspector in the course of inspection pursuant to this Section, by providing such descriptions or information as demanded by him or her.

(4) If the concerned person or body does not allow the environmental inspector to make inspection, while moving on to make inspection pursuant to this Section, does not provide such descriptions or information as demanded by him or her, gives false descriptions, creates let and hinderance or does not assist in the course of inspection, the environmental inspector may immediately impose the fine as follows on such a person or body:

- (a) A fine of up to twenty thousand rupees in case of disallowing him or her to make inspection or creation of let and hindrance in inspection,
- (b) A fine of up to fifteen thousand rupees in case of failure to provide such descriptions or information as demanded or of giving false description in the course of inspection or failure to assist in inspection.

(5) A party who is not satisfied with a punishment imposed by the environmental inspector pursuant to sub-section (4) may make a complaint to the Director General not later than fifteen days of the date of receipt of information of that punishment.

(6) The environmental inspector shall submit a report of inquiry and inspection carried out pursuant to this Section to the concerned body and the Department.

(7) Other functions, duties and powers of the environmental inspector shall be as prescribed.

Chapter-4

Provisions Relating to Climate Change

23. To provide information: (1) The Ministry shall carry out study as prescribed, on a periodic basis, as to the adverse impacts caused by climate change on the local communities, eco-system and bio-diversity and make public descriptions thereof.

(2) The Ministry shall, on the basis of the study carried out pursuant to sub-section (1), and from time to time, make public necessary information on such measures as to be adopted for the mitigation of adverse impacts or risks from climate change while formulating development projects to be executed by the Government of Nepal, Provincial Government and Local Level.

(3) The Government of Nepal, Provincial Government and Local Level may, on the basis of the information made public pursuant to sub-section (2), set the priorities of formulation of development projects.

24. Adaptation plan may be made: (1) In order to avoid adverse impacts and risks of climate change, the Ministry, Provincial Ministry and Local Level may make and implement an adaptation plan at the national, Provincial and Local levels, respectively.

(2) In making the adaptation place referred to in sub-section (1), special priority shall be accorded to the women, persons with disabilities, children, senior

citizens and economically indigent communities who are more vulnerable to effects of climate change and the inhabitants of those geographical areas that have become more vulnerable to climate change.

(3) Local communities may make and implement an adaptation plan at the local level, and the concerned body shall make necessary assistance and facilitation in the implementation of such a plan.

25. Power to carry out acts of mitigation: (1) The Government of Nepal may identify areas emitting green-house gas and determine their national reference level.

(2) The Ministry shall make periodic monitoring as to the national reference level determined pursuant to sub-section (1) and make public the updated information.

(3) The Ministry, Provincial Government and Local Level may launch necessary programs.

(4) The Ministry may make, or cause to be made, measurement of green-house gas emission.

(5) Other provisions relating to mitigation shall be as prescribed.

26. Impacts from climate change and risk management: (1) The Government of Nepal may, for the purpose of managing adverse impacts and risks of climate change, issue necessary orders, by a notification in the Nepal Gazette, as to such measures as to be adopted for the mitigation of adverse impacts and risks of climate change, in the sectoral policies, strategies and action plans to be executed by the Government of Nepal, Provincial Government, Local Level and other public bodies as well as the private sector.

(2) The Government of Nepal may prescribe priority while issuing any order pursuant to sub-section (1).

27. Power to determine technical standards: (1) The Government of Nepal may determine and enforce necessary standards for the setting of priority of matters to be implemented in urban and rural areas as to the mitigation of adverse impacts and risks of climate change.

(2) The Government of Nepal may determine necessary policy and technical standards for the development of such technology as may be necessary in the prescribed subject areas for the mitigation of adverse impacts and risks of climate change.

- 28. Power to participate in carbon trade:** (1) The Government of Nepal may participate in carbon trade with the mechanisms established by the international treaty, any foreign government or organization, business entity or private sector for the mitigation and **conservation** of carbon emission.

(2) Other provisions relating to participation in carbon trade pursuant to sub-section (1) and allocation of benefits resulted therefrom shall be as prescribed.

Chapter-5

Provisions Relating to Protection of National Heritages and Environment

Protection Areas

- 29. Protection of national heritages:** (1) It shall be the duty of all the concerned agency to protect national heritages.

(2) For the purpose of the protection of national heritages, the concerned body shall to prepare and maintain an inventory, and such an inventory shall also include the objects or places within Nepal which are listed in the World Heritage List.

(3) The objects, places, plants, animals, environment etc., included in the inventory referred to in sub-section (2) shall be protected as prescribed.

- 30. Special provision relating to environment protection areas:** (1) The Government of Nepal may, in consultation with the Provincial Government and concerned Local Level and by a notification in the Nepal Gazette, maintain as an environment protection area any place containing a natural heritage or aesthetic place which is considered extremely significant from the point of view of environmental protection or any place of historical or cultural importance.

(2) In making any road, building, river management or other physical infrastructures, the Government of Nepal may, in coordination with the concerned body and by a notification in the Nepal Gazette, specify any specific area as an open or green area with a view to protecting the environment of such area.

(3) Prohibition may be imposed on any such act as prescribed within the environment protection area maintained pursuant to sub-section (1) or open or green area specified pursuant to sub-section (2).

(4) In cases where it appears that adverse impacts have been caused, are likely to be caused, on public health or environment of any specific area or place

as a result of excessive environmental pollution, soil erosion, excessive exploitation of natural heritages or occurrence of a natural calamity in such area or place, the Government of Nepal may, in consultation with the concerned Local Level, issue any appropriate order for the balance, management or restoration of the environment, upon specifying such an area or place as a sensitive area from the environmental viewpoint.

(5) The Government of Nepal may specify any place in which any injurious or hazardous substance or wastes are stored or disposed or there is excessive pollution for other reason as a polluted area and prevent the movement of public there.

(6) In cases where there is improvement from the environmental viewpoint in the place referred to in sub-section (4) or (5), such area may be removed from **the list of sensitive area or polluted area.**

(7) Participation of the local community maybe forged in the management of any area maintained or specified pursuant to this Section for the protection of environment.

Explanation: For the purposes of this Section and Section 36, “local community” means the community residing within or in neighborhood of such an area.

(8) There shall be participation of the local community as prescribed in the benefits resulted from the management of the area managed pursuant to sub-section (7).

31. Establishment and operation of fund: (1) There shall be established a fund entitled the environment protection fund, for the protection of environment, prevention and control of pollution, management of climate change and protection of the national heritages.

(2) The following amounts shall be credited to the fund referred to in sub-section (1):

- (a) Amount received from the Government of Nepal, Provincial Government or Local Level,
- (b) Amount received from any native person or organization,
- (c) Amount received from any foreign government or international organization.

(3) Prior to obtaining the amount referred to in clause (c) of sub-section (2), approval of the Government of Nepal, Ministry of Finance shall be obtained.

(4) The fund shall be audited by the Auditor General.

(5) The operation of the fund shall be as prescribed.

32. Power to constitute council: (1) There shall be an environmental protection and climate change management national council chaired by the Prime Minister, for the carrying out of acts relating to environmental protection and climate change at the national level in an effective manner.

(2) The council referred to in sub-section (1) shall consist of the following chairperson and members:

(a) Prime Minister -Chairperson

(b) Minister for Forest and Environment,
Government of Nepal -Member

(c) Three Ministers of the Government of Nepal
designated by the Prime Minister -Member

(d) Chief Ministers of all Provinces -Minister

(e) Member of the National Planning Commission
who looks after the matter of environment -Member

(f) Two persons including one woman nominated by
the Chairperson from among the professors
in forest and environmental science -Member

(g) Three persons including two women nominated by the
Chairperson from among the persons with expertise
in the field of forest and environment -Member

(h) Secretary, Ministry -Member-Secretary

(3) The chairperson may designate one Minister out of the members as the vice-chairperson.

(4) The tenure of the members nominated pursuant to clauses (f) and (g) shall be three years.

(5) Notwithstanding anything contained in sub-section (4), if a nominated member fails perform the duties of his or her office, the chairperson may remove him or her from the office of member.

Provided that, prior to such removal, he or she shall be provided with a reasonable opportunity to submit clarification.

33. Meetings and of the Council: (1) The Council shall meet at least once a year at such date, time and place as prescribed by the chairperson.

(2) The member-secretary of the Council shall, in consultation with the chairperson send a notice setting out the date, time and place of the meeting of the Council, along with the agenda to be deliberated thereat, so that all the members can receive it in advance of at least forty-eight hours of the time of the meeting.

Provided that in the event of a need for calling a meeting of the Council immediately, the chairperson of the Council may call the meeting in advance of **seventy-two** hours, if the meeting is so called, the member-secretary of the Council shall as soon as possible send the notice thereof so that all the members can receive it.

(3) The presence of a majority of the total number of members shall be deemed to constitute a quorum for the meeting of the Council.

(4) The chairperson of the Council shall preside over the meeting of the Council, and in the absence of the chairperson, the vice-chairperson of the Council shall preside over the meeting.

(5) Any decision of the Council shall be taken by a majority, and in the case of a tie, the chairperson shall exercise the casting vote.

(6) Any office-bearer, representative of concerned body or organization or environmental expert may, as required, be invited to the meeting of the Council.

(7) The member-secretary of the Council shall authenticate the decision of the Council.

(8) Other procedures relating to the meeting of the Council shall be as determined by the Council itself.

34. Functions, duties and powers of the Council: (1) The functions, duties and powers of the Council shall be as follows:

- (a) To give direction, as required, to the Ministry and other bodies to keep on integrating the matters relating to the environment and climate change into the long-term policies, plans and programs,
- (b) To set policy for the development of a national system for the control of pollution, management of wastes and protection of national heritages,

- (c) To give necessary policy guidance to the Provincial and Local levels with regard to environmental protection and climate change,
- (d) To manage economic resources for environmental protection and climate change and facilitate for the same,
- (e) To give guidance to the Ministry for utilization, management, development and protection of natural, cultural and physical resources and heritages,
- (f) To make evaluation of acts pertaining to environmental protection and climate change.

Chapter-6

Fine and Compensation

35. **Fine:** (1) If any person does the following act, the concerned body may punish that person as follows:

- (a) A fine not exceeding five hundred thousand rupees if, in the case of a proposal of which the brief environmental study report has to be approved, the proposal is executed without having it approved or if any proposal is executed in a manner inconsistent with the approved report,
- (b) A fine not exceeding one million rupees if any proposal is executed without having the initial environmental examination approved or in a manner inconsistent with the approved report,
- (c) A fine not exceeding five million rupees if, in the case of a proposal of which the environmental impact assessment report has to be approved, the proposal is executed without having it approved or if any proposal is executed in a manner inconsistent with the approved report.

(2) If any person does any act referred to in sub-section (1), the concerned body may give order to stop such act immediately and have the environmental study report approved pursuant to this Act where such report has not been got approved, and to improve the act if acted inconsistent with such a report, and it shall be the duty of the concerned person or body to do as per the order so given. The concerned body may impose a fine that is three-fold of the fine imposed pursuant to sub-section (1) if the order so given is not complied with.

(3) If any person does any act inconsistent with this Act or the rules, guidelines, procedures or norms framed under this Act, other than that set forth in sub-section (1), the concerned body may restrict the doing of such act and punish that person with a fine not exceeding three hundred thousand rupees and give order to do the act referred to in this Act or the rules, guidelines, procedures or norms framed under this Act. A fine that is three-fold of the fine imposed pursuant to this sub-section if the order so given is not complied with.

(4) If the act referred to in the order given pursuant to sub-section (2) or (3) is not done, such act shall be restricted and the concerned body shall send a request, accompanied by the recommendation, to take necessary action for blacklisting such a person or body.

(5) If so recommended pursuant to sub-section (4), the Department shall, if it finds the content reasonable, blacklist such a person or body for a period of one year to five years.

(6) Notwithstanding anything contained in sub-sections (4) and (5), the Department shall make necessary inquiry into non-compliance with the order given by it and take action referred to in sub-section (5).

(7) If a body is blacklisted pursuant to sub-section (5), such a person or body may not submit any proposal in that body's name or in any name whatever associated with such a person or body for the period of blacklisting.

(8) Prior to imposing the fine referred to in this Section, a reasonable opportunity shall be given to the person or body or project which is to be blacklisted.

36. Application may be made: (1) If a person executes, in contravention of this Act, a proposal without having the initial environmental examination, brief environmental study or environmental impact assessment report approved or in a manner inconsistent with the approved report or does or proceeds to do any act contrary to this Act, application may be made to the concerned body or authority.

(2) If any person, body or local community suffers any loss or damage as a result of the pollution or disposal of a hazardous waste by another person inconsistent with this Act or the rules, guidelines or standards framed under this Act, the person, body or local community victimized from such an act may make an application to the concerned body for getting compensation for the injury caused to such person, body or community.

(3) If, in examining and inquiring into the application made pursuant to sub-section (1) or (2), it is proved that the applicant has sustained loss or damage, the concerned body shall ascertain the injury and require a reasonable compensation to be paid by the person, body or proponent who has caused such loss or damage to the victim person, body or local community.

(4) There shall be formed a committee comprising three experts nominated by the Government of Nepal to make inquiry into any application made as to the injury caused from pollution made by any body of the Government of Nepal or body owned and controlled by the Government of Nepal, and compensation shall be paid pursuant to sub-section (3) on the basis of recommendation by that committee.

(5) There shall be formed a committee comprising three experts nominated by the Provincial Government to make inquiry into any application made as to the injury caused from pollution made by any body of the Provincial Government or Local Level or body owned and controlled by the Provincial Government or Local Level, and compensation shall be paid pursuant to sub-section (3) on the basis of recommendation by that committee.

(6) The basis for determining compensation pursuant to this Section and other provisions shall be as prescribed.

37. Appeal: (1) A party who is not satisfied with the fine imposed pursuant to Section 35 may make an appeal within thirty-five days to the concerned District Court if such fine is imposed by the Local Level and to the concerned High Court if it is imposed by other body or authority of the Government of Nepal or Provincial Government.

(2) A party who is not satisfied with the decision made as to the determination of compensation pursuant to Section 36 may make an appeal to the concerned High Court within thirty-five days.

Chapter-7

Miscellaneous

38. Environment protection plan to be formulated: (1) The Government of Nepal may formulate and implement an environment protection plan with a view to maintaining a clean and healthy environment, and conserving and promoting the same.

(2) The Provincial Government and Local Level may, subject to the plan referred to in sub-section (1), make and implement necessary plans for environmental protection.

(3) In formulating the plans referred to in sub-sections (1) and (2), traditional and local practices on the protection, conservation, sustainable use of the environment and equitable distribution of fruits received from the use of environmental resources shall be included in the plans.

(4) The plan referred to in sub-section (1) shall include such other matters as prescribed.

39. Monitoring and inspection to be carried out: (1) The Ministry or Department may carry out monitoring and inspection as to whether or not this Act or the rules, guidelines, procedures or standards framed under this Act have been implemented.

(2) The Provincial Government or Local Level may, with a view to protecting and conserving the environment within its area, carry out monitoring and inspection as to whether or not this Act or the rules, guidelines, procedures or standards framed under this Act have been implemented.

(3) Other provisions relating to monitoring and inspection to be carried out pursuant to sub-section (1) or (2) shall be as prescribed.

40. Annual report to be prepared: (1) The Ministry shall each year prepare an annual report including the following matters:

- (a) Description obtained from the monitoring and inspection carried out pursuant to Section 39,
- (b) Description relating to national and international activities on climate change,
- (c) Other necessary description.

(2) The Ministry shall submit the annual report referred to in sub-section (1) to the Council within two months of the date of expiry of each fiscal year.

41. Power to issue order: (1) The Government of Nepal may, by a notification in the Nepal Gazette, issue necessary order as to the matters requiring precautions from the point of view of environmental protection.

(2) The Director General may impose a fine not exceeding one hundred thousand rupees on a person or body that violates the order issued pursuant to sub-section (1).

42. **Delegation of power:** The Ministry may, as per necessity, delegate any of the powers conferred on it pursuant to this Act to the Department, environmental inspector or any office employee or any body.
43. **Prevailing law to govern:** The matters set forth in this Act shall be governed by this Act, and other matters shall be governed by the prevailing law.
44. **Power to frame rules:** The Government of Nepal may frame necessary rules for implementing this Act.
45. **Power to frame guidelines, procedures and standards:** The Government of Nepal may, without prejudice to this Act and the rules framed under this Act, frame and enforce necessary guidelines, procedures and standards.
46. **Assessment as to implementation of the Act:** (1) The Ministry shall make assessment of impacts of the implementation of the Act.
47. **Repeal and saving:** (1) The Environment Protection Act, 1997 (2053) is hereby repealed.
- (2) The acts and actions performed under the Environment Protection Act, 1997 (2053) shall be deemed to have been performed under this Act.
- (3) If any application or complaint is under consideration by any body or authority pursuant to the Environment Protection Act, 1997 (2053), such application or complaint shall be settled in accordance with that Act.