

GREEN
CLIMATE
FUND

Review and Harmonization of Environmental and Climate Laws

Royal Society For Protection of Nature
Thimphu



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Abbreviations

BAFRA	Bhutan Agriculture and Food Regulatory Authority
BFDA	Bhutan Food and Drug Authority
BSB	Bhutan Standards Bureau
BSDS	Bhutan Statistical Database System
CBD	Convention on Biological Diversity
CBDR	Common but Differentiated Responsibility
CITES	Convention on International Trade of Endangered Species
CNA	Competent National Authority
CoP	Conference of the Parties
DECC	Department of Environment and Climate Change
DFPS	Department of Forest and Park Service
DoA	Department of Agriculture
DoGM	Department of Geology and Mines
DoID	Department of Infrastructure Development
DoPH	Department of Public Health
DoRE	Department of Renewable Energy
DoW	Department of Water
EA	Environmental Assessment
EIA	Environmental Impact Assessment
GCF	Global Climate Fund
GLOF	Glacial Lake Outburst Flood
GNH	Gross National Happiness
ICJ	International Court of Justice
INFOSAN	International Food Safety Authorities Network
IWRM	Integrated Water Resources Management
IWRMP	Integrated Water Resources Management Plan
LDC	Least Developed Country
LMO	Living Modified Organisms
MoAL	Ministry of Agriculture and Livestock
MoENR	Ministry of Energy and Natural Resources
MoF	Ministry of Finance
MoH	Ministry of Health
MoICE	Ministry of Industry Commerce and Employment
MoIT	Ministry of Information and Transport
NBC	National Biodiversity Center
NBSAP	National Biodiversity Strategies and Action Plan
NCHM	National Centre for Hydrology and Meteorology
NDC	Nationally Determined Contribution
NEC	National Environment Commission
NEIS	National Environment Information System
NEPA	National Environment Protection Act
NFP	National Focal Point
NIWRMP	National Integrated Water Resources Management Plan
NJC	National Judicial Commission

NLC	National Land Commission
NSB	National Statistics Bureau
OAG	Office of the Attorney General
PIC	Prior Informed Consent
RGoB	Royal Government of Bhutan
RSPN	Royal Society for the Protection of Nature
RWSS	Rural Water Supply and Sanitation
SEA	Strategic Environmental Assessment
SEEA	System of Environmental Economic Accounting
SQCA	Standards and Quality Control Authority
TOR	Terms of Reference
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
UNTS	United Nations Treaty System
WB	World Bank
WHO	World Health Organisation

Introduction

Bhutan has shown remarkable international leadership in its approach to protection of the environment and sustainable development.

As the last Himalayan Kingdom it has a unique history and heritage which has influenced and guided its priorities and the quality of its decision-making. Maintaining those priorities has required vision and leadership. In the 1970s the Fourth King Jigme Singye Wangchuck instituted the concept of 'Gross National Happiness' (GNH), an alternative to Gross Domestic Product, as a system of assessing and measuring the level of economic and social development in the country. The principles of GNH guide the decision-making of the country in relation to the environment and development.

This approach has led to distinctive accomplishments that are recognised around the world. Bhutan is one of the few countries in the world that is carbon negative and through its achievements in the field of ecological conservation it is the home of unparalleled levels of biodiversity.

Environmental law in Bhutan, as in all countries around the world, faces different challenges. Those are the challenge of responding effectively to changing threats to the environment that include natural disasters, population movement and fluctuations in density, the introduction of different types of business and industry along with changes in technology and the ever present need to adopt the middle path that preserves the environment whilst responding to the economic and social needs of its citizens. These challenges sit within the changing expectations derived from law at the international level which requires the global community to cooperate to meet shared challenges such as climate change and plastic pollution.

Bhutan is at an important moment as it seeks to revise its own environmental law and institutions to meet those challenges. Like all countries it must plan for the best and most efficient ways to address government and governance. In doing this it faces the challenge of the interconnectedness that environmental law must inevitably have with virtually every other aspect of society and governance. This report is written to contribute to that process. It focuses on the way that existing laws can potentially be updated and the way that the institutional models can operate efficiently within that context. Given the breadth and range of environmental law, it focuses on specific aspects in accordance with the terms of reference and to ensure that maximum value can be provided.

This report, entitled *Review and Harmonisation of Environmental and Climate Laws* (Report), will serve not only to assist the RGoB in addressing its review and harmonisation of environmental and climate law within Bhutan but also as a bridge to the international community to assist in communicating the remarkable leadership that Bhutan is providing through its approach to economic development, and the ways in which it has maintained very high levels of environmental protection.

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We would also like to thank all the participants of the Stakeholder Workshop sessions in Paro held between 24-26 September 2025. Those sessions were vital in providing insights for the Consultancy Team and to provide a greater understanding of specific challenges that are faced within different sectors. We thank all the participants of the online stakeholder consultation that took place on Wednesday 26 November 2025. Finally, we thank the senior stakeholders who attended the online meeting on Thursday 27 November 2025. Those meetings were both very helpful in providing additional feedback which has assisted the team in refining and revising the final draft of the report. We thank everyone for their time and their helpful engagement with this process.

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The consultancy team would also like to thank OAG and RSPN for the kind hospitality during the visits in September and November.

Authors' Note

This is a final report that follows a consultation process that was agreed between the consultants and the Executive Director of RSPN, Bhutan and the Office of the Attorney General (OAG), Bhutan (July/Aug 2025).

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Any errors contained herein are those of the authors.

Author Contact:

Dr Jonathan Liljeblad (Author/ Consultant) Jonathan.liljeblad@anu.edu.au

Dr Stephen Turner (Author /Consultant) s.j.turner@essex.ac.uk

Executive Summary

This report, entitled *Review and Harmonisation of Environmental and Climate Laws* (Report), is provided in response to the Royal Government of Bhutan's (RGoB) requirement for a harmonisation review of the country's environmental and climate laws. The report is a product of the consultancy team comprised of David Morgan, Stephen Turner, and Jonathan Liljeblad (Consultancy Team), following desk review analysis, survey and stakeholder consultation and engagement.

The Report responds to the Terms of Reference (ToR) by analysing Bhutan's environmental and climate law to evaluate current legal frameworks, to identify gaps and inconsistencies and to identify areas where existing law and associated processes may need to be updated to ensure that it is consistent with international law and best practice. Based on the analysis it provides some specific recommendations but more importantly it proposes a roadmap that can be used by the RGoB to take the necessary steps towards a harmonised legal framework that is efficient and effective within the context of the revised civil service framework in the country.

The method adopted by the consultants involved a staged process that built the analysis incrementally using desk and empirical analysis.

The stages of the process were as follows

1. Section I. A review and analysis of 17 statutes that relate to environmental and climate law to understand gaps, inconsistencies, overlaps and potential areas where they may be inconsistent with international law and best practice. The analysis was conducted using the following specific themes: climate change, citizen engagement, environmental assessment, biodiversity and water. Those themes were adopted because they are cross-cutting and assist in highlighting themes that can emerge across the range of different laws under examination. The theme of climate change was included as the issue of climate law is of particular interest under the ToRs and therefore it was important to provide a specific examination of the extent to which climate change law had already been developed in Bhutan. This first stage of the analysis facilitated in providing an overall understanding of the way that Bhutanese environmental law responds to a range of important and cross cutting challenges.
2. Section II. A thematic analysis of climate change, citizens' engagement, environmental assessment, biodiversity, water and information, systems and processes to consider the extent to which those key aspects are consistent with international law and best practice. It included data derived from an online survey of stakeholders as well as data gathered from stakeholders during an in-person 3-day workshop held in Paro on 24-26 September 2025. This section also provided examination and discussion of themes that were emerging in the analysis to consider different approaches that the RGoB could potentially take in the revision and amendment of its environmental law. In addition to the 3-day in person workshop that was held in Paro, two online workshops were held on 26th and 27th November 2025. These workshops included senior civil servants from RGoB and provided a forum for a range of different responses and types of feedback.

Those comments are provided in Annex II of the report and those considerations have been integrated throughout all three sections of this report accordingly.

3. Section III. This provides recommendations, roadmap and guidance. It draws from the previous two stages of analysis to develop a roadmap that could be used as a method by the RGoB to achieve the step changes required to harmonise, update and reform the environmental and climate change law and practice in the country that would not only achieve the key objectives specified under the ToR but also achieve greater operational effectiveness and efficiency going forward.

4. Section IV. This identifies future projects that could further the recommendations provided in previous sections. Each of the future project areas may require additional funding. The Consultancy Team would be willing to assist the RGoB should they choose to pursue the future projects and seek relevant funding.

Overall, the review of the law demonstrated Bhutan has adopted laws in most areas where you would expect. The law also demonstrates remarkable leadership as it represents the manifestation of policy that has helped to maintain the carbon negative status that the country has achieved along with remarkable levels of protection of nature and biodiversity. Paradoxically despite the major achievement of being a carbon negative country, the one area where law is absent, and which is recognised by the RGoB, is that of climate change. There is currently no specific law that has the purpose of addressing climate change mitigation or adaptation.

Certain themes emerged from the analysis of the law which are as follows:

- a) Inconsistency in the way that information / data is collected and stored between ministries / agencies.
- b) Provision of information to other departments and to the public varies between different ministries / agencies.
- c) Processes of monitoring, technical assessments and environmental assessments vary across different ministries / agencies.
- d) Processes for citizens engagement varies across agencies/ministries which impacts the consistency of the realisation of participation in decision-making and access to justice. There are also geographical inconsistencies across different regions of the country.
- e) Absence of a coordinated legal framework to respond to climate mitigation and adaptation and relevant integration within relevant sectors.
- f) Inefficiencies between ministries / agencies through overlapping responsibilities.
- g) Many laws need to be updated to refer to the changes that have taken place through the Civil Service reforms of 2022.
- h) The issue of ensuring different groups, especially vulnerable and marginalised groups, can engage with legal processes.
- i) In many areas international law is recognised at least through the adoption of related law. However, this does not mean that international best practice has necessarily been adopted.

From these themes there are key features that emerged. It became clear that some systems and processes that are foundational to many, if not all, of the areas of environmental law in the country need to be addressed before seeking to address individual laws themselves. The harmonisation of those systems and processes can make environmental law in the country more efficient and provide the foundation upon which individual laws can then be revised and reformed. As such the systems in place to address the collection and dissemination of information, monitoring of environmental data, environmental assessment, citizen participation and technological and scientific assessment, need to be addressed as they are foundational to the spectrum of environmental law in the country.

When considering specific laws, there are foundational laws that need to be addressed before other individual laws are revised. NEPA (2007) falls into this category as it is a foundational law. Therefore, as the bedrock of environmental law across the country its provisions need to be carefully considered to ensure that it provides the basis of the system that meets Bhutan's policy and strategic needs, as well as providing the basis for efficiency and effectiveness.

Additionally, if it is the case that Bhutan decides to adopt specific climate laws, amendments to existing laws relating to climate, or a framework climate law, would need to be established at an early stage in the process. The approach adopted to climate change law therefore represents a foundation that would inevitably affect the revision of other areas of law. The Consultancy Team identified four possible approaches that RGOB could adopt in this regard. These are referred to below, and the merits of each approach are discussed in detail within the relevant sections of the report.

Following that foundational work, specific laws would require updating in accordance with the systems mentioned above. However, in reviewing the current law, some of the early law from the late 1990s and early 2000s is particularly reflective of the era within which it was drafted. Therefore, those are the laws that are the most in need of revision. Also, with the reform of the civil service, references to the relevant authorities need to be amended accordingly.

Regarding legal implementation, in reviewing the law some acts or aspects of them, rely on secondary legislation (i.e. regulations) for their implementation. Therefore, the review of each different area of law also needs to encompass the relevant secondary legislation and relevant processes.

Within all these revisions, awareness of international law, international standards and best practice need to be incorporated where applicable. However, it must be emphasised that in many instances meeting international standards is not a question of merely incorporating specific provisions within the law but about ensuring that adequate processes of monitoring, data collection, data provision, assessment, enforcement and information dissemination underlie the administration of environmental law in practice. This is the reason why these foundational aspects require primary attention in the review of the environmental law itself.

Discussions at the Paro Stakeholder Workshop sessions in Paro in September 2025 proved to be extremely helpful to the consultancy team as they reinforced key points that emerged from the desk-based reviews already undertaken and helped to provide further insights and contextual understanding of the ways that harmonisation and reform of the law could be taken forward.

The subsequent online Stakeholder Meetings in November 2025 also proved vital in providing specific guidance and understanding related to certain sectors and practices. The opportunity to receive feedback and comments from senior civil servants was crucial in providing broader contextual insights. The team are very grateful to all those that attended for their time and the feedback that they provided.

In terms of developing recommendations, it became clear to the international consultants that the reforms and changes required within the law, administration and practice of environmental and climate law, would be a process to be undertaken by the RGoB rather than

a single event requiring the adoption of a set of actions. This is due firstly to the nature of environmental and climate law itself, which must be developed in accordance with national priorities (cultural, economic and social). As such only the RGoB can make decisions related to the variety of different options that are available to it, relating to the future changes to environmental and climate law in the country. Secondly, it is due to the complexity of the relationships between different ministries and agencies within the RGoB, especially following the recent Civil Service Reforms. Environmental and climate laws are cross-cutting in nature and therefore involve a range of different ministries and agencies at the national level and multiple Dzongkhags and Gewogs at the sub-national local government level. The governance relationships between these agencies and entities are something that only the RGoB can determine.

For these reasons the main recommendations are included within a roadmap in Section III that provides a pathway through which the RGoB can take the steps needed for the harmonisation of Bhutan's environmental and climate laws.

Recommendations, Roadmap and Guidance

As a result of the foregoing commentary, the recommendations, roadmap and guidance are set out in Section III in the following format:

A) How to Use this Report

This report is designed to be used as a tool through which the roadmap process can be followed. Therefore, when considering the roadmap, recommendations and guidance that are referred to in Section III the relevant parts of Sections I and II can be referred to for further detail.

B) Institutional Structure for Roadmap / Staged Process

This explains the institutional arrangements that would need to be established to follow the roadmap's stage process. It emphasises the need for a Leadership Committee to be established with relevant Working Group Committees being established to report to it on specific areas of focus.

C) Roadmap / Staged Process

Stage 1. Reviewing the Systems of Information upon which Environmental Law functions

This first stage focuses on the need to review the foundational information data collection, storage and dissemination systems upon which most of the environmental law relies, as detailed in the sub-section entitled 'Information, Systems and Processes' in Section II of the report.

Stage 2. Reviewing Systems that rely on Information

This stage focuses on the need to review the relevant administrative processes that are common across different areas of environmental law that provide the basis upon which harmonised administration across different Government agencies can be established. These processes include monitoring, enforcement and compliance, environmental audits, scientific and technical assessments, environmental impact assessments, public participation / citizen engagement, public access to information, access to justice, prior-informed consent, disaster management, development of standards, environmental permits / licences and international reporting.

Stage 3. Review of NEPA and Climate Change Law

This stage focuses on reviewing two areas of law that are foundational to other specific laws. NEPA is a foundational law from an organisational and administrative perspective and provides the basis upon which many other areas of law related to the environment is founded. Therefore, it is important that any revisions to environmental law to achieve harmonisation are based on revisions at that foundational level.

Also, this stage would address the law concerning climate change. The four potential options the Consultancy Team identify, that the RGoB could adopt are as follows:

Option 1 - No immediate Legislative changes.

Option 2 - Amending existing law to accommodate climate change obligations.

Option 3 - Adopting specific individual laws to respond to specific climate change policy requirements.

Option 4 - Adopting a national framework climate change law.

The merits of each of the above approaches is analysed in detail within the 'Climate Change' sub-section found in Section II of the report.

Stage 4. Review of Individual Statutes related to Protection of the Environment

Following stages 1-3 set out above, it would be possible to then review and revise the remaining laws that have a relationship with the environment and climate change. In doing so the adopted systems related to information and the relevant processes could be incorporated accordingly. Also, those laws could be amended in accordance with the structures and frameworks adopted under NEPA and whichever approach the country adopts concerning climate change law.

D) Capacity Building

At various levels further capacity building is required. Therefore, a needs assessment will need to be conducted accordingly. The Consultancy Team identified the following areas where further development could be appropriate:

- Capacity-building regarding scientific and technical expertise regarding the environment.
- Capacity-building in environmental governance, policy, and law (not just for international environmental law, but for environmental law more generally).
- Capacity-building in information technology and technology infrastructure.
- Capacity-building for human resources generally.

Beyond this Consultation/Future Projects

Beyond the analysis and recommendations, the Consultancy Team identified numerous areas of work that would be integral to any future efforts by the RGoB to implement the findings of the Report. While those tasks are outside the scope of the report and its ToR, they are necessary to fully achieve goals of harmonisation and greater compliance with international best practices and standards. The Consultancy Team are available to assist RGoB with defined support in areas that may include:

- Capacity Building
- Review of Processes
- Legal Review and Drafting
- Climate Change Law
- Environmental Governance
- Environmental Impact Assessment
- Biodiversity Law
- Delivering the Changes

Section I - Review of Environmental Statutes

This section provides a review of each of the statutes referred to in the Terms of Reference. Specific criteria are used to carry out the analysis. The cross-cutting themes of climate change, citizen engagement / procedural environmental rights, environmental impact assessments, biodiversity, and water provide this analytical framework.

Water Act 2011

Climate Change

The Water Act 2011 is identified as related to climate change by the Bhutan Transparency Report 2024 to the UNFCCC, with the lead agency being the Department of Water (DoW) supported by the Department of Environment and Climate Change (DECC).

Ss. 12-14 of the Water Act 2011 places its implementation under the National Environment Commission (NEC) and DECC, and so the compliance with international state duties to climate change is the same as that listed for the NEC and DECC under the National Environmental Protection Act 2007 (NEPA).

The Water Act 2011 contains no explicit reference to climate change.

Citizen Engagement / Procedural Environmental Rights

a) Information

More detail could be provided relating to the quality of water, water effluent standards, presence of certain substances, flow levels and presence of hazardous waste. This may be present in regulations that the authors have not had sight of.

S. 14 refers to the Secretariat of the NEC disseminating but there is the question as to the level of information that citizens are entitled to. Best practice may need to be considered.

International best practice enables citizens to access data / information that relates to the quality/levels of pollution in their environment. This is particularly important in terms of water quality.

Also considering the responsibilities of the Secretariat and the Competent Authorities under s. 15 there appears to be a lack of clarity and potential for duplication of responsibility.

Some of the responsibilities (such as those relating to collection of data under s. 28(3) of the River Basin Committee appear to overlap with the roles and responsibilities of the competent authorities under s. 15 in terms of collecting data.

b) Participation in decision-making

Although 23(b) refers to public consultation, there is no detail from this as to what level of public consultation takes place.

Ss. 55 and 56 related to the declaration of a water management area does not make clear who the affected parties are and the level of consultation. It is possible that this is included in secondary legislation.

c) Access to Justice

No direct references.

Environmental Impact Assessments

Includes references to Environmental Assessments, so that may need closer inspection vis à vis the Environmental Assessment Act and NEPA.

Biodiversity

The Water Act 2011 is identified as being related to biodiversity by Bhutan's Fifth National Biodiversity Strategies and Action Plan (NBSAP).

Ss. 4-11 articulate principles that overlap with the principles prescribed by the CBD and Nagoya Protocol, including:

- Conservation & sustainable use of biological resources (CBD)
- Access to information (CBD & Cartagena Protocol)
- Promoting research (Nagoya Protocol)
- Participation of indigenous and local communities (Nagoya Protocol)
- Public awareness-raising—sharing information and education (Nagoya Protocol)
- Monitoring (Nagoya Protocol)

However, the principles in the Water Act 2011 exhibit compliance issues with respect to the following:

- There is partial compliance regarding risk assessment, in that ss. 43, 48, 54, and 55 place the treatment of risk under the authority of the NEC, but the Water Act 2011 provides no clarity regarding risk assessment.
- There is no mention of the principle of cooperation with international entities.
- There is no mention of the Precautionary Principle.

In addition, the Water Act 2011 presents uncertain compliance in terms of its association with other biodiversity-related authorities and laws. ss. 12-16 designate the relevant authorities, with the major ones being the NEC and DECC, but there are potential uncertainties regarding the following:

- Unclear connection to National Biodiversity Centre
- Unclear connection to other agencies/ministries involved in biodiversity
- Unclear connection to other acts involved in biodiversity

In addition, the Water Act 2011 has no explicit reference to biodiversity.

Water Basin Management

There may be obligations under customary international law regarding the management of a river basin owing to its transboundary nature. It may be necessary to enter into an agreement with the neighbouring country concerning the use of the water resource and this should then be considered in s. 23 National Integrated Water Management Plan and ss. 24 and 27 concerning the management of river basins.

s. 46 Refers to wetlands. Bhutan is a party to the RAMSAR convention; therefore, it should refer to its commitments under international law.

Land Act 2007

Climate Change

The Land Act 2007 is identified as related to Bhutan's obligations to climate change by Bhutan's Transparency Report 2024 to the UNFCCC.

s. 3 makes the National Land Commission (NLC) as the independent authority and decision-making body for the Act.

s. 4 includes a representative of the National Environment Commission (NEC) as a member of the NLC, so the Act's compliance with Bhutan's international obligations to climate change are determined by the NEC presence.

There is no explicit reference to climate change.

Citizen Engagement / Procedural Environmental Rights

Information

Ss. 10 and 12 identify the National Land Commission Secretariat as responsible for cadastre and registration of land, s. 17 includes information about land within its contents, and ss. 52-55 allow officials and authorized agencies to access such information.

Public Participation

s. 6 states that the functions of the NLC include coordination with stakeholders on identification and demarcation of Thromde (government), industrial, and protected agricultural areas.

Biodiversity

The Land Act 2007 is identified as being related to biodiversity by Bhutan's Fifth NBSAP.

s. 303 articulates principles that overlap with the principles prescribed by the CBD and Nagoya Protocol, including:

- Sustainable use of land (CBD)
- Monitoring through cadastre and land registration (Nagoya Protocol)

However, the Land Act 2007 exhibit compliance issues with respect to the following:

- While ss. 10, 12, 17, and 52-55 identify cadastre and registration of land, there is no language indicating if such records are accessible to the public, making it unclear if the Land Act 2007 meets the expectations of access to information and public awareness required by the CBD.
- No mention of promoting research
- No mention of participation by indigenous and local communities

- No mention of environmental assessment.
- No mention of the principle of cooperation with international entities.
- No mention of the Precautionary Principle.

In addition, the Land Act 2007 presents uncertain compliance in terms of its association with other biodiversity-related authorities and laws. There is no mention of connections to the following:

- National Biodiversity Centre
- Other agencies/ministries involved in biodiversity
- Other Acts involved in biodiversity

In addition, the Land Act 2007 has no explicit reference to biodiversity.

Environmental Impact Assessments

There is no mention of environmental assessments.

Water Law/Rights

s. 123 allows for persons of the NLCS or representatives of RGOB to access land and with the landowner's consent divert water bodies.

s. 166 includes water among the criteria to determine feasibility of land conversion.

s. 267 addresses easements on water channels and embankments, but states that such language only prevails until the Water Act was enacted.

s. 275 allows a landowner to lay water pipes on the owner's land.

s. 279 allows a landowner whose land is damaged by artificial drainage from a higher land may demand the owner of the higher land to construct drainage through the lower land.

s. 281 allows a right-of-way for cattle to cross unenclosed uncultivated land for grazing and watering.

Point to Note

The introduction of the National Spatial Data Infrastructure System (NSDI) provides a step forward for the country and will need to be considered in both the review of the law and also Stage 1 of the Roadmap detailed in Section III of this report.

Forest and Nature Conservation Act 2023

Climate Change

Identified as related to Bhutan's climate change obligations by Bhutan's Transparency Report 2024 to the UNFCCC, with the lead agencies being the Department of Forest and Park Services (DFPS) and the Ministry of Energy and Natural Resources (MoENR).

Ss. 8-11 place implementation of the Forest and Nature Conservation Act 2023 under the MoENR and DFPS, so compliance of the Act to international state duties on climate change is dependent on the coordination of the MoENR and DFPS with the NEC and DECC.

There are explicit references to climate change in the following provisions:

- The Preamble recognizes nature, cultural heritage, forests, flora, fauna and natural resources as part of mitigation and adaptation to climate change
- s. 7 includes mitigation and adaptation of the forest to climate change as one of the objects of the act
- s. 47 references to climate change is regarding public participation in resilience to climate change

Citizen Engagement / Procedural Environmental Rights

Information

Consideration could potentially be given to the provision of information relating to the different plans to enable public participation accordingly.

Public Participation

s. 9(5) speaks of the promotion of public participation but there is no provision for access to information in the Act.

s. 47 refers to public participation relating to ecosystem services.

Biodiversity

The Forest and Nature Conservation Act 2023 is identified by Bhutan's Fifth NBSAP as contributing to Bhutan's international obligations to biodiversity conservation.

The title is somewhat misleading since its contents include things that are related to the Convention on International Trade of Endangered Species (CITES)—in particular, the Act has provisions that address Management Authority, Scientific Authority, trade permits, and import/export, all of which are in CITES.

The Act is compliant with some of the principles identified in the Convention on Biological Diversity, Cartagena Protocol, and Nagoya Protocol, with the Act containing the following principles:

- Preamble and ss. 142 and 251—conservation and sustainable use of biological resources (CBD)
- ss. 99 and 251—*in situ* and *ex situ* conservation (CBD)
- ss. 8, 9, 79, 82-83, 89, 92, 93, 96-97, 99, 102, 108, 118, 158, 165, 170, 187, 194, and 251—all reference the conduct and promotion of research (Nagoya Protocol)
- ss. 9, 34, 47, and 251—participation for local communities (Nagoya Protocol)
- ss. 99, 102, 108, 158, 165 251—raising public awareness through information-sharing and education (Nagoya Protocol)
- ss. 21, 84-85, and 101—all mention monitoring (Nagoya Protocol)

The Act is not compliant to the extent that it omits the following principles contained in the Convention on Biological Diversity, Cartagena Protocol, and Nagoya Protocol:

- Mention of the precautionary principle
- Access to information (or conditions it upon confidentiality of informants)
- Cooperation and risk assessment

There is uncertain compliance regarding authorities, in that the Act places implementation under the MoENR and DFPS but leaves the following uncertainties:

- Unclear connection to NEC and National Biodiversity Centre.
- Unclear connection to other agencies/ministries involved in biodiversity.

The Act provides explicit reference to biodiversity in Preamble and its list of definitions in s. 251.

The list of species in Schedule I, II, and III appears to go further than the requirements of CITES in terms of prohibition.

Environmental Impact Assessments

This statute does not contain references to environmental assessments.

Water Law / Rights

This Act contains many provisions related to water, water use, basins, discharge.

Biodiversity Act 2022

Climate Law

The Biodiversity Act 2022 is identified as related to Bhutan's obligations to climate change by Bhutan's Transparency Report 2024 to the UNFCCC.

s. 13 includes the National Environment Commission (NEC) as part of the Competent National Authority implementing the Act, so the Act's compliance with Bhutan's international obligations to climate change are determined by the NEC presence.

ss. 142-156 tasks the Competent National Authority with monitoring and enforcement in coordination with other government entities.

There is no explicit reference to climate change.

Citizen Engagement / Procedural Environmental Rights

Information

s. 17(2) states that the National Focal Point (NFP) will be the 'clearing house publishing authority for information related to access and benefit sharing for Bhutan'. There may be an overlap or conflict with the way that information is provided through the organisation under NEPA.

s. 103. Should this be part of a central information database.

Participation in Decision-Making

s. 20(7) states that the NFP will, 'engage general public on biodiversity conservation and sustainable utilization'. This is unclear and it seems that a central governmental agency for information should be the focal point through which the public can access information relating to environmental issues.

s. 21 and s. 23 (as above)

s. 66 Refers to the 'Rules' related to Prior Informed Consent (PIC) but it does not indicate what rules are referred to. The process for PIC is now much more developed. Therefore, there should be greater clarity on the procedures and rights of communities as a result.

Access to Justice

s. 48 should state which court of law (time limits should apply and more detail relating to procedure).

s. 56 and s. 57 should probably provide a right of appeal to ensure due process under the law. This may be present in other provisions.

Biodiversity

The Biodiversity Act 2022 is identified by Bhutan's Fifth NBSAP as related to Bhutan's international obligations to biodiversity.

The title of the Act is somewhat misleading since its contents are more related to the Nagoya Protocol, with provisions addressing Nagoya Protocol requirements for genetic resources, including a National Focal Point, prior informed consent, model agreements, and an Access and Benefits-Sharing Clearinghouse.

There is compliance with some components of international biodiversity law, with provisions in the Act providing principles that overlap with principles contained in the Convention on Biological Diversity, Kunming-Montreal Global Biodiversity Framework, Cartagena Protocol, and Nagoya Protocol:

- ss. 18-20, 140, and 168—conservation & sustainable use of biological resources (CBD and Kunming-Montreal Global Biodiversity Framework)
- ss. 5, 20-22, 24, 94, 119, 131, and 168—in situ & ex-situ conservation (CBD)
- Preamble and Arts 5-6, 12, 17, 20, 26-28, 58-114, 128-132, 168—regulating access to genetic resources (Nagoya Protocol)
- ss. 115-127—fair and equitable sharing of benefits from genetic resources (Kunming-Montreal Global Biodiversity Framework and Nagoya Protocol)
- Preamble and ss. 12, 20, 26, 71, 77, 81-84, 87, 92, 107, 117, 119-122, 131, and 159-160, and 168—conduct, sharing, and promotion of research (commercial) (Nagoya Protocol)
- Preamble and ss. 6, 12, 14, 66, 87, 90, 101-127, 130-131, 134-135, 145-148, 157-158, and 168—supporting traditional knowledge (Kunming-Montreal Global Biodiversity Framework and Nagoya Protocol)
- ss. 6, 102, and 168—participation Indigenous & local communities (Kunming-Montreal Global Biodiversity Framework and Nagoya Protocol)
- s. 17—public awareness-raising via information-sharing and education (Nagoya Protocol)
- ss. 17 and 142-156—monitoring (Nagoya Protocol)

There is partial compliance with respect to the following principles:

- Access to information—ss. 66, 87, 90, and 144-146 condition access to information upon rules regarding traditional knowledge and intellectual property
- Transfer and collaboration of technical and scientific research under the Nagoya Protocol—ss. 26-28, 66, 87, and 90 condition it upon rules re traditional knowledge & intellectual property)
- Omits precautionary principle
- Omits cooperation & risk assessment

There is compliance with international biodiversity laws regarding procedures and institutions:

- ss. 17, 58-100, 85, and 168–Mutually Agreed Terms, certificates of compliance, and model agreements
- ss. 13-15–Competent National Authority, with members including NEC, Ministry of Agriculture, and National Biodiversity Centre
- ss. 16-17–National Focal Point comprised of the National Biodiversity Centre under Ministry of Agriculture
- ss. 17–National Focal Point is clearing house for access and benefit sharing
- s. 14–Reporting by Competent National Authority for the National Biodiversity Strategies and Action Plan

There is partial compliance with international biodiversity laws regarding the procedure for prior informed consent—ss. 66, 105, and 168 do not directly provide for a permit or proof of prior informed consent (required by Nagoya Protocol Art. 6)

[*In relation to Chapter 5 on Access to Genetic Resources]

Environmental Impact Assessments

There is no direct reference to EAs in the Act.

Water Law / Rights

There is no direct reference to water in the Act.

Points to Note

More clarity required. s. 102. Is there an issue with translation in this section as the second sentence does not make perfect sense in English?

More clarity required. s. 105. What are the current international standards for this?

More clarity required s. 165 Power to make Rules. Are there rules related to specific aspects of the Act?

Environmental Assessment Act 2000

Climate Law

Identified as related to climate change by the Bhutan Transparency Report 2024 to the UNFCCC.

ss. 32-33 place implementation of the Environmental Assessment Act 2000 under the National Environment Commission (NEC), so the Act's compliance to State duties under international law on climate change is determined by the NEC's status in the National Environmental Protection Act 2007.

There is no explicit reference to climate change.

Citizen Engagement / Procedural Environmental Rights

Generally, Section 32(4) gives the NEC the authority to adopt regulations and guidelines on public information, consultation and appeals.

Information

Chapter IV relates to information.

Key aspects include:

- s. 27 ● Obligation for RGoB agencies to provide information to applicants
- s. 29 ● s. Obligation for the RGoB to provide EA documentation to the public
- 30 Basis upon which information can be kept confidential.

Right to Participation

s. 39.2 refers to the extent of the consultation that would take place. Different types of consultation in accordance with the regulations that are adopted under Section 32.4

Access to Justice

s. 55 refers to a 'Court of law'. Now with the establishment of the Green Bench, there should be greater coherence in the law to facilitate the use of the Green Bench as the relevant court where applicable.

Biodiversity Law

Identified as related to biodiversity by Bhutan's Fifth NBSAP.

ss. 32-33 place implementation of the Environmental Assessment Act 2000 under the National Environment Commission (NEC), so the Act's compliance to State duties under international law regarding biodiversity is determined by the NEC's status in the National Environmental Protection Act 2007.

There is no explicit reference to biodiversity.

Specific issues concerning Environmental Assessments

s. 7 appears inconsistent with s. 1. Section 1 refers to strategic plans and projects, but Section 7 does not refer to these. This may be an issue of translation from the Dzongkha version.

Chapter V relating to the Functions and Powers of the NEC stated at s.32.2 that the NEC can adopt regulations defining requirements for SEAs of policies, plans and programmes of the RGoB.

The RGoB has developed different regulations that apply to different sectors, which is helpful. However, this will create further challenges in integrating international standards and best practice. (See below details of some of the relevant Regulations).

Water Law / Rights

Points to Note

s. 59 refers to inter-agency coalition. It would be helpful to understand how this operates in practice.

Regulation for the Environmental Clearance of Projects 2001

Points to Note

Considering the Regulation of 2002, it is possible to see certain aspects which are not consistent with World Bank (WB) practices.

s. 17.2 provides a quantitative distance.

This is not consistent with WB practice and that in many countries. It applies a delimitation but may also lead to less strict standards applied to development applications on land that are just over the specified distance.

For example, the World Bank does not specify a fixed distance from human dwellings that triggers the requirement for an Environmental Impact Assessment (EIA). Instead, the need for an EIA is determined by the potential environmental impacts of a development project, regardless of its proximity to human settlements. Factors like the scale of the development, the type of impacts, and the sensitivity of the surrounding environment are considered.

The key factor is whether a development is likely to have significant adverse environmental effects. This is assessed on a case-by-case basis, considering the nature and scale of the project, the sensitivity of the location, and the potential for cumulative impacts.

Given the development trajectory of Bhutan, it is possible that the structure of the Annexes needs to be updated from the types of developments that were applicable in 2001 to the types of potential developments applicable now and going forward.

The structure of the Annexes may not be completely consistent with World Bank and international standards.

Guidelines for different Industries

Following the Regulations issued in 2001, Bhutan has issued Guidelines for specific industries which are as follows:

- Vehicle Washing Facility
- Tourism activities
- Forest activities
- Hydropower projects
- Industries
- Roads and highways
- Power transmissions
- General guidelines for Environmental Assessments

Points to Note

It is possible that additional categories need to be added to the different types of Regulations that have been adopted (as above) to cover different sectors.

This could be considered within the work undertaken to integrate international standards and best practice.

It can also be noted that Chapter VI relates to monitoring and enforcement which may be an area that requires strengthening.

Regulation on Strategic Environmental Assessment (Bhutan) 2002

Points to Note

These regulations are very brief and should be brought in line with existing international best practice.

Environmental Assessment – Guideline for Forestry Activities (May 2012)

Points to Note

Para. 1.4 above states that '[i]t is also advisable to involve the public from the very beginning in the scoping process and in all the other phases of project development (See Figure 1.1: Best Practices in EIA). It is also recommended to consider the size, scale, site sensitivity and pollution potential while deciding the study area, duration and scope of EIA.

These aspects need to be considered as legal requirements rather than 'best practice'.

Waste Prevention and Management Act 2009

Climate Law

Identified as part of Bhutan's climate change legal regime by Bhutan's Transparency Report 2024 to the UNFCCC, with the lead agencies being the Department of Environment and Climate Change and the Ministry of Infrastructure and Transport.

s. 24 names the National Environment Commission (NEC) as the regulatory authority for implementation of the Waste Prevention and Management Act 2009.

s. 37 requires that the NEC works cooperatively and in consultation with stakeholders.

There is no explicit reference to climate change.

Citizen Engagement / Procedural Environmental Rights

Information

Although s.24 (e) refers to the collection of information, there is little in the Act to denote a responsibility to provide information to the public relating to waste.

s. 27 Refers to the collection of information and provision of the NEC periodically. This may not amount to consistency with international standards.

Right to Participation

s. 38 and s. 39 refer to the rights of participation and information, respectively. However, the details are limited. It would be necessary to analyse the implementing regulations, to assess the extent to which provisions are consistent with international standards

Access to Justice

There are no provisions related to access to justice in this statute.

Biodiversity Law

Identified as part of Bhutan's legal regime for biodiversity by Bhutan's Fifth NBSAP.

s. 24 names the National Environment Commission (NEC) as the regulatory authority for implementation of the Waste Prevention and Management Act 2009, and so compliance with State duties under international biodiversity law is the same as the NEC under the National Environment and Protection Act 2007.

s. 37 requires that the NEC works cooperatively and in consultation with stakeholders.

There is no explicit reference to biodiversity.

Environmental Impact Assessments

Environmental assessments are only mentioned once in this statute within the context of detailing the authority of the NEC under the Act and its associated authority for environmental assessments.

Water Law / Rights

Limited references to water are made in this statute.

The Waste Prevention and Management Regulation 2012

Points to Note

This regulation deals with different types of waste, such as that concerning household, medical, hazardous and electronic.

It does not provide a specific section or chapter that deals with the collection of information and the way third parties or members of the public could obtain that information.

This may not be consistent with best international practice and/or s. 81 of NEPA (as mentioned above i.e. applicable to the Act under s. 39 of the Act.)

Pesticide Act 2000

Climate Law

Identified as being part of Bhutan's legal regime for climate change by Bhutan's Transparency Report 2024 to the UNFCCC, with the lead agencies being the Department of Agriculture and the Ministry of Agriculture and Livestock.

The current institutional authority for implementation is unclear, since the Pesticide Act 2000 predates the Constitution of the Kingdom of Bhutan 2008 and the Civil Service Reform Act 2022. s. 7 of the Act names a Pesticides Board that is appointed by the Ministry of Agriculture, but it does not give an explicit statement of the ministerial agency with implementation authority.

The Act does not include a statement regarding its connection with the National Environment Commission.

There is no explicit reference to climate change.

Citizen Engagement / Procedural Environmental Rights

Information

There is no provision relating to the right of information to details relating to pesticides.

Arguably, this should be included within both the Act and the Regulations.

There is nothing in this Act that provides detail of a database that is available to the public denoting the pesticides that have been authorised.

Right to Participation

No reference to the right to participation or consultation in the statute.

Access to Justice

No reference to access to justice in this statute.

Biodiversity Law

Identified as being part of Bhutan's legal regime for biodiversity by Bhutan's Fifth NBSAP.

The current institutional authority for implementation is unclear, since the Pesticide Act 2000 predates the Constitution of the Kingdom of Bhutan 2008 and the Civil Service Reform Act 2022. s. 7 of the Act names a Pesticides Board that is appointed by the Ministry of Agriculture, but it does not give an explicit statement of the ministerial agency with implementation authority.

The Act does not include a statement regarding its connection with the National Environment Commission.

There is no explicit reference to biodiversity.

Environmental Impact Assessments

There is no mention of Environmental Assessment in this statute.

Water Law / Rights

No significant mention of water in the statute.

Pesticides Rules and Regulations of Bhutan 2019

Points to Note

These regulations are very much user focused and do not focus on the rights of third parties or the generic right to information.

There is no provision requiring an authority to provide this information to the public or a database relating to the licenses that have been granted.

Biosafety Act 2015

Climate Law

Bhutan's Transparency Report 2024 to the UNFCCC does not list the Biosafety Act 2015 among the laws in Bhutan's legal regime for climate change.

Citizen Engagement / Procedural Environmental Rights

Information

There is a requirement under the Act and the associated Regulations to provide information for the public. There are questions as to whether this provision meets international standards.

Right to Participation

Under s. 22 public consultation may occur where deemed appropriate by the Bhutan Agriculture and Food Regulatory Authority.

Access to Justice

There is no explicit reference to access to justice. Instead, there is indirect reference to aspects of access to justice via language in ss. 44-45 regarding administrative review wherein decisions of the Bhutan Agriculture and Food Regulatory Authority can be appealed to the National Biosafety Board.

Biodiversity Law

Bhutan's Fifth NBSAP includes the Biosafety Act 2015 among the laws in Bhutan's legal regime for biodiversity. The Preamble to the Biosafety Act 2015 declares that it is intended to fulfil Bhutan's obligations to the Cartagena Protocol on Biosafety 2003 to the CBD.

s. 5 of the Biosafety Act 2015 creates a National Biosafety Board that includes the NEC as a member, so the Act fulfils the Cartagena Protocol to the extent that the NEC's role under the National Environment and Protection Act 2007 satisfies Bhutan's commitments to international biodiversity law is the same as the NEC.

s. 8 of the Biosafety Act 2015 specifies the mandate of the National Biosafety Act as including planning, coordination among stakeholder agencies, approving mechanisms for transboundary movement of genetically modified organisms, addressing appeals for grievances under the act, and making decisions for approval of genetically modified organisms. All the powers in the mandate are consistent with the Cartagena Protocol.

A portion of provisions in the Biosafety Act 2015 is consistent with principles in the Cartagena Protocol. Specifically, the Biosafety Act 2015 address the following principles in the Cartagena Protocol:

- Precautionary Principle—stated explicitly in s. 16 of the Biosafety Act 2015

- Monitoring and reporting—encompassed by monitoring and inspection provisions in ss. 30-33 of the Biosafety Act 2015
- Access to information—given directly by s. 35 of the act
- Risk assessment—stated in ss. 20-22
- Public awareness—included in the text of ss. 14 and 34
- Public participation—embodied by the text regarding public consultation in s. 22
- Safe handling, packaging, and transport of living modified organisms—encompassed by the text on labelling, import, export, inspections, and monitoring in ss. 23-33
- Competent National Authority—s. 8 of the act names the Bhutan Agriculture and Food Regulatory Authority as the national competent authority
- National Focal Point s. 14(10) states that the mandate of the Bhutan Agriculture and Food Regulatory Authority includes management of information in the Bhutan Biosafety Clearing House

However, the Biosafety Act 2015 is unclear regarding its fulfilment of other principles in the Cartagena Protocol. In particular, the Biosafety Act 2015 is not clear regarding the following:

- Cooperation—the Biosafety Act 2015 is not explicit regarding either international or domestic cooperation
- Notice and notifications—while the Act has provisions regarding communications in ss. 20-22, it does not specifically address requirements for notice and notifications
- Reporting—the Act does not indicate who is responsible for communications, liaison, or reporting to the CBD Secretariat or Conference of the Parties
- Requirements regarding procedures—the Cartagena Protocol calls for the availability of an Advance Informed Agreement regarding the transboundary movement of living modified organisms

Environmental Impact Assessments

Whereas EAs are not explicitly mentioned, by virtue of the nature of the Act. However, environmental assessment is addressed indirectly with language related to risk analysis, in the sense that risk analysis is a component of environmental assessment.

Water Law / Rights

There are limited references to water.

Biosafety Rules and Regulations of Bhutan 2018

Points to Note

The regulations provide sparse detail relating to both information and consultation/ public participation.

Livestock Act 2001

The Livestock Act 2001 regulates livestock breeding, health and production aimed at enhancing their productivity and preventing diseases to enhance rural income and livelihood.

Climate Change

Identified as part of Bhutan's legal regime for climate change by Bhutan's Transparency Report 2024 to the UNFCCC, with the lead agencies being the Department of Agriculture and Ministry of Agriculture and Livestock.

s. 3 names the Ministry of Agriculture as the institutional authority for implementing the Act.

There is no statement of a connection to the National Environment Commission (NEC).

There is no explicit reference to climate change.

Biodiversity

Bhutan's Fifth NBSAP lists the Livestock Act 2001 as part of Bhutan's legal regime for biodiversity. The Livestock Act 2001 does not explicitly mention biodiversity, but its attention to livestock falls under the topic of biodiversity.

The Livestock Act 2001 is problematic in fulfilling principles contained in the CBD, the Cartagena Protocol, and the Nagoya Protocol. While the Act addresses principles of monitoring in the form of language in ss. 10, 16, and 23-25 regarding inspections, it is lacking further language regarding other principles. Specifically, the Livestock Act 2001 lacks language addressing the following principles found in the CBD, Cartagena Protocol, and Nagoya Protocol:

- Conservation & sustainable use/development
- Access to information
- Participation
- Precautionary Principle
- Research
- Public awareness/education
- Communication/reporting to international authorities
- Planning
- Transparency and access to information

In addition, the Livestock Act 2001 is unclear regarding the following aspects of Bhutan's broader biodiversity legal regime:

- No clear connection to the National Biodiversity Center and other agencies/ministries involved in biodiversity
- No clear connection to other acts related to biodiversity

Citizen's Engagement / Procedural Environmental Rights

The 2001 Act does not include reference to the right of access to information, public participation and consultation etc.

Water

The Act does not deal with the relationship between livestock and water.

Environmental Assessment

The Act does not refer to environmental assessments.

Points to Note

The Livestock Bill 2025 was not available at the time of writing.

National Environment Protection Act 2007

Climate Law

Bhutan's Biennial Update Report 2022 and Transparency Report 2024 to the UNFCCC identify the National Environment Protection Act (NEPA) 2007 as a core part of Bhutan's legal regime for climate change, with the National Environment Commission also being the National Climate Change Commission and the Department of Environment and Climate Change being the Climate Change Coordination Committee.

As NEPA is the foundational Act from which both the NEC and the Secretariat for the NEC (now the DECC) derive their authority, this close connection with climate change is present. However, it must be stressed that NEPA itself does not directly address climate change. The term 'climate' only arises once in the Act and that is in the 'definitions' section. 'Climate change' is not mentioned at all, nor are greenhouse gases, mitigation or adaptation.

However, some of the generic aspects that relate to the protection of the environment within the Act can be understood to relate to steps that RGoB takes to respond to climate change and therefore analysis of those sections provides insights into the extent of its coverage relating to climate.

In this sense NEPA is partially compliant with the principles associated with international climate change law, with ss. 3-19 and 81-91 containing the following principles that overlap with those identified by the International Court of Justice Advisory Opinion 2025 (ICJ Opinion):

- Access to justice
- Access to information
- Participation
- Intergenerational Equity
- Precautionary Principle
- Polluter-Pays Principle
- Sustainable Development

However, ss. 3-19 and 81-91 do not include the following principles that are named by the ICJ Opinion as among the State duties to climate change:

- No statement of the principle of equity
- No statement of the principle of Common-But-Differentiated Responsibility (CBDR)

There is partial compliance regarding the right to a healthy climate, in that s. 5 provides for a right to a safe and healthy environment but it does not explicitly state that there is a right to a healthy climate.

There is compliance with respect to procedures and institutional authorities. NEPA includes several components specified by the ICJ Opinion, United Nations Framework Convention on Climate Change (UNFCCC), and Paris Agreement:

- Compliant regarding communication/reporting—ss. 30 and 41 place responsibility upon the NEC and DECC for planning, monitoring, & reporting
- Compliant regarding planning—ss. 30 and 31 identify the NEC and DECC as having authority for planning
 - Compliant regarding monitoring—s. 100 tasks DECC with monitoring
 - Compliant regarding coordination—ss. 41-42 give DECC responsibility for coordinating with domestic entities for implementation of international environmental agreements
 - Compliant regarding mitigation and adaptation—ss. 30 gives the NEC the mandate to set and review policies, regulations, and guidelines
- Compliant regarding transparency and access to information
 - ss. 81 provides for a right to environmental information
 - ss. 82-85 call for publication of information via electronic databases accessible to public
- Compliant regarding research/education/public awareness
 - ss. 81 identifies the NEC and DECC as having duties to promote science and education
 - ss. 82-85 give the NEC and DECC power to establish the National Environmental Information System to gather/process/analyse/disseminate information

There are no clear statements regarding duties and duty-holders for the following, all of which are included among the State duties regarding climate change:

- International cooperation and international exchange
- Accounting and communication of progress on Nationally Determined Contributions (NDC)
- Duties to regulate private actors
- Climate change

Citizen Engagement / Procedural Environmental Rights

Information

s. 15 This states that, '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.' This provides a clear statement that correlates with the Constitution of the Kingdom of Bhutan 2008.

This is supported by s. 81 which provides for the obligations of the Commission.

It provides a test against which some of the other legislation under scrutiny can be assessed.

s. 82 states as follows:

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 to enable timely response.
- c) Determination of the causes of environmental impacts.
- d) Identification of appropriate corrective and remedial measures to be taken.

This has the potential to play a key part in the provision of information if fully implemented.

See also related ss. 83-5 relating the NEIS and information provision in the context of the right to information.

Right to Participation

s. 86 states as follows:

Citizens are entitled to participate in decision-making processes concerning the environment, when the Government deems it 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 the environmental impact assessment process before the issuance of environmental clearance. Provided that the larger interest of the community/country shall prevail over individual interest.
- c) Commenting on draft legislation or regulations under preparation to implement this Act.

s. 87 states as follows:

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.

This limits the rights of participation to those instances where the 'Government deems appropriate.

This needs to be assessed against more recent international law and international best practice.

Access to Justice

s. 16 states that,

[a]ny 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.

ss. 88-91 state as follows:

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 to any person who considers that:

- 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.

Other laws under scrutiny can be tested against these standards.

Biodiversity

Bhutan's Fifth NBSAP identifies NEPA 2007 as a core part of Bhutan's legal framework for biodiversity.

NEPA Chs. II, IV, and V contain explicit references to biodiversity.

The National Environment Protection Act (NEPA) 2007 is compliant with the principles associated with international biodiversity law, with ss. 3-19 and 81-91 containing the following principles that overlap with those identified in the CBD, the Cartagena Protocol, and the Nagoya Protocol:

- Conservation & sustainable use/development (CBD)
- Access to information (CBD, Cartagena Protocol, & Nagoya Protocol)
- Participation (Cartagena Protocol & Nagoya Protocol)
- Precautionary Principle (Cartagena Protocol)
- Monitoring (CBD, Cartagena Protocol, & Nagoya Protocol)
- Research (CBD)
- Public awareness/education (CBD & Nagoya Protocol)

It is also compliant with respect to procedures and institutional authorities—NEPA includes several components prescribed by the CBD, the Cartagena Protocol, and the Nagoya Protocol:

- Compliant re communication/reporting—ss. 30 and 41 place responsibility upon the NEC and DECC for reporting
- Compliant regarding planning—ss. 30 and 31 identify the NEC and DECC as having authority for planning
- Compliant regarding monitoring—s. 100 tasks DECC with monitoring
- Compliant regarding transparency and access to information
 - ss. 81 provides for a right to environmental information
 - ss. 82-85 call for publication of information via electronic databases accessible to public
- Compliant regarding research/education/public awareness
 - ss. 81 identifies the NEC and DECC as having duties to promote science and education
 - ss. 82-85 give the NEC and DECC power to establish the National Environmental Information System to gather/process/analyse/disseminate information

There is uncertain compliance regarding other authorities—NEPA 2007 names the NEC and DECC as authorities, but

- There is no clear connection to the National Biodiversity Centre and other agencies/ministries involved in biodiversity.
- No clear connection to other acts related to biodiversity.

Environmental Impact Assessments

Both environmental assessments and strategic environmental assessments are mentioned in this statute.

The question with the current law as noted in the section above related specifically to the EA Act 2000 is whether current provision is consistent with international best practice.

Water Law / Rights

References to water are made in numerous contexts within the Act concerning monitoring, water quality, watersheds, rights to water, pollution and in terms of the responsibilities thereto.

Points to Note

It can be noted that 'information' is referred to in NEPA in several contexts. There are those sections noted above that relate to the 'right to information' i.e. s. 15 and ss 82-87.

There is also the role of the Secretariat under s. 41(e) which explains its role in the 'development and maintenance of an effective environmental information system, including recordkeeping of all administrative decisions taken by the Secretariat'

Additionally, it refers to the duties of competent authorities under s. 47 and s.47(d) in gathering and forwarding environmental information on a regular basis to the Secretariat.

Related to these are other provisions that have the potential to relate to information. These include references to the responsibilities of the NEC under s.53 to take measures to prevent environmental harm

For example, s. 53. States the NEC 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. This is then related to s. 54 which provides in s.54(j) that without prejudice to the generality of the provisions of s. 53, those measures may include the collection and dissemination of information in respect of matters relating to environmental pollution.

It can be noted that the task of the development and maintenance of an effective 'environmental information system' under s. 47 is not elaborated on within the Act.

The Consultancy Team note the issue of information collection, storage and transfer / dissemination is of central importance for the administration of environmental law in any jurisdiction. Further specific analysis related to this is provided in Section II under the heading 'Information, Systems and Processes'.

It emphasises that the National Environmental Information System referred to in s. 82 has not to date been realised. Therefore, there is the potential for further steps to be taken to strengthen the systems of collection, storage and dissemination / transfer of information that are referred to in NEPA.

It can also be noted that NEPA does contain specific chapters related to protection of forestry, biodiversity and integrity (Ch V); environmental financing and incentives (Ch VI); and right to environmental information and citizen participation (Ch VII). However, it does not include a specific chapter related to Climate Change. Therefore, as detailed in Section II under the heading of 'Climate Change', there is the potential that NEPA is amended accordingly or amended to include more specific reference to climate change and the role of DECC and other relevant Government agencies.

Finally, it can also be noted that the NEC has a power and function under NEPA s. 30 (j) to:

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;'

This provision is particularly relevant to this current review in its focus on the harmonisation of law. Therefore, it would be logical for the NEC to play a pivotal role in the Leadership Committee referred to in Section III of this report relating to the 'Institutional Structure for Roadmap / Staged Process' required to oversee the process required to review and harmonise environmental and climate change law in the country.

Mines and Minerals Act 1995

Climate Law

The Mines and Minerals Act 1995 is identified by Bhutan's Transparency Report 2024 to the UNFCCC as being part of Bhutan's legal framework for climate change.

There is a lack of clarity regarding the implementing authority because the Mines and Minerals Act 1995 predate the Constitution of the Kingdom of Bhutan 2008 and the Civil Service Reform Act 2022. Section 4 of the Act names the Ministry of Trade and Industry as the implementing authority, but that does not match the named ministries stated in the Civil Service Reform Act 2022. As a result, it is currently not possible to identify the implementing authorities and their respective duties in relation to climate change.

There is no clear connection to the NEC.

There is no explicit reference to climate change.

Citizen Engagement / Procedural Environmental Rights

Information

The provisions of ss. 23-25 should include provisions relating to regular environmental testing and monitoring, the data for which should be provided to the Government in order that it can be made available on the National Environmental Information System (or equivalent).

Right to Participation

There are no provisions relating to a consultation process with stakeholders / the new bill should link in with the responsibilities under the EIA law. This is now included in Chapter 8 concerning Environmental and Social Risk Assessment.

Access to Justice

Access to justice is not provided for.

Biodiversity Law

The Mines and Minerals Act 1995 is not listed by Bhutan's Fifth NBSAP as being among the laws within Bhutan's legal framework for biodiversity.

Environmental Impact Assessments

Reference is made to EIAs but it is limited.

Water Law / Rights

Some references to water are made in this statute.

Mines and Minerals Bill of Bhutan 2020

This bill recognises the role of the 'Ministry' (Ministry of Energy and Natural Resources) as having overall competence in the extraction of minerals and natural resources. It also recognises the 'Department' (Department of Geology and Mines) to have the authority to control all mineral rights and geoscientific activities.

Climate

The bill does not include reference to climate change

Citizen Engagement / Procedural Environmental Rights

The bill does not include reference to disclosure of information for the public (although some provisions do relate to the collection and dissemination of information).

The bill does not include reference to participation in decision-making.

The bill does include provisions allowing decisions to be appealed through due process.

Environmental Assessment

The bill does not include reference to environmental assessment as such.

The bill does state at s.119: 'The Department shall consider the environmental carrying capacity and social risk associated with mining while granting the Mineral Rights.'

Biodiversity

The bill does not include reference to biodiversity

Water

The bill contains provisions relating to Socio Economic Benefit Sharing as follows:

s. 144 The affected community shall be compensated through benefit sharing scheme as prescribed.

s. 145. The communities shall have access to:

- (1) social infrastructure developed by the lessee; and
- (2) other infrastructures such as medical facilities, road and water supply.

Points to Note

The Mines and Minerals Bill 2020 does include environmental risk in Chapter VII but it does not relate to the EA , NEPA or international best practice standards.

Enhanced information provision for the public would be required to meet international standards.

s. 145 refers to the provision of water supply to communities. It must be noted that citizens have a right to water and as such should not strictly be regarded as an element of benefit sharing.

Road Act 2013

Climate Law

The Road Act 2013 is not listed as part of Bhutan's legal framework for climate change by Bhutan's Transparency Report 2024.

Citizen Engagement / Procedural Environmental Rights

Information

The Act does have provisions relating to information. This needs to be consistent with international standards.

Right to Participation

The Act does not have relevant provisions.

Access to Justice

The Act does not have relevant provisions.

Biodiversity Law

The Road Act 2013 is not listed as part of Bhutan's legal framework for biodiversity by Bhutan's Fifth NBSAP.

Environmental Impact Assessments

It does not include a provision related to the need to ensure that environmental assessments and SEAs are undertaken and that proper consultation is undertaken in the planning, development and construction of roads. Also, it includes no details of rights of information of the population.

s. 218 relates to the design and environmental aspect but it does not include an environmental assessment reference as such.

Water Law / Rights

The Act mentions water but often it is in the context of ensuring that water does not run onto road surfaces.

Seeds Act 2000

Climate Law

Bhutan's Transparency Report 2024 to the UNFCCC does not include the Seeds Act 2000 within Bhutan's legal framework for climate change.

Citizen Engagement / Procedural Environmental Rights Information

The Act contains no mention of a database or access to information. Arguably, this should be part of the National Environmental Information System.

Right to Participation

The Act does not contain mention of a right to participate in decision-making.

Access to Justice

s. 10 does allow for individuals to appeal against decisions.

Biodiversity Law

Bhutan's Fifth NBSAP includes the Seeds Act 2000 as part of Bhutan's legal framework for biodiversity.

The Seeds Act 2000 has no clear implementing authority because it predates the Constitution of the Kingdom of Bhutan 2008 and the Civil Service Reform Act 2022.

Ss. 2-5 name a National Seed Board under the Ministry of Agriculture, but it is not clear if that continues under the Constitution of the Kingdom of Bhutan 2008 and Civil Service Reform Act 2022.

Ss. 2-5 identify the National Seed Board as the implementation authority of National Seed Board.

There is no clear connection to NEC.

s. 22 states that the Act does not cover the issue of genetic resources.

There is no explicit reference to biodiversity.

Environmental Assessments

The Act does not include mention of environmental assessments.

Water Law / Rights

The Act does not include mention of water.

Seeds Rules and Regulations of Bhutan 2006

Similarly in these regulations there is no correlation with the right to information or data.

Electricity Act 2001

Climate Law

The Electricity Act 2001 is identified as being part of Bhutan's legal framework for climate change by Bhutan's Transparency Report 2024 to the UNFCCC, with the lead agencies being the Bhutan Electricity Authority (BEA) and the Ministry of Energy and Natural Resources.

There is a lack of clarity regarding the implementing authority because the Electricity Act 2001 predates the Constitution of the Kingdom of Bhutan 2008 and Civil Service Reform Act 2022. There is no clear statement within the Act regarding a ministry with authority under the Civil Service Reform Act 2022. As a result, it is not possible to identify authorities and their respective duties in relation to climate change.

There is no statement of a connection to the National Environment Commission (NEC).

There is no explicit reference to climate change.

Citizen Engagement / Procedural Environmental Rights

Information

Certain access to information is allowed for.

However, potentially licensees should have a responsibility to provide environmental monitoring information.

Arguably the public should have safety information made available to them through the NEIS.

Right to Participation

The Act does not mention the right to participation or consultation.

Access to Justice

Access to justice does appear through certain provisions: 34(5); 42(4); 43(4); 47(2); 53(4).

Biodiversity

The Electricity Act 2001 is not listed by Bhutan's Fifth NBSAP as being among the laws within Bhutan's legal framework for biodiversity.

Environmental Assessment

EAs are referred to, however there should also be reference to SEAs.

Water Law / Rights

The Act does refer to water.

Points to Note

There does not appear to be a separate set of regulations. This Act is quite comprehensive and covers a lot of the types of areas that regulations often do.

Dispute Settlement Rules and Regulations 2025

These regulations were produced by the Electricity Regulatory Authority in 2025 to cover disputes related to the Electricity Act 2001.

Climate Law

Climate is not referred to in the regulations.

Citizen Engagement / Procedural Environmental Rights

Right to information

The right to information is not referred to.

Right to Participate in Decision-Making

The right to participate in decision-making is not referred to.

Access to Justice

This is not referred to explicitly although the regulations relate directly to access to justice.

In relation to time-limits the following apply:

- s. 22 If the information submitted in Form A is incomplete or if any other information required for the complaint is missing, the CAAU shall notify the complainant to provide the complete information within three (3) days.
- s. 23 A complaint shall be rejected if it does not meet the criteria under sections 19, 20, 21 and 22 of these Rules and Regulations.

International standards and best practice related to time limits for responses from complainants should be considered. The three-day time limit in this instance is particularly onerous for the complainant and could potentially lead to unfairness.

Environmental Assessment

The Regulations do not refer to environmental assessments.

Biodiversity

The Regulations do not refer to biodiversity.

Water

The Regulations do not refer to water.

Points to Note

In terms of international standards and best practice, the processes including time-limits in these Regulations could be revisited to assess their compatibility, as the fairness of such processes can impact the right of access to justice. This does relate to the environment but equally can be regarded as part of administrative law more generally.

Food Act 2005

Climate Law

The Food Act 2005 is not included among the laws listed by Bhutan's Transparency Report 2024 as comprising Bhutan's legal framework for climate change.

Citizen Engagement / Procedural Environmental Rights

Information

Arguably the Bhutan Food and Drug Authority (BAFRA) should have clear responsibilities to make information available to the public through the NEIS.

Right to Participation

The Act does not explicitly contain provisions relating to direct public participation or consultation. However, the Act provides indirect forms of participation:

1. Appeal and Complaint Mechanisms

S. 69 allows for any person aggrieved by a decision or action of a food inspector under the Act to make written appeals to BAFRA in writing and so allows participation in the form of decision review.

S. 70 allows any person not satisfied with a decision of the BAFRA under section 69 to lodge a complaint with the Royal Court of Justice.

2. Codex Committee

S. 30 allows the National Codex Committee under the Act to authorise representatives of governmental organizations and agencies, as well as industry and consumer groups, to attend National Codex Committee meetings.

3. Stakeholder Engagement

S. 31. The Act sets the National Codex Committee as liaison to the food industry, consumers, traders and all other concerned persons and organizations, for the purpose of distributing information received from the Codex Alimentarius Commission Secretariat and facilitating wide consultation to ensure that the government is provided with an appropriate balance of policy and technical advice for decisions relating to the acceptance of Codex standards and all other food control matters in the Kingdom. Liaison and consultation enable participation by allowing stakeholders to engage with the National Codex Committee on topics such as

- i. drafting technical standards
- ii. developing regulations
- iii. implementing Codex standards

- iv. discussing food safety challenges

Access to Justice

The Act does contain provisions relating to access to justice in ss. 69-70.

Biodiversity

The Food Act 2005 is not included among the laws listed by Bhutan's Fifth NBSAP as comprising Bhutan's legal framework for biodiversity.

Environmental Impact Assessments

There is no mention of EAs in this Act.

Water Law / Rights

There is no mention of water in this Act.

Points to Note

The International Food Safety Authorities Network (INFOSAN) is the international network point through which information is available in emergencies (established through the World Health Organisation (WHO)) but this is not detailed in the legislation. BAFRA has the responsibility for coordinating in this regard.

Disaster Management Act 2013

Climate Law

Bhutan's Transparency Report 2024 to the UNFCCC lists the Disaster Management Act 2013 as being part of Bhutan's legal framework for climate change, with the lead agencies being the Department of Disaster Management, Department of Local Governance and Disaster Management, and the Ministry of Home Affairs.

s. 8 includes the Head of NEC as part of the National Disaster Management Authority, so the Act's compliance with international climate change law is determined by the NEC presence.

There is no explicit reference to climate change.

Citizen Engagement / Procedural Environmental Rights

Information

The Act does include provision concerning access to information.

However, s. 11 relating to the function of the National Disaster Management Committee does not include the responsibility to provide information as required under the Constitution of the Kingdom of Bhutan 2008 and in accordance with international best practice.

ss. 30-31 state that the Dzonkhag does have a responsibility to provide information to the National Disaster Management Committee.

If an NEIS became compromised during the time of a disaster, contingency plans to provide alternative methods of providing and disseminating information should be developed and put into practice as necessary.

Right to Participation

The Act does include provision concerning the right to participate in decision-making

Access to Justice

The Act does not include provision concerning access to justice.

Biodiversity

Bhutan's Fifth NBSAP does not include the Disaster Management Act 2013 as part of Bhutan's legal framework for biodiversity.

Environmental Assessments

The Act does not include provision concerning EAs.

Water Law / Rights

The Act does not include provision concerning water.

Plant Quarantine Act 1993

Climate Law

The Plant Quarantine Act 1993 is not listed among the laws forming Bhutan's legal framework for climate change by Bhutan's Transparency Report 2024 to the UNFCCC.

Citizen Engagement / Procedural Environmental Rights

Information

The Act does not provide a basis upon which information is available to the public.

Right to Participation

The Act does not provide for public participation or consultation.

Access to Justice

There are no rights of appeal against decisions in this Act.

Biodiversity

The Plant Quarantine Act 1993 is included within Bhutan's legal framework for biodiversity by Bhutan's Fifth NBSAP.

There is no clear implementation authority because it predates the Constitution of the Kingdom of Bhutan 2008 and the Civil Service Reform Act 2022 and there is no explicit statement of the implementing authority under the Civil Service Reform Act 2022.

There is no explicit reference to biodiversity.

Environmental Assessment

The Act does not provide for EAs.

Water Law / Rights

The Act does not have provisions relating to water.

Plant Quarantine Rules 2018

This does not provide a basis upon which information is available to the public.

Arguably this should also be provided through the NEIS.

Section II – Thematic Focus

This part of the report focuses on specific thematic areas. It draws on the analysis of the law in Bhutan and provides further analysis against relevant international environmental law and international best practice. It also provides key points drawn from the online survey and raised during the workshops in Paro (September 2025) and online in Thimphu (November 2025).

This Section of the report provides important components of the analysis upon which the recommendations and roadmap provided in Section III are based. Therefore, it can be cross-referenced with the relevant parts of Section III.

Climate Change

Introduction

This section seeks to achieve two main objectives. First, it addresses current international law relating to climate change. Secondly, it considers the options for Bhutan in its choice of approach to climate change law in the country, as specifically raised within the ToR.

It should be noted that various States have sought to create national climate change laws to implement their respective State duties regarding climate change in international law. Therefore, this section draws on state practice to elaborate on the options Bhutan has in determining its own approach to climate change law.

The recommendations and findings in this section related directly with Stage 3 of the recommendations and roadmap provided in Section III of this report.

International Law and Best Practice

A succinct definition for “climate change” appears in Art. 1 of the United Nations Framework Convention on Climate Change 1992 (UNFCCC), which describes it as ‘a change of climate which is attributed directly or indirectly to human activity’ that is beyond the natural

The UNFCCC, with its attendant instruments and institutions, is the primary international legal framework on climate change. However, the scope of climate change impacts entails a range of environmental issues and so calls for discussion on State duties regarding climate change to consider diverse sources in international environmental law.

Clarity on the scope of State duties in regard to climate change under international law appeared on 23 July 2025 with the International Court of Justice (ICJ) Advisory Opinion Case 187 on the Obligations of States in Respect of Climate Change (ICJ Opinion). The ICJ Opinion drew upon the breadth of international law as a whole to specifically identify sources and principles that apply to States in connection with climate change. Because of its advisory nature, the ICJ Opinion is not binding upon States. However, because the ICJ is a component of the United Nations system, its jurisprudence serves as an authoritative statement on international law related to State duties regarding climate change.

The broad outline of the international legal regime centred on the topic of climate change is the UNFCCC, which is a framework convention that prescribes a system for State parties to convene, deliberate, and decide on appropriate institutions and instruments addressing anthropogenic climate change. In terms of institutions, the text of the UNFCCC itself establishes a Conference of the Parties (CoP), a Secretariat, the Subsidiary Body of Scientific and Technical Advice, and the Subsidiary Body of Implementation. The CoP meets annually

¹ United Nations Framework Convention on Climate Change (New York) 9 May 1992, in force 21 March 1994, 1771 UNTS 107 (1992) (1992 UNFCCC)

International Court of Justice, *Case 187: Obligations of States in Respect of Climate Change*, 23 July 2025, <https://www.icj-cij.org/case/187> (2025 ICJ Advisory Opinion)

and functions as the main decision-making body for the UNFCCC. The Secretariat provides support and expertise for UNFCCC operations, including the distribution of information and development of approaches to fulfil the terms of the UNFCCC and its attendant instruments. The Subsidiary Body of Scientific and Technical Advice is tasked with rendering expert advice and information on technical and scientific aspects of issues under the UNFCCC, and the Subsidiary Body of Implementation is responsible for conducting assessments and issuing recommendations on implementation of the UNFCCC and its related instruments.

With respect to instruments, the legal instruments that fall under the UNFCCC evolve as a function of the outcomes arising from each session of its Conference of the Parties (CoPs). As of 2025, the main corpus of instruments on climate change encompasses the 1992 UNFCCC, 1997 Kyoto Protocol, and 2016 Paris Agreement. While the Kyoto Protocol was superseded by the Paris Agreement, aspects of it continue, with the more notable examples including market-based mechanisms to control greenhouse gas emissions and development mechanisms that allow developed countries to offset their greenhouse gas emissions by investment in emission-reduction projects in developing countries. The Paris Agreement replaced the Kyoto Protocol's State party targets on greenhouse gas emissions with a voluntary target approach that allows each State party to adopt its own emissions reduction targets, with State parties expected to issue 5-year plans for National Determined Contributions that follow an increasing path of greenhouse gas emissions.

State duties identified by the ICJ Opinion

The ICJ exists outside of the UNFCCC regime. However, as a product of the 1945 United Nations Charter, the ICJ exists as the only international court holding jurisdiction on general matters of international law involving states. All members of the United Nations (UN) General Assembly are State parties to the statute creating the ICJ, and the mandate of the ICJ encompasses adjudication rendering legally binding decisions on disputes submitted by State parties as well as advisory opinions producing legally non-binding judicial statements in response to questions submitted by the UN and its agencies. The ICJ Opinion was in response to a request submitted in 2023 by the UN General Assembly, which asked for ICJ resolution of two legal questions: 1) What are the obligations of states under international law to protect the climate and the environment from anthropogenic greenhouse gas emissions?, and 2) What are the legal consequences for states whose actions or omissions result in significant harm to the climate and the environment?

The ICJ Opinion responded to the above questions by identifying each state's duties about climate change, and the correlated sources of international law that express each duty. The following table presents the ICJ Opinion findings:³

³ Ibid.

<i>State Duty</i>	<i>Identified Sources in International Law</i>
Duty to co-operate—good faith effort collective action	ICJ AO (2025) finds this duty in <ul style="list-style-type: none"> ● Environmental treaties—UNFCCC, Convention on Biological Diversity (CBD), and others (Paras. 214-218; 260-270) ● Customary international law (Paras. 301-308)
Duty to prevent—exercise due diligence (all means at its disposal)	ICJ AO (2025) finds this duty in <ul style="list-style-type: none"> ● Customary international law (Paras. 271-300)
Duty to mitigate—via national laws, NDCs, etc...with all measures at its disposal	ICJ AO (2025) finds this duty in <ul style="list-style-type: none"> ● Environmental treaties—UNFCCC, CBD, etc. (Paras. 200-208; 230-254)
Duty to adapt—Annex II countries must assist developing countries (N/A—Bhutan is non-Annex II)	ICJ AO (2025) finds this duty in <ul style="list-style-type: none"> ● Environmental treaties—UNFCCC, CBD, etc. (Paras. 209-213; 255-259)
Human right to healthy climate	ICJ AO (2025) finds this duty in (Paras. 143-145 & 393) <ul style="list-style-type: none"> ● International Covenant on Civil and Political Rights (ICCPR) ● International Covenant on Economic, Social, and Cultural Rights (ICESCR) ● Customary international law on human rights
Principles <ul style="list-style-type: none"> ● Sustainable development ● Common-but-differentiated-responsibility ● Equity ● Intergenerational equity ● Precautionary principle ● Polluter-pays principle 	ICJ AO (2025) finds these principles within international environmental law (Paras. 141-161)

Duty to regulate private actors	ICJ AO (2025) finds this duty within international environmental law (Para. 428)
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In addition to the above duties identified by the ICJ Opinion, there are also further duties for State parties to the UNFCCC and Paris Agreement. The duties for each are presented below.

Requirements of the UNFCCC

Bhutan is outside the list of states in Annex I and Annex II, and so does not share their requirements regarding reduction of greenhouse gas emissions and delivery of assistance to developing states. However, Bhutan is still expected to fulfil the following:

- Give support to international and intergovernmental efforts, for finance, data collection, observation, scientific research and improving endogenous capacities (UNFCCC Art. 5)
 - Promote educational and public awareness, public access to information, public participation, training of scientific personnel and international exchange of education/public awareness material (UNFCCC Arts. 4 & 6)
- Communication to CoP:
 - A national inventory of anthropogenic emissions/GHGs outside Montreal Protocol, to the extent that its capacities permit & comparable methods agreed by CoP (Art. 4 & 12)
 - Publications/updates of regional programs for mitigation/adaptation (Art. 4)
 - Promotion and cooperation in the development/application/diffusion of technologies and practices to counter anthropogenic emissions (Art. 4)
 - Promotion of sustainable management, incorporation of climate change into of scientific/technical/socio-economic research on climate change and promotion of full, open, and prompt exchange of scientific/technical/socio-economic information on climate change (Arts. 4 & 12)
 - A general description of steps to implement UNFCCC (Arts. 4 & 12)
 - Proposals of projects for financing (Art. 12)

In addition, the 16th and 17th Conference of the Parties to the UNFCCC Conference of the Parties issued guidelines stating that national adaptation measures should use country-driven, gender-responsive, participatory, and transparent approaches that consider vulnerable groups.⁴

Requirements of the Paris Agreement

The Paris Agreement superseded the previous Kyoto Protocol. Under the Paris Agreement, Bhutan is expected to do the following⁵:

⁴ United Nations Climate Change Secretariat, Considerations Regarding Vulnerable Groups, *Communities and Ecosystems in the Context of the National Adaptation Plans* (2018):7, <https://unfccc.int/sites/default/files/resource/Considerations%20regarding%20vulnerable.pdf>

⁵ Paris Agreement, 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (Paris) 12 December 2015, in force 4 November 2016, 3156 UNTS 79 (2015) (2015 Paris Agreement)

- Prepare/communicate Bhutan's National Determined Contributions (NDCs) to the UNFCCC Secretariat, including domestic mitigation measures that follow a successive progression, with information that satisfies the requirements for clarity, transparency, and accordance with CoP decision 1/CP.21 and other CoP decisions (Art. 4); develop and periodically communicate to the Secretariat the adaptation plans, policies, and measures, including Bhutan's national adaptation plan, NDCs, and national communications (Art. 7)

- Account for NDCs, in accord with the Paris Agreement and CoP requirements (Art. 4)
- Strive to formulate long-term greenhouse gas emissions strategies (Art. 4)
- Comply with a transparency framework, including NDCs and biennial reports, international assessments and consultations, where clarity of progress towards NDCs requires information on (Art. 13)
 - National inventory report of anthropogenic emissions using good practice methods of IPCC
 - Information tracking progress on NDCs
 - Climate change impacts and adaptation
 - Information on the financing/technology/capacity-building needed and received
 - NOTE: Information submitted under Arts. 7 and 9 must be under technical expert review
- Least Developed Countries (LDC) may prepare/communicate strategies to lower greenhouse gas emissions that reflect their special circumstances
- Adaptation measures should follow a country-driven, gender-responsive, participatory, and transparent approach that considers vulnerable groups (Art. 7)
- There should be enhancement of cooperation in accord with the Cancun Adaptation Framework, particularly through sharing of information, best practices, lessons, and scientific research (Art. 7); there shall be cooperation in the enhancement of climate change education and awareness (Art. 12)

National Climate Change Laws

To assist fulfilment of State obligations in international law regarding climate change and to fulfil national policies, a State may create a dedicated climate change law or other laws that have relationships with climate change. It is important to stress that there is no single form of climate change law that is adopted by states. Therefore, decision-making related to climate change legislation is not a binary option between either having a climate change law or not. It is a question that pertains to the specific needs and objectives of a state and the law, policies and institutions that they already have, their future objectives and how a law or laws could potentially facilitate the accomplishment of those objectives. As such, the inclusion of a national climate change law or laws does not necessarily entail elimination of existing laws that reference climate change.

National climate change laws can serve a variety of different purposes. Some states adopt a climate change law that has the main purpose of setting greenhouse gas reduction targets. Such approaches commit successive national governments to climate reduction targets over the long term, often with the target of achieving net zero greenhouse gas emissions by a specific year (such as 2050). Some countries adopt framework laws that create the

institutional frameworks through which climate change mitigation and adaptation is integrated into national law and policy. Some states adopt specific individual laws that are dedicated to enabling specific policies related to climate change such as carbon trading and pricing regimes, climate taxation, financing, forestry, carbon monitoring and reporting, climate related investment and so on. Finally, some countries integrate climate law and policy into existing general national framework environmental law.

Generally, climate change laws can facilitate several forms of action, such as those detailed below:⁶

- Enable governments to overcome challenges in administrative, political, and legal accountability; provide horizontal coordination in terms of integration of climate change actions across sectors; provide vertical coordination in terms of alignment of climate change actions at national and sub-national levels in government and civil society; and clarify accountability mechanisms.
- Focus national and sub-national political discourse between stakeholders by increasing the visibility of climate change in national politics; draw public attention to climate change; and prevent regression in political action on climate change.
- Prompt initiatives for legal reform; enable integration of climate into policymaking across different issues; and foster greater certainty regarding the relevance of climate change in wider national policy deliberations.
- Increase public awareness of climate change governance; endow civil society with mechanisms for participation in climate change governance; and strengthen broader government engagement and communication with the public across all laws and policies related to climate change.
- Mobilise social transformation goals; encourage shifts in international and national financial flows; and promote greater innovation of mitigation and adaptation measures within society.

Framework climate change laws

Framework climate change laws deserve specific mention as they typically contain core provisions that specify each of the following⁷:

- Carbon targets and carbon budgets
- Planning and policy processes
- Public sector institutions and mandates, as well as independent advisory bodies
- Reporting, assessment, and review of progress

⁶London School of Economics, *Impacts of Climate Framework Laws: Lessons from Germany, Ireland, and New Zealand* (2024), <https://eprints.lse.ac.uk/129305/1/Impacts-of-climate-framework-laws.pdf> ; Detlef Jahn, The Stringency and Potential Impact of Climate Laws and Policies in the European Union and the 21 OECD Countries, *NPJ Climate Action* (2024), <https://www.nature.com/articles/s44168-024-00175-5> ; Johnathan Guy, Esther Shears, and Jonas Meckling, National Models of Climate Governance among Major Emitters, *Nature Climate Change* (2022), <https://www.nature.com/articles/s41558-022-01589-x>

⁷ Ibid.

In addition, a framework climate change law can contain provisions that deal with issues specific to national interests, such as⁸:

- Institutional capacity-building
- Requirements for future laws related to climate change
- Accountability mechanisms
- Private sector and public sector coordination
- Civil society participation

Formulation of a national framework climate change law incurs several considerations: 1) direct or indirect approaches to climate change, 2) mitigation or adaptation to climate change, and 3) centralisation or decentralisation of processes for crafting and enacting climate change measures.

Commencing with direct and indirect approaches, direct approaches seek to articulate mitigation and adaptation strategies with an express focus on the causes and impacts of climate change, while indirect approaches seek to embed climate change measures within existing legal regimes. Next, mitigation and adaptation relate to different aspects of efforts to counter climate change, with mitigation indicating a focus on limiting or reducing carbon emissions and adaptation referring to actions that prepare human populations for the impacts of climate change and the requirements of disaster management. Last, centralisation (alternatively indicated by the term ‘unicentrism’) and decentralisation (alternatively indicated by the term ‘polycentrism’) reflects the placement of authority in governance, with centralisation (alternatively called ‘top-down’) involving a locus of planning and decision-making within a central national institution and decentralisation (alternatively called ‘bottom-up’) pursuing a horizontal and vertical dissemination of planning and decision-making to include diverse stakeholders across different sectors (government, civil society, and private sector) and multiple levels of State and society (with the State being the national level and society being the sub-national level).⁹

Global Trends

Global trends indicate some movement towards dedicated national framework climate change laws. There are currently more than 60 States with national framework climate change laws, with others contemplating creation of their own national laws focused on climate change. However, it must be emphasised that by 2024 an additional 100 States had sought to integrate their duties to climate change across their existing laws.

⁸ Ibid.

⁹ London School of Economics, *Impacts of Climate Framework Laws: Lessons from Germany, Ireland, and New Zealand* (2024), <https://eprints.lse.ac.uk/129305/1/Impacts-of-climate-framework-laws.pdf> ; Navroz Dubash, Design National Framework Climate Laws to Enable Low-Carbon Resilient Transformation, *Science* 383(6684) (2024); Centre for Policy Research, *Climate Governance Functions: Towards Context-Specific Climate Laws* (2022), <https://cprindia.org/briefsreports/climate-governance-functions-towards-context-specific-climate-laws/> ; Benjamin Sovacool, An International Comparison of Four Polycentric Approaches to Climate and Energy Governance, *Energy Policy* 39 (2011), 3832-3844.

Notable examples of national framework climate change laws that have been deemed effective include the United Kingdom's Climate Change Act 2008, South Korea's Framework Act on Low Carbon, Green Growth 2010 and later Carbon Neutral Framework Green Growth Framework Act to Tackle the Climate Crisis 2021, and Kenya's Climate Change Act 2016.

While similar in their core components, framework climate change laws are different across jurisdictions. The United Kingdom looks more towards mitigation instead of adaptation, with its climate change law provisions prescribing emissions targets and associated institutions and procedures to achieve those targets. The United Kingdom's approach is direct, in that mitigation is contained within its national climate change law rather than being embedded within different laws. South Korea's 2010 climate change law was more embedded in the sense that it sought to connect climate change with the country's larger development strategies by encouraging businesses to follow green growth strategies. South Korea's later 2021 climate change law, in contrast, moved the country towards a net zero-target approach that was more evocative of the United Kingdom's climate change law. Kenya, for its part, has emphasised adaptation, with its provisions seeking to address concerns for vulnerable populations impacted by climate change. To do so, Kenya pursues a decentralised system intended to encourage bottom-up innovation of ideas from communities and local government.¹⁰

Examples of countries that have adopted alternative approaches or that do not currently have any specific laws related to climate change include the following examples. The United States has not adopted a framework law related to climate change, but the Inflation Reduction Act (2022) is significant as it authorises billions of dollars for renewable energy and climate related investment. Nepal does not have a specific climate change law, but it replaced its Environment Protection Act 1997 with the Environment Protection Act 2019. The 2019 Act includes a chapter relating to climate change which provides for: the study of the impacts of climate change, the provision of information, the development of adaptation plans, the role of authorities at the national, provincial and local levels relating to implementation of those plans, the power to carry out mitigation, the determination of technical standards, and the power to engage in carbon trading.

Beyond the aforementioned countries, there are additional climate change laws that are accessible via the on-line database entitled Climate Change Laws of the World (<https://climate-laws.org/>).

Options For Bhutan

It is clear from the preceding overview of global trends that there is no 'one size fits all' approach to climate change law. What is important for each state is that it adopts an approach to climate change law that meets its own specific needs in the most efficient and efficacious manner. Therefore, the specific characteristics of each country in terms of its pre-existing law, its existing institutional frameworks, its specific challenges in terms of mitigation and

¹⁰Navroz Dubash, Design National Framework Climate Laws to Enable Low-Carbon Resilient Transformation, *Science* 383(6684) (2024); Centre for Policy Research, *Climate Governance Functions: Towards Context-Specific Climate Laws* (2022), <https://cprindia.org/briefsreports/climate-governance-functions-towards-context-specific-climate-laws/>

adaptation, its financial frameworks and the extent to which climate change responsibilities are already integrated within different parts of government, will all have an influence on a state's approach to climate change law. Within the above range of alternative approaches, the specific options for Bhutan can now be considered.

Bhutan's current approach is described in its First Biennial Transparency Report 2024 to the UNFCCC, which indicates that Bhutan is addressing climate change through a suite of environmental laws. The range of laws encompass both mitigation and adaptation. In addition, Bhutan's environmental laws feature a range of approaches in planning and decision-making with varying degrees of decentralisation. Therefore, Bhutan's current approach to climate change can broadly be described as indirect, in terms of having climate embedded across different environmental laws. It is broad to the extent that those laws have provisions on both mitigation and adaptation; and inconsistent, in the sense that the laws exhibit differing degrees of decentralisation regarding climate change governance. It is notable that within the existing approach, although the NEC is central to overall policy relating to climate change, NEPA does not specifically refer to climate change and it is notable that NEPA does have specific chapters that relate to other key areas of importance such as Forestry and Biodiversity (Chapter V), Financing (Chapter VI) and Information and Citizen Participation (Chapter VII).

In bringing Bhutan's existing climate change legal regime closer to international standards, the key would be to determine the approach that most efficiently and effectively enabled it to achieve its climate related goals. The RGoB has set out its overall strategy in its Climate Change Policy issued by the NEC in 2020. This maps out the priorities and methods that Bhutan will adopt and so sets the policy requirements for potential legislative and institutional reforms. From the foregoing analysis of global trends, it is possible to identify several possible approaches, each of which has pros and cons. These can be characterised in terms of the following four options (which are referred to in summary in Stage 3 of the Roadmap provided in Section III of the Report):

Option 1 - No Immediate Legislative Changes

This approach would maintain the legislative and institutional status quo. This would leave DECC with control and responsibility for specific aspects of climate change. However, it would also require NEC to organically develop responsibilities within other ministries as and where necessary.

Advantages of this approach are that it does not require immediate action but in the long term may not be the most efficient approach. In the short term, staying within Bhutan's legislative and institutional status quo allows for expediency and enables flexibility, in that Bhutan would be able to maintain its current laws and institutions in relation to the broader slate of reforms that are currently underway in RGoB, such that climate change-related changes could occur as a subset of ongoing deliberations over reform. In the long term, the status quo is problematic because it hosts conditions reflected in the feedback gathered from stakeholders during the workshops in 2025 and summarised within this present report, which included stakeholder concerns such as confusion over the distribution of climate change roles across RGoB offices, coordination between government offices with respect to climate

change issues, insufficient capacity, and laws and policies that are rendered outdated by ongoing political and legal reforms. While the process of reform within Bhutan's legal and institutional status quo is ongoing and may eventually address the issues, it may not do so at a pace or at a scale sufficient to resolve them. In addition, the status quo conditions, to the extent that they are responsible for the current difficulties raised by Bhutan stakeholders, may not be the most appropriate source of solutions to overcome those difficulties.

Option 2 - Amending Existing Law to Accommodate Climate Change Obligations

This approach would build upon existing legislation in a logical manner by amending each individual law with dedicated provisions regarding climate change, with the purpose of ensuring each amended law fits within a comprehensive legal regime on climate change. Such an approach would have the advantage of clarifying and demarcating specific roles and responsibilities, thereby directly addressing a substantial portion of the concerns raised by stakeholders in the workshops in 2025 and summarised in the present Report.

For example, NEPA 2007 could be amended to include a specific chapter related to climate change. This would clarify the relationship between the NECA and DECC vis-à-vis climate change, clarify the relationship between the NECA and other ministries relating to climate change, and provide a clear system through which climate policy could be implemented and further developed. The approach that Nepal has adopted (see below) could provide an example of this approach.

It can be noted that other countries that are in a similar position to Bhutan such as Suriname and Panama, in the sense that they are carbon negative, adopt something akin to this approach. Other comparative examples of this approach exist with countries such as the United States and Nepal. With respect to the United States, while there are no laws wholly directed to climate change, climate change provisions appear in the Inflation Reduction Act (2022) that directs billions of dollars for investments in renewable energy and climate-related

projects.¹¹ With respect to Nepal, there is similarly no dedicated climate change law, but the Environment Protection Act 2019 contains a chapter addressing climate change in terms of study of climate change impact; provision of climate information; plans for climate adaptation; the role of different levels of government in implementation of climate adaptation plans; and powers of government for mitigation, determination of technical standards, and carbon trading.¹²

Option 3 - Adopting specific individual laws to respond to specific climate change policy requirements

This approach identifies specific legal components related to climate change that aid the achievement of national climate change policies and then enacts legislation for each component. For example, a national climate change regime can encompass policies on topics

¹¹ Navroz Dubash, Design National Framework Climate Laws to Enable Low-Carbon Resilient Transformation, *Science* 383(6684) (2024); Centre for Policy Research, *Climate Governance Functions: Towards Context-Specific Climate Laws* (2022), <https://cprindia.org/briefsreports/climate-governance-functions-towards-context-specific-climate-laws/>

¹² Ibid.

that include mitigation, adaptation, scientific research and data, education, and finance. Each of the topics would be the focus of its own dedicated law.

Examples of laws addressing aspects of climate change exist in the United Kingdom, South Korea, Kenya, and Germany. With respect to the United Kingdom, the Climate Change Act 2008 centres itself on mitigation in the form of carbon emission targets, with directions for institutions and procedures to achieve those targets. Similarly, South Korea also focuses on carbon emissions in its Carbon Neutral Framework Green Growth Framework Act to Tackle the Climate Crisis 2021, which directs its provisions towards net-zero emissions goals. In comparison, Kenya's Climate Change Act 2016 focuses on adaptation, with its text aimed at assisting vulnerable populations adjust to the impacts of climate change.¹³ Germany also maintains a specific law for adaptation, with its Federal Climate Adaptation Act 2023 addressing adaptation in connection with net-zero targets, risk just transitions, vulnerable groups, renewable energy, strategies for individual economic sectors, and finance.¹⁴

Option 4 - Adopting a national framework climate change law

This approach pursues a single comprehensive national climate change law that serves as a unified framework that addresses all aspects of climate change within a dedicated legal instrument. Under this approach, considerations for a dedicated climate change law should pursue language that is relevant for the context of Bhutan's climate change experiences.

Examples of comprehensive national climate change laws exist in the European Union, the Philippines, and Chile. With respect to the European Union, Regulation 2021/119 on Establishing the Framework for Achieving Climate Neutrality (EU Climate Change Law 2021) centres itself on net-zero targets with mitigation strategies to reduce carbon emissions, but it also contains language on adaptation by European Union societies and economies. Further, it hosts provisions covering a broad range of topics that encompass climate finance, taxation, carbon trading, climate-related standards, risk analysis, just transitions, renewable energy, vulnerable groups impacted by climate change, and sector-specific climate strategies.¹⁵ Likewise, the Philippines has its Republic Act Number 9729 (Climate Change Act 2009) and a supplementary Republic Act 10174 (Amendment to Climate Change Act 2011), which together integrate climate change into the political system, particularly in policy-making, development plans, disaster risk reduction, and poverty reduction. Their contents include a breadth of topics that include mitigation, adaptation, public health, infrastructure, sector-specific economic strategies, renewable energy, finance, tax and insurance, vulnerable groups, and just transitions.¹⁶ Similarly, Chile has the Framework Law on Climate Change

¹³ Ibid.; Kenya, *Climate Change Act*, No. 11 of 2016, https://climate-laws.org/documents/climate-change-act-2016_3c27 (Climate Change Act 2016).

Federal Republic of Germany, *Federal Climate Adaptation Act*, 11 October 2023, https://climate-laws.org/document/federal-climate-adaptation-act-entwurf-eines-bundes-klimaanpassungsgesetzes-kang_555f?q=federal+climate+adaptation+act (Federal Climate Adaptation Act 2023);

¹⁵ European Union, *Regulation 2021/119 Establishing the Framework for Achieving Climate Neutrality*, 30 June 2021, https://climate-laws.org/document/regulation-eu-2021-1119-establishing-the-framework-for-achieving-climate-neutrality-european-climate-law_df60 (EU Climate Change Law 2021)

¹⁶ Republic of the Philippines, *Republic Act Number 9729*, 23 October 2009, https://climate-laws.org/documents/administrative-order-implementing-the-climate-change-act-2009_b66d (Climate Change

2022, which covers a comparably broad range of topics spanning mitigation; adaptation; natural and societal risk; integration of climate into policy-making, foreign direct investment, and taxation; vulnerable groups; sector-specific strategies; and finance.¹⁷

If Bhutan decides to seek a dedicated national framework climate change law, then some caution should be observed in relying on language in the national climate change laws of other States. Specifically, the laws of States such as those identified above should not be treated as templates that can be applied for other countries. Rather, the variety of climate change laws among countries should be viewed as indicative of the context-specific nature of climate change approaches.

To facilitate the formulation of a context-specific national framework climate change law, it is helpful to reflect on the desired governance functions addressing climate change. Examples of functions include the following¹⁸:

- Direction-setting – prescribe objectives and principles that guide national approaches regarding climate change
- Knowledge and expertise – create advisory bodies that produce knowledge and analysis related to climate change
- Strategy articulation – establish processes for creation of climate policies
- Integration – consolidate existing laws and policies by clarifying roles, responsibilities, and rules
- Mainstreaming – provide procedures that incorporate climate change in strategies, policies, and processes of national and subnational government
- Coordination – create mechanisms for horizontal coordination between public and private sectors as well as vertical coordination between national and sub-national levels of state and society
- Stakeholder engagement – create mechanisms for participation and alignment of stakeholders
- Finance mobilisation – create or mobilise funds for climate research, mitigation, or adaptation
- Oversight and accountability – specify processes for accountability

Additional Factors

In deciding between the above four options for reform, Bhutan should consider the issues associated with 1) its current context, 2) its future international and domestic commitments.

Act 2009); Republic of the Philippines, *Republic Act Number 10174*, 25 July 2011, https://climate-laws.org/documents/an-act-establishing-the-people-s-survival-fund-to-provide-long-term-finance-streams-to-enable-the-government-to-effectively-address-the-problem-of-climate-change-climate-change-act-2009-amendment_0b38 (Amendment to Climate Change Act 2011)

¹⁷ Ministerio del Medio Ambiente Chile, *Ley 21455*, 13 June 2022, https://climate-laws.org/document/framework-law-on-climate-change-chile_dc8a (Framework Law on Climate Change 2022)

Ibid.

1. Bhutan's current context

Bhutan must identify solutions that are feasible within the contextual constraints of Bhutan, whose limits are prescribed by Bhutan's scarcity of available expertise, staffing, infrastructure, and resources. Such constraints affect the decision between each of the four preceding options. The consequences of Bhutan's contextual constraints manifest in a range of issues which were highlighted by the feedback from stakeholder sessions in September and November 2025. Specifically, in those sessions, stakeholders identified the following issues regarding Bhutan's current legal regime for climate change:

- *A need to clarify governance of climate change responsibilities with respect to:*
 - Need for a centralized coordinating agency
 - Develop proper framework for DECC to fulfil its role of coordinating climate change-related laws and exploring the possibility of a dedicated climate law
 - Reform diplomacy to involve specialist knowledge on climate topics
 - Ensure that all ministries understand they are responsible not just DECC
- *Need to review relevant legal framework and standards to achieve:*
 - Agreement on institutional standards
 - Comprehensive legal review to resolve overlapping provisions
 - Policy integration
 - At local government level – clarify who regulates at gewog level
- *Need to address the lack of data systems to track progress and enable people to access information:*
 - Introduce systems for tracking progress
 - Implement more robust data systems that improve access to information
- *Need to increase resources allocated to climate change, including:*
 - Invest in nature-based solutions
 - Allocate dedicated funding in the Five-Year Planning cycle
 - Government support/co-finance of climate (and related) programmes
 - Ensure adequate regional representation on global climate forums such as the UNFCCC Conference of the Parties
 - Explore innovative finance options for nature based/ climate funds (e.g., invest carbon credits into adaptive measures)
 - Strengthen institutional capacity
 - Seek relevant expertise, technology, and infrastructure
 - Encourage Innovative technologies/capabilities

Aspirations to resolve the above issues call for identification of an approach that is responsive to the contextual constraints of Bhutan's limitations in capacity. That is, the above issues require a decision over which of the four options introduced in preceding discussions is most appropriate given Bhutan's limitations in expertise, staffing, infrastructure, and resources.

In considering which of the four options are most appropriate, it is helpful to situate them along a spectrum between indirect and direct approaches. The extremes of the spectrum are marked by an indirect approach, which embeds climate change within Bhutan's status quo laws, and a direct approach, which uses laws dealing specifically with climate change. Options 1-4 lie in between such extremes in the sense that they involve varying mixtures of the

indirect and direct strategies. Each option presents different advantages and disadvantages for the contextual constraints facing Bhutan.

Option 1 - No Immediate Legislative Changes

Currently, Bhutan's legal approach to climate change is indirect in the sense that it embeds climate change across existing environmental laws. As indicated by the findings in Section I, RGoB identifies those laws in its First Biennial Transparency Report 2024 to the UNFCCC, which presents a list of current environmental laws that constitute Bhutan's performance to its obligations under the UNFCCC. Such laws prescribe institutions responsible for Bhutan's climate change regime, with the DECC having control and responsibility for Bhutan's activities in regard to climate change and the NEC holding authority to emplace duties within Bhutan's various ministries when necessary. The system set by current environmental laws given by the First Biennial Transparency Report 2024 reflect a status quo, and hence effectively represent the exercise of Option 1 at the present time.

Within the context of Bhutan, Option 1 provides advantages and disadvantages. With respect to advantages, by keeping climate change within Bhutan's collection of environmental laws and Bhutan's broader legal system, Bhutan can keep climate change within its existing body of expertise, staffing, infrastructure, and resources. In short, Option 1 requires no immediate action by Bhutan. As a result, it incurs no additional expenses by RGoB and stays within the present capacity constraints limiting RGoB. In addition, it allows for expediency and flexibility, in that it connects climate change with wider deliberations regarding Bhutan's laws, keeping it in alignment with Bhutan's present development trajectory. Further, it still provides possibilities for longer-term reforms arising from growth in RGoB capacity in the future.

In terms of disadvantages, however, Option 1 limits progress for reforms in support of Bhutan's international climate obligations, since it restricts attention to climate change to whatever capacity is available. In addition, it risks a persistence of the issues raised by the feedback from the stakeholder sessions of September and November 2025, in that the status quo is responsible for producing the issues. It means a continuation of conditions fostering confusion and lack of coordination across RGoB offices. Last, it may not be the most efficient strategy in addressing climate change, since the multiple demands upon Bhutan's expertise, staffing, infrastructure, and resources means that climate change most compete for priority against various other policy concerns challenging Bhutan.

Option 2 - Amending Existing Law to Accommodate Climate Change Obligations

Bhutan, however, is in the process of legal reforms. Those reforms shift Bhutan closer to Option 2 to the extent that they involve amendments with respect to the topic of climate change. Should Bhutan continue to amend its various laws to include issues of climate change, it will move Bhutan away from its status quo legal regime for climate change.

Option 2 presents its own advantages and disadvantages. Regarding advantages, connecting climate change to Bhutan's ongoing legal reforms means that there are opportunities available to integrate climate change into reform agendas. Specifically, Bhutan's legal reforms can include actions that directly respond to the issues raised by the stakeholder sessions of

September and November 2025, including the feedback highlighting the needs to clarify roles and responsibilities of RGoB offices and resolve their confusion over coordination of activities regarding climate change. Option 2 allows for the actions within the existing framework of Bhutanese laws, with a notable example being possible amendments to NEPA 2007 that provide a dedicated chapter on climate change and explicitly address the confusion over roles and responsibilities between the NEC and other ministries. In addition, Option 2 offers the potential for efficiency in the sense that by locating climate change within Bhutan's legal reforms it makes the demands of climate change a part of the demands imposed by wider legal reforms that are already underway. Further, situating climate change as a part of ongoing reform agendas makes it possible to integrate climate change into the changes planned for Bhutan's legal system, presenting a potential for more coherence and coordination between climate change and Bhutan's future laws.

Regarding disadvantages, Option 2 shares similar challenges as Option 1 in terms of restricting climate change to whatever capacity is allocated to legal reform – that is, Option 2 constrains climate change to whatever expertise, staffing, infrastructure, and resources are directed towards Bhutan's legal reforms. Moreover, Option 2 means that climate change is only one of multiple issues encompassed within Bhutan's overall reform agenda. As a result, Option 2 essentially places climate change into competition with other issues for an allocation of the RGoB's scarce capacities, creating a risk that the reach of reforms regarding climate change will receive only limited attention from the RGoB. Such a scenario creates an attendant risk of reforms that are insufficient to overcome the issues associated with climate change. It creates a risk that reforms will be unable to resolve the concerns raised by the stakeholder sessions of September and November 2025, especially the confusion over roles and responsibilities between government offices regarding climate change. Above all, by focusing on amendments, Option 2 directs government efforts away from the possibilities of innovation available through entirely new legislation.

Option 3 - Adopting specific individual laws to respond to specific Climate Change policy requirements

Alternatively, there is the possibility of Option 3 in the sense that Bhutan's ongoing reforms may seek to produce new laws on diverse issues. The possibility of new laws may include a slate of new climate-change related laws, each dealing with a different facet of climate change such as mitigation, adaptation, climate-related finance, carbon trading, and others. In which case, they would constitute a more substantial change relative to the choice of amendments to the status quo.

Option 3 presents different advantages and disadvantages compared to Options 1 and 2. With respect to advantages, Option 3 provides direct focus upon climate change and elevates it as a concern for Bhutan's legal system. In addition, through the crafting of new laws dedicated to specific aspects of climate change, Option 3 allows the RGoB to craft specific laws for each climate change policy objective. Such specificity would include provisions in laws that target the problems raised by the feedback from the stakeholder sessions of September and November 2025. Option 3 would also provide the potential to quickly integrate new topics regarding climate change into Bhutan's development trajectory, with the RGoB simply producing new laws as new topics arise over time.

However, with respect to disadvantages, Option 3 requires more effort in that it calls for activity to craft and pass each new item of legislation through Bhutan's parliament. Moreover, it involves a greater demand upon expertise, staffing, infrastructure, and resources to design the appropriate content for each new law. Finally, as much as Option 3 may have the potential to address the confusion over roles and responsibilities raised by the stakeholder sessions of September and November 2025, the creation of new laws also has the potential to create more overlaps between government offices and thereby foster more confusion over roles and responsibilities.

Option 4 - Adopting a national framework climate change law

Option 4 involves the creation of a single comprehensive national climate change law that unifies Bhutan's legal regime into a coherent framework that clarifies and coordinates laws and institutions regarding climate change. As given by Annex II, this option was supported by stakeholders in the November workshop. As a framework, a national climate change law could accommodate other laws, including current and future laws, in the sense that a framework can serve a purpose of providing guidance with respect to the interpretation or drafting of other laws in a way consistent with Bhutan's climate change policy goals. As noted in previous sections, national climate change laws adopted by various countries reflect their respective perspectives regarding priorities for content, substance of provisions, and the specificity of language. Hence, for Bhutan, Option 4 means the possibility of creating a national climate change law appropriate for Bhutan's context.

Option 4 poses advantages and disadvantages that compare to previous options. In terms of advantages, Option 4 may incur less demand upon Bhutan's capacities relative to Option 3, in that the labour to enact a single new law in Bhutan's parliament may be less than the labour to enact multiple new ones. Further, in seeking a comprehensive framework, Option 4 provides the potential for a decisive restatement of Bhutan's diverse environmental laws into a single climate change regime that clarifies the existing confusion over roles and responsibilities across RGoB offices highlighted in the stakeholder sessions of September and November 2025. Moreover, as illustrated by the examples of national climate change laws presented in previous sections, a national climate change law has the potential to cover a broad range of topics that can include risk analysis, climate finance, taxation, carbon trading, renewable energy, just transitions, vulnerable groups, and sector-specific climate strategies.

However, Option 4 also presents disadvantages. Specifically, it may incur significant legislative overhaul, especially if a national climate change law seeks to be comprehensive. Aspirations to encompass a broad range of climate issues may cause a national climate change law to overlap with a broad slate of existing laws, creating a need to address potential conflicts either within the text of the national climate change law or through repeal and amendment of existing laws. In addition, it may be impossible to foresee all issues related to climate change at the time of crafting a national climate change law, leaving the possibility of further issues arising in the future that introduce more overlap and conflicts with existing laws. Finally, a comprehensive national climate change law entails complexity, since it attempts to address multiple facets of climate change within a single legal instrument. Such complexity risks demanding higher levels of expertise compared to other options, especially in regard to

designing content for a comprehensive national framework climate change law. Complexity also risks consuming more attention and time, imposing a larger drain upon available staffing, infrastructure, and resources relative to the preceding options described above. In essence, Option 4 may involve requirements beyond Bhutan’s limited capacities.

2. Future international and domestic commitments

The legal reforms associated with each of the four options above serve several international and domestic purposes regarding climate change.

With respect to international purposes, a growing number of states in the world have, or are enacting, laws related to climate change. If Bhutan has a goal of presenting itself as a model for State action on climate change, then it would align with global practices to support dedicated attention to climate change within Bhutan’s legal system.

With respect to domestic purposes, climate change is tied to impending impacts from Bhutan’s environment and development conditions. With respect to the environment, climate change is producing disproportionate impacts on the mountainous areas. As a predominately mountainous country, Bhutan is facing environmental changes consistent with such patterns, with Bhutan experiencing climate change that is creating existential hazards for Bhutan’s ecosystems, fresh water supplies, energy systems, habitable spaces, human infrastructure, and economy. Legal reforms dedicated to climate change would not only counter the growing climate change hazards impacting Bhutan but would also affirm the priority of climate change as a concern for Bhutan as a State. With respect to development, Bhutan is expanding the complexity of its legal system, with its progress towards the establishment of Gelephu Mindfulness City (GMC) involving the creation of a second legal system specific to GMC. Legal reforms regarding climate change would allow opportunities for guidance with respect to future legislation capable of accommodating the expansion of Bhutan’s laws to encompass GMC.

Bhutan’s Laws that Contain Climate Change Provisions

According to the First Biennial Transparency Report 2024 submitted by the Department of Energy and Climate Change to the UNFCCC, the following laws in Bhutan relate to climate change:

Constitution of the Kingdom of Bhutan 2008
National Environmental Protection Act 2007
Water Act of Bhutan 2011
Waste Prevention and Management Act 2009
Land Act 2007
Biodiversity Act 2023
Electricity Act 2001
Environmental Assessment Act 2000
Forest and Nature Conservation Act 2023
Mine and Mineral Management Act 1995
Pesticides Act 2000

Livestock Act 2001
Disaster Management Act 2013

Bhutan's Laws that Do Not Include References to Climate Change

Biosafety Act 2015
Road Act 2013
Seeds Act 2000
Food Act 2005
Plant Quarantine Act 1993

Online Survey and Workshop Consultation (See results of Survey in Annex I)

The online survey and workshop consultation highlighted areas that require further assessment and consideration.

The survey showed that there was a general concern relating to harmonisation across various laws and government ministries in Bhutan with respect to climate change.

The workshop consultation elicited more detailed comments relating to areas where work needs to be focussed. In particular, the workshop identified the following issues as posing the greatest problems for Bhutan's compliance with international climate change standards:

- Lack of resources
 - Limited institutional capacity (human resources and technology)
Research constraints
 - Limited financial support
 - Economic constraints
 - Lack of expertise, technology, and infrastructure
 - Difficulty in accessing Global Climate Funds
- Lack of coordination, with overlapping mandates and inconsistent legal framework that led to lack of clarity on mandates and responsibilities
 - Inconsistencies in domestic climate change policies and laws
 - Overlapping mandates among agencies with components scattered
 - Lack of coordination amongst institutions
 - Overlapping mandates between institutions and zero work on climate change requirements by some institutions
 - Lack of institutional memory
 - Lack of a central data repository
 - A need for Bhutan representatives to international events to share feedback – currently, institutions cannot track responses from international events regarding Bhutan's performance to its commitments
 - Regulatory vacuum, with gaps between different regulators on the ground
 - Lack of regulation for high polluting sectors
- Strategic threats
 - Maintaining balance between conservation and economic development

- Trans-border climate vulnerability, since Bhutan is located between two large countries
- Weak awareness of climate change in Bhutan communities – climate change means different things to different people
- Geographic challenges, since Bhutan is a landlocked country

Citizen Engagement – Procedural Environmental Rights

Introduction

Procedural environmental rights are those rights that enable citizens to engage meaningfully in decision-making processes made by the State relating to the environment.

They refer specifically to the rights to information relating to the environment, the right to participate in decision-making relating to the environment, and the right of access to justice relating to the environment.

They are recognised in both environmental law and human rights law, and their basis is found in numerous international law treaties.¹⁹

Within Bhutanese law these rights are included within the Constitution of the Kingdom of Bhutan 2008, and they are often included in different laws relating to different aspects of environmental protection. The purpose of this subsection is to consider the levels of inclusion, their effectiveness and efficiency and the extent to which they meet international law and international best practice.

Specific comments and recommendations made in this section of the report relate directly to Stage 2 of the roadmap in Section III of this report.

International Law and Best Practice

At the international level, procedural environmental rights have been well established through their recognition in Principle 10 of the Rio Declaration in 1992 that resulted from the United Nations Conference on Environment and Development (UNCED).²⁰ Their status has been enhanced significantly due to the acknowledgement by the United Nations General Assembly of the Right to a Clean, Healthy and Sustainable Environment in 2022.²¹ This right includes the procedural environmental right of access to information, the right to participate in decision-making and the right of access to justice. These rights can be traced back to the Universal Declaration on Human Rights (UDHR),²² and are now evidenced through regional human rights treaties as well as through many international environmental law treaties.

¹⁹ Convention on Access to Information, Public Participation and Decision-Making and Access to Justice in Environmental Matters (Aarhus) 25 June 1998, in force 30 October 2001, 38 ILM 517 (1999) (1998 Aarhus Convention); Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazu) 4 March 2018, in force 22 April 2021, UNTS 3388C.N.195 (2018 Escazu Convention).

²⁰ UN Conference on Environment and Development (Rio de Janeiro). , UN Doc. A/CONF. 151/26/Rev.1. (UNCED).

UN GA Resolution. The Human Right to a Clean, Healthy and Sustainable Environment. UN Doc. A/Res/76/300.

Universal Declaration on Human Rights (1948) GA Res 217, UN GAOR, 3rd Sess., UN Doc. A/810 (1948) (UDHR)

This section will deal with each of these three procedural environmental rights separately as they appear separately within different parts of Bhutan’s law. It provides comments that are related to the recommendations and roadmap provided in section III of this report concerning these rights and the processes that facilitate them.

a) The Right to Information

Bhutan’s Law that Includes the Right to Information / Provision of Information for the Public

The Constitution of the Kingdom of Bhutan 2008: Article 7(3)

Biodiversity Act 2022 see s17(2), s20(7), s21, s23

Environmental Assessment Act 2000 ss. 26-31

Waste Prevention and Management Act 2009 s. 39

Biosafety Act 2015 s. 35

National Environmental Protection Act s.15, ss. 81-85

Food Act 2005 ss 31(b) and (c)

Bhutan’s law that does not include the Right to Information

The Water Act 2011

Forest and Nature Conservation Act 2022

Pesticides Act 2000

Livestock Act 2001

Mines and Minerals Act 1995

Mines and Minerals Bill 2020

Road Act 2013

Seeds Act of Bhutan 2000

Electricity Act 2001

Disaster Management Act 2013

Plant Quarantine Act 2003

International Law and Best Practice Instruments

United Nations Declaration on Human Rights 1948²³

UN General Assembly Resolution concerning the Right to a Clean, Healthy and Sustainable Environment.²⁴

Aarhus Convention 1997²⁵

Escazu Convention 2018²⁶

World Bank Policy on Access to Information 2010 (revised 2013)²⁷

²³ Ibid.

²⁴ Supra n. 13

²⁵ Supra n. 11

²⁶ Supra n. 11

²⁷ The World Bank policy on access to information (English). Washington, DC: World Bank. (2010)

<http://documents.worldbank.org/curated/en/391361468161959342>

Online Survey and Workshop Consultation (See results of Survey in Annex I)

The online survey and workshop consultation highlighted areas that require further assessment and consideration.

The survey showed that there was a general concern relating to civic engagement at all levels. The comment that appears to sum up this concern is that there is a need for improved civic engagement, 'from start to end'.

The workshop consultation elicited more nuanced and insightful comments relating to areas where work needs to be focussed. The following themes can be highlighted:

The need for a more structured framework for collecting and sharing information and consistent guidelines. Currently the processes are specific to each agency, and this means there is lack of consistency and efficiency.

More capacity building and knowledge sharing in this area is required.

Sometimes information is not shared swiftly. A more efficient system is required.

One person suggested that the DECC website becomes the one place to look with all departments using it to communicate information.

It was noted that people in rural areas do not have access to the internet and therefore access to information is more difficult.

Information should be provided in accordance with the agency mandates.

Better communication between sectoral agencies and streamlining of processes would facilitate an improved and more efficient system.

Specific Comments relating to the Right to Information

It is recommended that the processes related to the right to information are reviewed so that they can be harmonised and then applied to the relevant areas of law where they are applicable. This would create efficiencies and a common system that is applicable to the public across all aspects of environmental law. It is recommended that the issues highlighted in the workshops and surveys relating to accessibility and a common system are particularly addressed in the development of those processes.

A process or processes for the right to information should be built upon the broader work related to information systems as detailed in Stage 1 of the roadmap in Section III of this report.

Section III also provides for the right to information in stage 2 of the roadmap.

Adopting standardised processes in relation to citizens' right to information will provide the basis upon which standards of international best practice can be met.

b) Right to Participate in Decision-Making

Bhutan's Law that includes the Right to Participate in Decision-Making / Provisions relating to Public Consultation

The Constitution of the Kingdom of Bhutan 2008, Arts 22(1) and (3)

The Water Act 2011 s. 23(b); s. 47
Forest and Nature Conservation Act 2023 s. 9 (5)
Environmental Assessment Act 2000 s. 32(4)
Waste Prevention and Management Act 2009 s. 38
Biosafety Act 2015 s.22
National Environmental Protection Act 2007 ss. 86-7.

Bhutan's Environmental Law that does not include the Right to Participate in Decision-Making

Pesticide Act 2000
Livestock Act 2001
Mines and Minerals Act 1995
Road Act 2013
Seeds Act of Bhutan 2000
Electricity Act 2000
Food Act 2005
Disaster Management Act 2013
Plant Quarantine Act 1993

International Law and Best Practice

United Nations Declaration on Human Rights 1948
UN General Assembly Resolution concerning the Right to a Clean, Healthy and Sustainable Environment.
Aarhus Convention 1997
Escazu Convention 2018
World Bank Policy

Online Survey and Workshop Consultation (See results of Survey in Annex I)

The online survey and workshop consultation highlighted areas that require further assessment and consideration in the field of public participation in decision-making.

The survey highlighted the fact that greater awareness of environmental law and the rights that people have would help to improve participation in decision-making.

The workshop highlighted several areas where it was clear that law and regulation can not only be harmonised but better developed in terms of its application and effectiveness.

The following themes emerged:

- There was a concern that public consultation can be a tick box exercise if not performed properly.
- Currently there are fewer women and young people included and involved in consultation processes, especially in some regions.
- Technical information in environmental assessment reports can make inclusivity a major challenge.
- Lack of literacy can also make inclusivity challenging.
- Other citizens that may find it difficult to participate are those with disabilities for example. Information should also be available in braille and through sign language.
- Many meetings are attended mainly by men and therefore gender inclusivity is a challenge.
- Citizens cannot engage as they do not know which ministry to go to.
- There are questions as to the consistency / quality of consultation at the local levels.

Specific Comments relating to Public Participation

It is recommended that the processes of public consultation are reviewed as a set of processes that can be harmonised and then applied to the relevant areas of law where they are applicable. This would create efficiencies and a common system that is applicable to the public across all aspects of environmental law.

It is recommended that the issues highlighted in the workshops and surveys relating to equality, consistency of application and accessibility are particularly addressed in the development of those processes.

The processes for public participation should be built upon an information system as detailed in Stage 1 of the roadmap in Section III of this report.

Section III also provides for public participation in stage 2 of the roadmap.

Adopting standardised processes in relation to public participation will provide the basis upon which standards of international best practice can be met.

c) Right of Access to Justice

Bhutan's Law that Includes the Right of Access to Justice in Environmental Matters

The Constitution of the Kingdom of Bhutan 2008, Arts 7(23)

Environmental Assessment Act 2000?

National Environmental Protection Act 2007 s. 16 and ss.88-91

Food Act 2005 ss 69-70.

Seeds Act 2000 s. 10

Electricity Act ss. 34(5); 42(4); 43(4); 47(2); 53(4).

Bhutan's Environmental Law that does not include the Right of Access to Justice

Water Act 2011
Forest and Nature Conservation Act 2023
Environmental Assessment Act 2000
Waste Prevention and Management Act 2009
Biosafety Act 2015
Livestock Act 2001
Mines and Minerals Act 1995
Road Act 2013
Disaster Management Act 2013
Plant Quarantine Act 1993
Pesticide Act 2000

International Law and Best Practice

United Nations Declaration on Human Rights 1948
UN General Assembly Resolution concerning the Right to a Clean, Healthy and Sustainable Environment.
Aarhus Convention 1997
Escazu Convention 2018
UN Environmental Rule of Law Report (II)
World Bank Policy

Online Survey and Workshop Consultation (See results of Survey in Annex I)

The workshop highlighted several areas where access to justice related to the environment could be further enhanced:

- Where there is a lack of literacy it is a challenge for people to exercise their rights.
- Where there are financial constraints, people are often unable to exercise their rights.
- There is a lack of legal aid from the Government to support citizens in this regard.
- The concerns of citizens are often lost in bureaucratic processes.
- Courts are not disability friendly.
- Legal and policy guidance from the Government relating to access to justice should be clearer.
- Bhutan needs a specialised bench to adjudicate on environmental cases and put cases on a fast track where necessary.
- There is a need to provide a neutral platform where / or through which people can challenge processes / decisions.

Specific Comments relating to Access to Justice

It is recommended that the processes of Access to Justice are reviewed as a set of processes that can be harmonised and then applied to the relevant areas of law where they are applicable. This would create efficiencies and a common system that is applicable to the public across all aspects of environmental law.

It is recommended that the issues highlighted in the workshops and surveys relating to accessibility are particularly addressed in the development of those processes.

Within the context of these processes, the role of the Green Bench should be addressed accordingly.

A process or processes for access to justice should be built upon an information system as detailed in Stage 1 of the roadmap in Section III of this report.

Section III also provides for access to justice in stage 2 of the roadmap.

Adopting standardised processes in relation to access to justice will provide the basis upon which standards of international best practice can be met.

Environmental Impact Assessments

Introduction

Environmental impact assessments (EIA) were first introduced in some countries in the late 1960s as mechanisms to anticipate the potential negative effects of projects with a view to assisting with decision-making and where projects are approved to ensure that adequate mitigation for negative environmental impacts is built into the project design.

For over 50 years the science and practice related to environmental impacts assessments has developed internationally and become more sophisticated. Most countries include systems of EIA within their environmental law and administration although the quality of provision varies. Additionally, Strategic Environmental Assessments (SEA) have evolved. SEAs assess the potential negative impacts of plan, policies and programmes. SEAs now have an important role in a wide range of decision-making processes at Governmental level.

Specific comments and recommendations made in this section of the report relate directly to Stage 2 of the roadmap in Section III of this report.

International Law and Best Practice

The status of Environmental Impact Assessments is very well recognised at the international level. The Rio Declaration 1992 specifically provides for EIAs in Principle 17 and there are numerous international instruments that include mention of them.²⁸ It is well accepted that between states EIAs are recognised requirement under customary international law. For example, the ICJ Pulp Mills Case 2010 confirmed the view of international jurists that EIAs were required in certain situations as a matter of 'general international law'.²⁹ Some regions have developed international treaties related to environmental impact assessments. For example, the Economic Commission for Europe's Espoo Convention (1991)³⁰ which relates to EIAs in a Transnational Context. There is currently no global treaty for EIAs. However, certain international institutions such as the World Bank (WB) have developed best practice at the international level through policies and guidance.

Bhutan's Law that Includes Reference to Environmental Assessments

Environmental Assessment Act 2000

National Environmental Protection Act 2007

Water Act 2011

Waste Prevention and Management Act 2009

Mines and Minerals Act 1995/Mines and Minerals Bill 2020

Electricity Act 2001

²⁸ UN Conference on Environment and Development (Rio de Janeiro), UN Doc. A/CONF. 151/26/Rev.1. (UNCED).

Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment) (2010) ICJ Reports 18.

³⁰ Convention on Environmental Impact Assessment in a Transboundary Context (Espoo) 25 February 1991, in force 10 September 1997, 30 ILM 802 (1991) (1991 Espoo Convention).

Bhutan's Law that does not Include reference to Environmental Assessments

Forest and Nature Conservation Act 2023

Biosafety Act 2015

Livestock Act 2001

Pesticide Act 2000

Biodiversity Act 2022

Road Act 2001

Seeds Act of Bhutan 2000

Food Act 2005

Disaster Management Act 2013

Plant Quarantine Act 1993

Online Survey and Workshop Consultation (See results of Survey in Annex I)

The online survey and workshop consultation highlighted areas that require further consideration in the field of environmental assessments.

The survey highlighted the fact that much of the law was dated but also that there was a lack of enforcement. Additionally, responses highlighted the need for harmonisation and better engagement with local communities. Also, the practical budgeting aspects of environmental assessments could be improved.

The workshop highlighted several areas where it was clear that law and regulation can not only be harmonised but better developed in terms of its application and effectiveness. The following are some of the key points:

- The NEC delegates authority to a competent authority but there is no guarantee that they will follow guidance and there is no inspection/review system to check results. Better reporting would strengthen the systems.
- The District Environment Committees have a mandate, but this is not practised.
- There is a lack of a central data repository.
- Lack of monitoring post development. Generally monitoring and compliance could be much improved. More site visits are needed and greater involvement of the local communities.
- Need to streamline EA process between sectors.
- Sometimes there is political pressure to approve developments.
- Processes could be more efficient if there was stronger institutional coordination between NEC and district authorities.
- Institute reporting mechanisms would improve data management and lead to better efficiency.
- Better capacity within the Government with more in-house experts would improve the quality of EAs.
- Increased fairness including transparency and access to information would improve the quality of EA processes.
- Better awareness of the EA and of the digital platform (online system) would improve efficiency.

- The processes could be more efficient if they were simplified.
- Processes need to be more accessible to the public.
- Processes need to be more transparent.
- The composition of the NEC could be addressed to increase fairness.

Specific Comments relating to Environmental Impact Assessments

It is recommended that the processes of Environmental Impact Assessments and Strategic Environmental Assessments are reviewed as a set of processes that can be harmonised and made consistent across all relevant areas of law and the Governmental agencies where they are applicable. This would create efficiencies and a common system that could then be applied to all relevant areas of law and against which common standards could be adopted and applied.

As emphasised in ‘Information, Systems and Processes’ within Section II of this report, effective environmental assessment processes are heavily dependent on efficient and comprehensive information systems that serve the relevant agencies and stakeholders.

It is recommended that the issues highlighted in the workshops and surveys relating to consistency across different agencies are considered accordingly.

A process/processes for environmental assessments should be developed / refined as detailed in Stage 2 of the roadmap in Section III of this report.

Once that process / processes have been developed / refined they can then be incorporated into the relevant areas of law, including of course the National Environmental Protection Act 2007 and the Environmental Assessment Act 2000.

Adopting standardised processes in relation to environmental assessments will provide the basis upon which standards of international best practice can be met.

Biodiversity

Introduction

This section firstly provides an overview of the relevant international law and best practice that are relevant to law that relates to biodiversity.

It secondly draws on this overview, feedback from the survey and workshops to provide comment and analysis that is relevant to the stages of the recommendations, roadmap and guidance provided in Section III of this report.

International Law and Best Practice

The term ‘biodiversity’ refers to the full variety of living organisms, and encompasses genetic diversity within a single species, species diversity across a range of flora and fauna, and ecosystem diversity hosting flora and fauna. Such a scope incurs a corresponding breadth of legal regimes to address the multiple forms of diversity that fall within the concept of biodiversity. Within international law, the topic of biodiversity largely falls under the regime constituted by the Convention on Biological Diversity 1992 (CBD)³¹ and its supplementary instruments encompassing the Kunming-Montreal Global Biodiversity Framework, the Cartagena Protocol 2000, and the Nagoya Protocol 2010.³²

In brief, the international regime formed by the CBD, Kunming-Montreal Global Biodiversity Framework, Cartagena Protocol, and Nagoya Protocol involves a collective body of institutions and instruments. With respect to institutions, the CBD establishes an annual Conference of the Parties (CoP); a Secretariat; a Subsidiary Body for Scientific, Technical, and Technological Advice; and a Subsidiary Body on Implementation. The CoP hosts representatives of State parties once every two years, and serves as the central authority for setting agendas, issuing workplans, creating new biodiversity bodies, reviewing member progress reports, and making amendments. The Secretariat is a permanent entity situated in the United Nations Environment Programme, and works to organise meetings, produce documents, disseminate information, and assist members with implementation of CoP workplans. The Subsidiary Body for Scientific, Technical, and Technological Advice provides advice on the status of biodiversity along with scientific, technical, and technological recommendations to the CoP. The Subsidiary Body on Implementation functions to assess implementation of CoP workplans, strengthens activities for implementation, devise appropriate strategies to improve implementation, and sustain operations tied to the CBD and its supplementary protocols.

³¹ Convention on Biological Diversity (Rio de Janeiro) 5 June 1992, in force 29 December 1993, 31 ILM 822 (1992) (1992 CBD);

Cartagena Protocol on Biosafety (Cartagena) 29 January 2000, in force 11 September 2003, 2226 UNTS 208 (2003) (2003 Cartagena Protocol); Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity (Nagoya) 29 October 2010, in force 12 October 2014, 3008 UNTS 3 (2014) (2010 Nagoya Protocol); Kunming-Montreal Global Biodiversity Framework CBD/COP/15/L.25 (Montreal) 22 December 2022 [2022 Kunming-Montreal Global Biodiversity Framework].

With respect to instruments, the corpus formed by the CBD, Kunming-Montreal Global Biodiversity Framework, Cartagena Protocol, and Nagoya Protocol covers several complementary issues. The CBD deals with the general topics of conservation and sustainable use of biodiversity, the Kunming-Montreal Global Biodiversity Framework sets a global agenda for biodiversity, the Cartagena Protocol focuses on the movement of living modified organisms (LMOs) resulting from biotechnology, and the Nagoya Protocol addresses genetic resources with the fair and equitable sharing of benefits from the use of genetic resources. Each instrument prescribes principles and procedures that constitute requirements for State parties to fulfil. For Bhutan, the requirements contained in each are summarised below:

Requirements of the CBD

- Principles
 - Cooperation—international and local, technology and scientific
 - Conservation and sustainable use
 - Identification and monitoring biodiversity, w mechanisms for data
 - *In situ* conservation with protected areas and ecosystems, with traditional knowledge, via national laws and management
 - *Ex situ* conservation with facilities for conservation/research/recovery
 - Incentive measures
 - Research and training for scientific and technical education
 - Public education and awareness
 - Impact assessment
 - Access to genetic resources
 - Access and transfer of technology
 - Exchange of information
 - Access to biotechnology, with effective participation
- Communications and reporting—NBSAP, reports
- National legislation to achieve principles

Requirements of the Kunming-Montreal Global Biodiversity Framework

The Kunming-Montreal Global Biodiversity Framework, while not a formal treaty, is a product of a decision by the 15th Conference of the Parties (CoP) for the CBD and so holds the same status as other CoP decisions under the terms of the CBD. In brief, the Kunming-Montreal Global Biodiversity Framework calls for the following:

- Goals
 - Integrity of ecosystems
 - Sustainable use of ecosystem resources
 - Access and benefits-sharing, both monetary and non-monetary
 - Adequate means of implementation for all CBD state parties, including financial resources, capacity-building, technical and scientific cooperation, and access to and transfer of technology adequate to implement the Kunming-Montreal Global Biodiversity Framework
- Agenda
 - Reducing threats to biodiversity, with targets that include having 30% of land and water areas under effective restoration of biodiversity, 30% of land and

water areas reserved for ecological conservation by 2030, and minimising impacts of climate change

- Sustainable use and benefits-sharing, with targets that include restoration and enhancement of ecosystem services, increasing access and benefits from green and blue areas for urban populations, and promote capacity-building for sharing of benefits
- Mainstream biodiversity, with targets that include integrating biodiversity into policy planning and implementation; strengthening capacity for biosafety measures, strengthening capacity for technology; improving access to information; and ensure participation and access to justice for vulnerable groups including Indigenous peoples, local communities, women, children, people with disabilities, and human rights defenders.

Requirements of the Cartagena Protocol

- Principles
 - Precautionary Principle
 - Cooperation—international & local
 - Monitoring and reporting
 - Safe handling, packaging, and transport of living modified organisms
 - Access to information
 - Risk assessment
 - Notice
 - Public awareness
 - Public participation
- Requirements regarding procedures
 - Advance Informed Agreement regarding the transboundary movement of living modified organisms
 - Notifications and acknowledgement of notifications
 - Decisions regarding importation
 - Procedure for living modified organisms used as feed
 - Risk assessment in scientifically sound manner
- Institutional requirements
 - Competent National Authority
 - National Focal Point—liaison with the CBD Secretariat and Biosafety Clearinghouse
 - Mechanism for risk management
- Reporting requirements—report to the CoP
- National legislation to achieve principles

Requirements of the Nagoya Protocol

- Principles
 - Fair & equitable benefits-sharing
 - Access to genetic resources, traditional knowledge
 - Prior informed consent
 - Promote research for conservation and sustainable use
 - Cooperation—international

- Support for traditional knowledge
- Participation and involvement of Indigenous and local communities
- Monitoring use of genetic resources
- Public awareness-raising
 - Transfer and collaboration of technical and scientific research
- Requirements regarding procedures
 - Prior informed consent
 - Certificate of compliance
 - Mutually Agreed Terms, Model Contract Clauses, and Codes of Conduct
- Institutional requirements
 - Competent National Authority
 - National Focal Point
 - National Access and Benefit-Sharing Clearing-House
- Reporting requirements—report to CoP
- National legislation to achieve principles

Bhutan’s Laws that Include References to Biodiversity

According to Bhutan’s Fifth NBSAP, the following Bhutanese laws relate to biodiversity:

The Constitution of the Kingdom of Bhutan 2008
 Water Act 2011
 Waste Prevention and Management Act 2009
 Local Government Act 2009
 National Environmental Protection Act 2007
 Land Act 2007
 Livestock Act 2001
 Biodiversity Act 2022
 Biosafety Act 2015
 Environmental Assessment Act 2000
 Seeds Act 2000
 Pesticide Act 2000
 Forest and Nature Conservation Act 2023
 Plant Quarantine Act 1993

Bhutan’s Laws that Do Not Include References to Biodiversity

Mines and Minerals Management Act 1995
 Road Act 2013
 Electricity Act 2001
 Food Act 2005
 Disaster Management Act 2013

Online Survey and Workshop Consultation (See results of Survey in Annex I)

The online survey and workshop consultation highlighted areas that require further assessment and consideration.

The survey showed that there was a general concern relating to harmonisation across various laws and government ministries in Bhutan regarding biodiversity, particularly in terms of clarifying mandates in situations where issues of biodiversity overlap with issues of water, forestry, waste management, food, biosafety, seeds, plants, and agriculture.

The workshop consultation elicited more detailed comments relating to areas where work needs to be focussed. In particular, the workshop identified the following issues as posing the greatest problems for Bhutan's compliance with international biodiversity standards:

- Governance and coordination
 - Absence of a single institute responsible for reporting and complying to international standards – currently there are different focal points for different conventions, such that different responsibilities to international protocols in different sectors are spread across different ministries
 - Absence of an effective coordination mechanism
 - Lack of effective partnerships between government offices
- Complex legal framework
 - There are many biodiversity related laws/policies
 - Bhutan uses a broad definition of biodiversity (complex)
 - There is a need to review and harmonise with multiple international instruments
- Lack of financial resources and human resources
 - Limited technical and scientific capacity (insufficient data/monitoring)
 - Lack of technical capacity
- Lack of public awareness and community engagement
 - Lack of public awareness of international laws – even well-educated people in Bhutan do not understand how international law affects a nation-state.
- Data and information deficiencies
 - Limited technical and scientific capacity (insufficient data/monitoring)
 - Lack of technical capacity
 - Limited financial resources and human resources
 - Legal and policy gaps, especially regarding access-and-benefits-sharing
- Threats to biodiversity
 - Developmental pressure (urbanization) – particularly impacts to biodiversity, invasive species, and human-wildlife conflict
 - Porous borders, which allows illegal business (including poaching)
 - Weak monitoring and evaluation, along with an absence of a robust data system

Specific Comments relating to Biodiversity

As detailed above, there are specific processes that are pertinent to the effective administration of law relating to biodiversity. Therefore, it is recommended that these are reviewed and harmonised within the process of review detailed in Stage 2 of the Roadmap detailed in Section III of this report.

Those processes include those related to: monitoring, enforcement, access to information, prior informed consent, environmental impact assessments, public participation and benefit sharing etc.

As emphasised in 'Information, Systems and Processes' within Section II of this report, effective processes are heavily dependent on efficient and comprehensive information systems that serve the relevant agencies and stakeholders. Therefore, those information systems are a foundational requirement for the effective functioning of law relating to biodiversity. Therefore, the review and revision of those systems detailed in Stage 1 of the Roadmap detailed in Section III is fundamental to an effective system.

It is recommended that the issues highlighted in the workshops and surveys relating to consistency across different agencies and capacity building are particularly considered.

Once the process / processes have been developed / refined under Stage 2 of the roadmap provided in Section III of this report, they can then be incorporated into the relevant laws that are relevant under Stage 4 of the Roadmap.

Adopting standardised processes as stated above will provide the basis upon which standards of international best practice detailed above can be met.

Water

Introduction

This section seeks to achieve two objectives. It firstly provides an overview of the relevant international law concerning water. It secondly provides commentary based on the analysis and feedback, that then forms part of the specific recommendations included in Section III.

International Law and Best Practice

The dynamics related to water within the context of environmental law are multifaceted. From a human rights perspective the right to water means that every citizen is entitled to sufficient potable water as a human right. From a commercial perspective, water is used in a range of industries including the agricultural and energy sectors. Therefore, laws must be put in place for individual businesses and industries that wish to access water resources to ensure that the water resources are not overused or polluted. Water sources themselves must be protected from pollution generally. Finally, there are sometimes international obligations related to water that result from transboundary water resources that may flow from one country to another. This means that international agreements are required to ensure that 'equitable utilization' of water courses is adhered to.

The Human Right to Water is now well established and recognised through General Comment no 15 (2003) to arts 11 and 12 of the International Covenant on Economic Social and Cultural Rights 1966.³³

The United Nations Convention on the Law of Non-Navigational Uses of International Watercourses 1997,³⁴ set out the principles upon which states should seek to achieve 'equitable and reasonable' shared use of the watercourse. Although Bhutan is not a party to this treaty many of the provisions within it are regarded as reflecting customary international law.

Best practice in this field is reflected through well run water basins and international watercourses that are shared by two or more countries.

Bhutan's Law that Includes reference to Water

Water Act 2011

Forest and Nature Conservation Act 2023

Environmental Assessment Act 2000

Waste Prevention and Management Act 2009

Biosafety Act 2015

³³ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, in force 3rd January 1976, Annex to UNGA Res. 2200 (XXI), 6 ILM 360 (1967) (1966 ICESCR); General Comment No. 15 OHCHR UN Doc. E/C.12/2002/11 (2003).

³⁴ Convention on the Law of Non-Navigational uses of International Watercourses (New York) 21 May 1997, in force 17 August 2014, 36 ILM 700 (1977) (1997 Watercourses Convention).

Livestock Act 2001
National Environmental Protection Act 2007
Mines and Minerals Act 1995 / Mines and Minerals Bill 2020
Road Act 2013
Electricity Act 2001

Bhutan's Law that does not include reference to Water

Seeds Act 2000
Biodiversity Act 2022
Food Act 2005
Disaster Management Act 2013
Plant Quarantine Act 1993
Pesticide Act 2000

Online Survey and Workshop Consultation (See results of Survey in Annex I)

The online survey and workshop consultation highlighted areas that require further consideration in the field of water law.

The survey did not elicit many responses related specifically to water law. However, there were comments that affirmed the need for harmonisation and a comment that highlighted issues relating to water abstraction rights and competitive authorities.

The workshop highlighted several areas where it was clear that water law and regulation could be harmonised and better address some of the water related challenges that the country and communities face. The following are some of the key points.

Strengths

- The importance of water management and protection areas for critical watersheds
- The RWSS development agenda
- Importance of water for public health
- The acknowledgement of customary practices
- The use of buffer zones to protect water resources

Weaknesses

- Overlapping and lack of clarity around mandates of multiple agencies (DoW, DECC, DoA, DoPH, NCHM, DoID, Thromde (Municipal)). Lack of clarity relating to leadership.
 - Weak operation of National Integrated Water Resources Management Plans (NIWRMP) – do not functional well in practice
- Weak implementation of Water Law – all rural houses should have access to safe water but not currently achieved.
- No proper data collection system.
- Absence of community engagement in IWRNP
- No mention of biodiversity in water law
- Weak compliance and enforcement and unsustainable rural water supply scheme
- Illegal water tapping
- Lack of public awareness and engagement (in reality little)

- Proper clauses on climate change not defined.
- No proper information/knowledge on alternative water sources
- No provisions on water hazards – floods and glacial lake outburst floods (GLOF).

How could the water legal regime in Bhutan be made more effective?

- Strengthen and empower Department of Water
- **Clearly delineate roles and responsibilities**
 - Streamline mandates and roles of relevant agencies.
 - Harmonize laws and policies – no one takes ownership of doing this.
 - Strengthen coordination – strong agency coordination mechanism
 - Strengthen IWRMP – create plan and ensure inclusive engagement
 - Integrate climate change/resilience in water law, water resource planning and management – already lost 60 springs to climate change
- **Increase public awareness and participation**
 - Robust community engagement and awareness raising x 2 in water governance
 - Empower local communities on water resources rights and active engagement in water protection
 - Strengthen payment for water use – collect nominal fees
 - Private sector engagement
 - Secure finance to ensure capital investment in water supply system

What are the next steps?

- Harmonize law and policies
- Review Water Law and incorporate and address gaps in the Water Bill.
- Identify right agencies and stakeholders
- Implement multiple and effective stakeholder consultation
- Build institutional capacity
- Raise public awareness
- Institute community-based water governance mechanism
- Collect data and conduct comprehensive research and study on state of water in Bhutan
- Conduct proper assessment of water source and availability
- Secure innovative financing schemes to ensure capital investment in water supply system
- Integrate climate resilient infrastructure

Specific Comments relating to Water

As detailed above, there are specific processes that are pertinent to the effective administration of law relating to water. Therefore, it is recommended that these are reviewed and harmonised within the process of review detailed in Stage 2 of the Roadmap detailed in Section III of this report.

Those processes include those related to: monitoring, enforcement and compliance, access to information, public participation, access to justice, Environmental Impact Assessments, and disaster management.

As emphasised in 'Information, Systems and Processes' within Section II of this report, effective processes are heavily dependent on efficient and comprehensive information systems that serve the relevant agencies and stakeholders. This is particularly the case for the effective functioning of law relating to water where data collection, storage and dissemination is crucial. Therefore, the review and revision of those systems detailed in Stage 1 of the Roadmap detailed in Section III is fundamental to an effective system.

It is suggested that the issues highlighted in the workshops and surveys relating to the overlaps between agencies, effective monitoring and implementation and capacity building can be more readily addressed once Stages 1 and 2 of the Roadmap have been addressed. Those stages in the Roadmap will provide the bases upon which effective law and institutions can be framed.

Adopting standardised processes as stated above will provide part of the basis upon which international standards and the realisation of the peoples' right to adequate water can be fully implemented.

Information Systems and Processes

Introduction

In reviewing national environmental law in Bhutan, it is important to note that most national environmental laws, whether they relate to waste, biodiversity, climate, pollution, water or other specific areas are heavily reliant on systems related to the collection and dissemination of information. They are also reliant on a range of different processes that are dependent on those information systems. Therefore, this section considers these issues within the context of Bhutan and the challenges that it currently faces in terms of information, systems and processes.

General

The collection and provision of information is indeed pivotal for a range of different aspects which include monitoring, compliance and enforcement; public participation / citizen engagement; technical / scientific assessments and environmental impact assessments. Therefore, the collection and dissemination of information is a foundational component, not only for smooth functioning in the relationships between departments and ministries within government, but also for the smooth functioning of engagement with citizens relating to the environment that affects them.

The efficient collection, dissemination and use of information is crucial to the following functions:

- Monitoring, enforcement and compliance
- Environmental Audits.
- Scientific and Technical Assessments
- Environmental Impact Assessments
- Strategic Environmental Assessments
- Public Participation / Citizen Engagement
- Public access to information

- Access to justice
- Evidence based decision-making
- International reporting
- Prior Informed Consent
- Benefit Sharing
- Disaster management
- Environmental Permits / Licences
- Development of standards
- Meeting international best practice standards

These functions form the foundations upon which the administration of environmental law operates in practice in all jurisdictions. Naturally different countries have their own specific environmental challenges. Some countries have the challenge of managing shared watercourses, some have greater issues with toxins from industrial pollution, some have specific challenges relating to aviation emissions, some have issues with particulates affecting

urban air quality, some have issues of biodiversity loss, and some have challenges related to the loss or quality of forest or wetlands. However, whatever the environmental challenge, the need to monitor, scientifically assess, report, collate and transfer information effectively and efficiently are fundamental to the administration of the range of different functions that cumulatively represent the administration of domestic environmental law in practice.

At the international level too, most international environmental law treaties operate through reporting systems that are reliant on information collection and dissemination. Core examples are the Paris Agreement and the requirements of the UNFCCC itself. Under the UNFCCC, Bhutan has the obligation to carry out scientific assessment, collect data, provide an inventory of emissions, disseminate information for public awareness and so forth (see the earlier climate change section). Similarly, the Paris Agreement requires parties to prepare their Nationally Determined Contributions (NDC) and there are obligations to maintain assessment and reporting of information relating to a range of different indices that can influence the net GHG emissions of a country or its ability to respond adequately to adaptation challenges.

It therefore follows that meeting international standards relating to many areas of environmental law requires the law itself to be framed upon a foundational system of data collection and dissemination that is accurate, efficient and user-friendly both for those collecting and inputting data but also for those using that data whether they be government departments, industry or members of the public.

What also can be observed at domestic and international levels is that the quality of information that is collected and disseminated affects the quality of decision-making itself, accountability and efficiency in environmental management. Evidence based decision-making related to the environment not only provides governments, business and industry and communities with confidence in decisions; it also makes decisions easier to make, defend and support.

The importance of harmonised information systems within government

If information systems are at variance with each other through different laws, or through disparate application across departments and ministries, it can lead to inefficiencies and potentially less optimal decision-making processes.

Additionally, for the engagement of businesses or communities seeking environmental permits, those inefficiencies can undermine confidence and momentum in realising important projects.

Similarly, for citizens and communities engaging with government information services, the constitutionally guaranteed rights of access to information, participation in decision-making and access to justice can equally be undermined.

The administrative functioning of environmental law is inextricably linked to the systems of collection and dissemination of information, to the extent that if those systems are

themselves poorly designed, constructed or implemented, no matter how well drafted the law is, the outcomes in environmental governance will suffer as a result.

The multiplication effect of information Collection and Dissemination of Information and Different Functions in the Administration of Environmental law

As information is key to monitoring and enforcement, public participation / citizen engagement, impact assessments and all other types of scientific and technical assessments, investment in effective systems of information collection and dissemination can have multiple rewards, as they are foundational to the outcomes of numerous areas of the administration of environmental law.

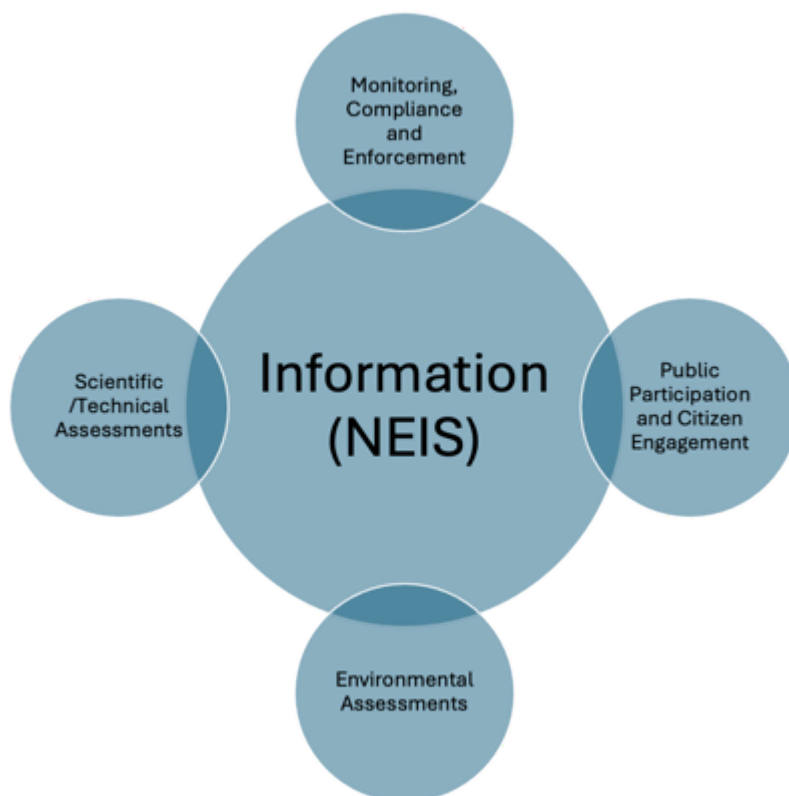


Fig 1. The multiplication effect of a National Environmental Information System (NEIS) to the administration of environmental law and governance.

As a reliable and efficient information system acts as a hub around which other functions of government rely, it can exponentially improve a range of other functions such as those listed above and illustrated in Fig. 1.

As such, an investment in an effective national environmental information system can have multiple overall benefits to the overall effectiveness of the administration of environmental law in any country.

Observations of the position in Bhutan

In Section I of this report (in the analysis of NEPA) it was observed that NEPA has numerous provisions that relate to the collection, storage and dissemination of information. These include s. 82 and s.83 which refer to the possibility that the NEC may establish a national environmental information system (NEIS) but also in other provisions that relate to the general obligations that the NEC has to provide for the protection of the environment (for example ss. 15, 41(e), 47(d)), 53 and 54(j).)

The existing lack or partial centralisation of data within the different areas of environmental law in the country can be viewed against the intent at the time of the NEPA being enacted in 2007 that not only could an NEIS be established but that information systems adequate for the administration of environmental law in the country would be needed to fulfil the purposes of the Act.

It can be argued that although an 'environmental information system' consistent with the full potential of what was envisaged under s. 47 has not yet been fully developed, other very positive developments and steps have been taken.

Bhutan has invested and developed specific systems for the collection and reporting of information. The SEEA (System of Environmental Economic Accounting) has been adopted as part of the National Implementation Plan for the System of Environmental Accounting. In its early stages it has focussed on minerals and mines, energy and forestry. At the forefront of implementation of this has been the National Statistics Bureau (NSB). However, the 2023 UN report 'National Implementation Plan for the System of Environmental Accounting in Bhutan 2024-29', notes that there are issues in terms of the resources available to develop the implementation of this facility.³⁵

To share data - the Bhutan Statistical Database System (BSDS) has been developed. This enables data gathered through the SEEA to be made available to other government agencies and other data users including the public. The BSDS includes five different categories of information which are, Gewog Profile, Agriculture, Livestock, Forestry and Education. This demonstrates the vision of integrating data from various sectors including those from education and the environment.

Other platforms developed within specific areas to collate and provide information include the following:

DEWA (Dashboard to Enhance Wellbeing of All). This was launched in 2021. It provides web-based information to monitor and track the progress of the SDGs, GNH indicators and Five-Year Plans.

³⁵ National Statistics Bureau - Royal Government of Bhutan, 'National Implementation Plan for the System of Environmental-Economic Accounting in Bhutan 2024-29 (October 2023). Available at https://seea.un.org/sites/seea.un.org/files/nip_final.pdf (Accessed 22nd Feb. 2026).

Environmental Clearance Service Delivery System: The NEC Secretariat established an online feedback platform to improve the efficiency of environmental clearances. The Environmental Assessment and Compliance Division has the authority for these processes.

Bhutan NSDI (National Spatial Infrastructure System): This is a centralised digital platform that includes maps and applications relating to land use that assist in the monitoring of environmental changes and potential climate risks.

SPS Information Portal: Operated by the Bhutan Food and Drug Authority: This provides a one stop platform for essential guidance relating to SPS (Sanitary and Phytosanitary Measures). This facilitates compliance with environmental and health standards for trade in food and livestock.

Sectoral Environmental Assessment Guidelines: The NEC (as stated earlier) has developed guidelines on the requirements for environmental assessments in specific sectors (such as mining, roads, hydropower etc.)

The Bhutan Food and Drug Authority BFDA also has its own databases.

Whilst these developments are all positive, in comparison to a comprehensive NEIS, they represent a proportion of the relevant information concerning the management and governance of the environment. There is still room for further development to build on the steps that have been taken and to avoid a fragmented approach across different departments and ministries.

Ultimately a key recommendation of this report is that the RGoB should establish a more comprehensive, harmonised and unified system of information collection, storage and dissemination that would provide the cornerstone of revised and harmonised environmental law in the country (see Section III of this report). Such a system could create many efficiencies in doing so for the reasons set out above.

Section III Recommendations, Roadmap and Guidance

This section of the report brings together recommendations that emerge from the analysis undertaken in Sections I and II. It draws on the analysis of the law in Bhutan (Section I), the themed analysis (Section II), the survey data, and the data and insights drawn from the workshops and consultations.

It provides:

- A) How to Use this Report**
- B) Institutional Structure for Roadmap / Staged Process**
- C) Roadmap / Staged Process**

Stage 1. Reviewing the Systems of Information upon which Environmental Law functions

Stage 2. Reviewing Systems that relay on Information

Stage 3. Review of NEPA and Climate Change Law

Stage 4. Review of Individual Statutes related to Protection of the Environment

- D) Capacity Building**

A. How to Use this Report

This report can be used as a tool through which the roadmap process can be followed. Each part of the report is inter-related. Sections I and II provided analysis to provide the basis of the recommendations, roadmap and guidance provided in Section III. As such Sections I and II can be referred to for further detail related to the recommendations that are made in Section III.

In this way, the report can be used as a handbook and a guide for the practical implementation of the staged reform processes that are provided within the roadmap.

B. Institutional Structure for Roadmap / Staged Process

The consultants recommend a staged process that should be adopted to achieve the harmonisation / revision and reform.

That process is as follows:

1. A Leadership Committee should be established to consider the necessary reforms.
2. The Government should decide on the constitution of the Leadership Committee (for example, it could consist of members of the OAG and the NEC).
3. Under this Leadership Committee, specific Working Group Committees should then be established to address the key areas in sequence. After each stage in the sequence the Working Group Committees will report to the Leadership Committee for strategic decisions to be made.
4. The Leadership Committee should establish a timeline through which each stage in the sequence would be followed.
5. Each Working Group Committee should have a membership that reflects the requirements of the laws, processes and institutions in Bhutan with a view to appropriate reform. Specifically, each Working Group committee membership should include representatives of relevant ministries as well as stakeholders encompassing the private sector and civil society. (See indicative areas that require attention from this report)
6. The relevant sections of these recommendations will provide indicative possible membership of each of those Working Group committees.
7. Each Working Group committee should:
 - a. Meet to discuss areas within the relevant process/law(s)/institution/ that require(s) assessment.
 - b. Commission specific research analysis where necessary.
 - c. Set a process for a series of meetings / allocation of work with a view to considering the options for reform.
 - d. Complete recommendations / options by specific dates and submit to the Leadership Committee

C. Roadmap / Staged Process

This report recommends a staged process to the development of reforms and harmonisation of environmental and climate law in Bhutan. This is important as it is necessary to ensure that there is a clear and orderly process of reform that 1) ensures harmonisation across laws and institutions of the RGoB, 2) promotes improved understanding of roles and responsibilities for ministries and offices of the RGoB, 3) enables coordination for more effective implementation of laws and policies, and 4) improves understanding of reforms for both the RGoB and Bhutanese society. For the staged process, the Consultancy Team recommends 4 stages:

- Stage 1 - Reviewing the System of Information upon which Environmental Law functions
- Stage 2 – Reviewing Systems that rely on Information
- Stage 3 - Review of NEPA and Climate Change Law
- Stage 4 - Review of Individual Statutes related to the Protection of the Environment

The contents of actions for each of the 4 stages are summarised individually below. It can be noted that whilst each of these stages are separated out, it can be the case that these processes are in fact iterative as stages can necessarily inform each other. Therefore, some fusion and interaction between these stages is likely to be inevitable.

Stage 1 - Reviewing the System of Information upon which Environmental Law functions

In accordance with the findings and analysis of this report the Consultancy Team recommends that the first stage in the review of harmonisation of environmental and climate law in Bhutan is for the RGoB to review and overhaul the information systems that underpin the functioning of environmental and climate law in the country.

The Working Group Committee on Information should involve representatives that deal with the following Acts (this is an indicative list and not exhaustive)

Water Act 2011
Forest and Nature Conservation Act 2023
Biodiversity Act 2022
Environmental Assessment Act 2000
Water Prevention and Management Act 2009
Pesticide Act 2000
Biosafety Act 2015
Livestock Act 2001
Land Act 2007
National Environmental Protection Act 2007
Mines and Minerals Act 1995 / Mines and Minerals Bill 2020
Road Act 2013
Seeds Act 2000
Electricity Act 2001
Food Act 2005
Disaster Management Act 2013
Plant Quarantine Act 1993

Also, those departments and agencies of the RGoB that deal with information systems.

Also, IT specialists able to advise on a centralised system of information provision to meet the needs of the country.

Consideration should be given to consultation and the due inclusion of representatives from business and industry, civil society, local communities, and vulnerable groups such as Indigenous peoples, women, and people with disabilities.

Areas of Focus

As was detailed in the analysis provided in 'Information, Systems and Processes' in Section II, the administration of environmental law is heavily reliant on the collection, storage and dissemination of information. Therefore, this aspect is foundational to a smooth running legal and administrative system. It is upon this infrastructure that a streamlined and harmonised legal system can be fully developed. Bhutan has already made significant steps in this regard, as was detailed in Section II. However, it was also acknowledged that much more needs to be established.

As such, this aspect is both legal and technical in nature. It requires input from all the relevant ministries and departments that are involved in the collection, storage and dissemination or provision of information. However, crucially it requires the involvement of information technology (IT) specialists who can advise on the type/types of system that would be most effective. Because of the need to involve multiple ministries and departments as well as IT specialists, Stage 1 should have a dedicated Working Group Committee on Information that comprises representatives from those relevant ministries, departments, and IT specialists to ensure inclusion of their respective insights. The Working Group Committee on Information would need to organise and synthesise the contributions of its members to achieve the purpose of an information system / systems previously described in Section II: a unified comprehensive system / set of systems of information on Bhutan's environment and climate that is accessible to all relevant users in accordance with their respective needs and requirements.

Stage 2 – Reviewing Systems that Rely on Information

The Working Group Committee on systems that rely on information, should comprise representatives that deal with the following Acts (this is an indicative list and not exhaustive)

Water Act 2011
Forest and Nature Conservation Act 2023
Biodiversity Act 2022
Environmental Assessment Act 2000
Water Prevention and Management Act 2009
Pesticide Act 2000
Biosafety Act 2015
Livestock Act 2001
Land Act 2007
National Environmental Protection Act 2007
Mines and Minerals Act 1995 / Mines and Minerals Bill 2020
Road Act 2013
Seeds Act 2000
Electricity Act 2001
Food Act 2005
Disaster Management Act 2013
Plant Quarantine Act 1993

Also, those departments and agencies of the RGoB that deal with the functions and processes outlined below.

Consideration should be given to consultation and the due inclusion of representatives from business and industry, civil society, local communities, and vulnerable groups such as Indigenous peoples, women, and people with disabilities.

Areas of Focus

As stated above there are numerous functions within the administration of environmental law that rely on a reliable and efficient information systems. Those functions are cross-cutting as they do not relate specifically to one area of environmental law. They include:

- Monitoring, enforcement and compliance
- Environmental audits
- Scientific and technical assessments
- Environmental impact assessments
- Strategic environmental assessments
- Public participation / citizen engagement
- Public access to information
- Prior Informed Consent
- Benefit Sharing
- Disaster Management

- Development of standards
- Environmental Permits / Licences
- International reporting
- Access to justice

As they are cross-cutting, it is logical that they are developed and harmonised as systems which can then be utilised by all the relevant agencies. Once systems for each of the above functions have been created/revised, it is possible to consider the actual laws related to each, so that they can operate efficiently and consistently.

It is important to note that with all the above stated systems, processes should be adopted so that efficiencies can be achieved and to ensure that information can be readily shared.

For each of the functions to be reviewed specific Working Group Committees can be formed that include representatives from the relevant RGoB ministries and departments. In essence, for the functions listed above, each should be treated as its own system and should have its own dedicated Working Group Committee.

For each of the functions listed above, it would be beneficial to include stakeholders outside of the RGoB to engage in the development and refinement of processes. For example, the Working Group Committee assigned the task of reviewing processes of Environmental Impact Assessments should draw from the expertise or even include representatives from business and industry, community stakeholder groups and possibly academia too.

It is intended that the processes of developing information systems detailed in Stage I are linked directly to the processes that develop under Section II. Therefore, it may be that ultimately the two stages inform each other with some degree of overlap in an iterative process.

Stage 3 - Review of NEPA and Climate Change Law

Once the systems have been determined, it is possible to begin considering the law that relates to the protection of the environment.

Apart from the national constitution, the penultimate overarching law for protection of the environment is the National Environmental Protection Act 2007 (NEPA).

This needs to be reviewed, first to revise it in line with the systems that have been adopted in Stage 1 and Stage 2 but also specifically in terms of its relationship with climate change.

Alongside the review of NEPA, the review of Climate Change law needs to be undertaken.

a) NEPA 2007

The Working Group Committee on NEPA should involve representatives that deal with the following Acts (this is an indicative list and not exhaustive)

Water Act 2011
Forest and Nature Conservation Act 2023
Biodiversity Act 2022
Environmental Assessment Act 2000
Water Prevention and Management Act 2009
Pesticide Act 2000
Biosafety Act 2015
Livestock Act 2001
Land Act 2007
National Environmental Protection Act 2007
Mines and Minerals Act 1995 / Mines and Minerals Bill 2020
Road Act 2013
Seeds Act 2000
Electricity Act 2001
Food Act 2005
Disaster Management Act 2013
Plant Quarantine Act 1993

The Working Group Committee on NEPA should involve high level representatives that consult with representatives that work as part of Stage 1 Working Group Committee and each of the Stage 2 Working Group Committees

Also, those departments of Government that deal with Climate Change and relevant civil society organisations.

Consideration should be given to consultation and the due inclusion of representatives from business and industry, civil society, local communities, and vulnerable groups such as Indigenous peoples, women, and people with disabilities.

Areas of Focus:

Stages 1 and 2 of the Roadmap

A key purpose of the Working Group Committee on NEPA is to review and identify the changes to NEPA that are necessary to incorporate the reforms raised by Stage 1 and Stage 2 in ways that are consistent with broader reforms occurring in Bhutan's legal system. The review should be undertaken with a view to instil consistency in the processes involving relevant agencies.

As a result of the reviews from Stage 1 and Stage 2, there may be specific amendments that need to be made concerning those parts and specific sections that relate to information. Therefore, s. 47 and ss. 82-84 may require review.

Civil Service Reform Act

The review of NEPA provides an opportunity to update it in relation to the reforms undertaken through the Civil Service Reform Act 2022.

International Law and Best Practice

The review provides the opportunity to update it in relation to international law and international best practice.

Climate Change

In relation to climate change and the review to be undertaken relating to the appropriate approach that RGoB wishes to adopt, it may be that specific corresponding amendments need to be made in NEPA. For example, it may be determined that a specific chapter relating to climate change should be incorporated or specific provisions relating to the way that the NEC will coordinate the work of the relevant agencies. It may be that other new provisions need to be incorporated within NEPA relating to climate change.

b) Climate Change Law

The Working Group Committee on Climate Change should include representatives that work with the following laws related to climate change (this is an indicative list and not exhaustive):

- Constitution of the Kingdom of Bhutan 2008
- National Environmental Protection Act 2007
- Water Act of Bhutan 2011
- Waste Prevention and Management Act 2009
- Land Act 2007
- Biodiversity Act 2023
- Electricity Act 2001
- Environmental Assessment Act 2000
- Forest and Nature Conservation Act 2023

- Mine and Mineral Management Act 1995
- Pesticides Act 2000
- Livestock Act 2001
- Disaster Management Act 2013

Consideration should be given to consultation and the due inclusion of representatives from business and industry, civil society, local communities, and vulnerable groups such as Indigenous peoples, women, and people with disabilities.

Areas of Focus

The purposes of the Working Group Committee on Climate Change are as follows:

1. Review the options raised in Section II for reforms to Bhutan's legal regime for climate change, and determine which one is most appropriate for Bhutan's context
2. Based on the option chosen, develop a plan to reform Bhutan's legal regime for climate change, and
3. Within the plan to reform Bhutan's legal regime for climate change, identify the changes that are necessary to integrate the reforms raised by Stage 1 and Stage 2 in ways consistent with broader reforms occurring in Bhutan's legal system, and 2.

With respect to the options raised in Section II, the Consulting Team identified a range of four options:

Option 1 - No Immediate Legislative Changes

Main features:

- Maintenance of the legislative and institutional status quo.
- Leaving DECC with control and responsibility for specific aspects of climate change.
- Requiring NEC to develop responsibilities within other ministries as and where necessary.

Advantages:

- It does not require immediate action
- Less expensive
- Allows for expediency and flexibility.
- Capacity for step-by-step approach to reform in the longer term.

Disadvantages:

- May not be the most efficient approach.
- Maintains confusion over the distribution of climate change roles across RGoB Offices.
- Maintains lack of coordination between government offices.
- Reform would be slow.

Option 2 - Amending Existing Law to Accommodate Climate Change Obligations

Main Features:

- Building upon existing legislation in a logical manner.
- Amending individual laws

Advantages:

- Clarification and demarcation of specific roles and responsibilities.
- Directly addressing confusion of climate change roles across RGoB Offices
- The potential to include a specific climate change chapter in NEPA 2007.
- Clarification of the relationship between the NEC and other ministries relating to climate change.
- This may be a relatively cost-effective and efficient approach to reform.

Disadvantages

- Reform may not be as far reaching as a framework climate change law.
- Amendment of laws may not be sufficient to overcome dissonance between departments and ministries regarding responsibilities for climate change.
- Amendment of laws may not lead to new provisions that may be possible in completely new legislation.

Option 3 - Adopting specific individual laws to respond to specific Climate Change policy requirements

Main features:

- Adopting specific laws that relate to specific policy objectives
- Possibly specific laws relating to adaptation, climate finance, carbon trading etc.

Advantages:

- Specific laws related to policy objectives of the RGoB are developed.
- The potential to harness new areas of climate development swiftly.

Disadvantages:

- Requires more effort in terms of activity to craft and pass each new item of legislation through Bhutan's parliament
- Incurs a greater demand on RGoB's capacities to design each new law
- May not address dissonance between departments and ministries regarding responsibilities for climate change.
- May cause further overlaps between different areas of law and the administrative competencies.

Option 4 - Adopting a national framework climate change law

Main features:

- A single comprehensive legal framework to address climate change.

Advantages: Clarification of responsibilities for different issues

- Can include a broad range of topics that encompass climate finance, taxation, carbon trading, climate related standards, risk analysis, just transitions, renewable energy, vulnerable groups impacted by climate change, and sector-specific climate strategies

Disadvantages

- Significant legislative overhaul
- May require the repeal or amendment of other existing law to ensure that conflicts did not occur.
 - Impossible to foresee all areas that relate to climate change in a single piece of legislation, leaving the need to address further issues that arise in the future.
- A comprehensive national climate change law entails complexity that requires expertise which may be beyond Bhutan's limited capacities.

General Recommendations that apply to Bhutan whichever of the options it adopts relating to climate change:

- **Consideration of Bhutan's specific context**

As has been emphasised in Section II, there is no 'one-size fits all' approach when it comes to climate change law. Different countries adopt different approaches that suit them, their strategic and policy objectives, their relationship with energy production and provision, the adaptation and extreme weather event challenges that they face, their geographies, their economies and so forth.

While it is appropriate for climate change law to contain provisions on both mitigation and adaptation, Bhutan's status as a carbon-negative country decreases the urgency for mitigation. Instead, the growing impacts of climate change upon Bhutan's environment and populace incurs a greater need for provisions that address adaptation.

- **The Need for Greater Coordination**

The analysis in Section I presented variations in the distribution of authority across Bhutan's environmental laws, with each law differing in the manner and extent of centralised or decentralised decision-making. As much as such differences may reflect the RGoB's policy preferences for each law's area of focus, it also poses potential issues in terms of confusing Bhutanese State and society and impeding broader Bhutanese goals for principles of good governance such as inclusion, participation, and equity. To the extent that Bhutan is pursuing reforms in support of international standards and best practices for good governance, approaches or reforms to climate change law should serve a purpose of fostering greater consistency and clarity regarding decentralised power structures.

Also, the feedback from stakeholder workshops in September and November 2025, which identified that in Bhutan's context there are specific needs for more coordination between RGoB ministries, more clarity regarding roles and responsibilities across ministries, improved stakeholder engagement for both State and society, greater capacity-building, and greater provision of resources. All of the issues are forms of governance functions. A review of

climate change law and potential reform provides an opportunity to directly address the concerns, such that the system could lead Bhutan's State and society towards the preceding governance functions for climate change.

- **The need for continued tracking of the ongoing changes in international law regarding climate change, particularly in terms of Bhutan's position in relation to the UNFCCC and the 2025 ICJ Opinion.**

If Bhutan wants to assert itself as a model for State action on climate change, then it should seek to integrate all developments at the UNFCCC and components of the ICJ Opinion within Bhutan's laws. Since the ICJ Opinion was rendered in July 2025, it is concurrent with Bhutan's current civil service reforms. As a result, it would be appropriate for Bhutan to take immediate action to review the consistency of the current civil service reforms with the ICJ Opinion and then conduct relevant changes in Bhutan's laws to address any potential inconsistencies.

- **The Need for Flexibility**

In its approach to climate change law a measure of caution needs to be adopted regarding flexibility. That is, the ongoing progress of Bhutan as a developing country means that it is undergoing fluid conditions that are likely to continue. As a result, Bhutan's legal regimes are likely to face uncertainties that call for changes in policies and attendant changes in laws. The implications for Bhutan's legal system are that there is a requirement to maintain flexibility sufficient to fulfil the changing needs of Bhutan's State and society. This suggests a particular need for provisions that enable flexibility. In essence, it would be more responsive to Bhutan's context to allow for provisions that enable variation in the future. Possible approaches to do so could involve language that allows for discretion in the application of Bhutan's climate change laws or for amendment of content in Bhutan's climate change laws. In articulating an approach for flexibility, the goal should be for an iterative system that enables Bhutan's legal regime to address ongoing changes in Bhutan's State and society related to climate change going forwards.

Stage 4 - Review of Individual Statutes related to the Protection of the Environment

The Working Group Committees on each specific law related to the environment as listed in Section I (apart from NEPA 2007) should include representatives that work with that area of law.

Consideration should be given to consultation and the due inclusion of representatives from business and industry, civil society, local communities, and vulnerable groups such as indigenous peoples, women, and people with disabilities.

Areas of Focus

Once the information system has been adopted, related key processes established (as detailed in Stage 2 above) and decisions have been made in relation to NEPA and Climate Change Law (as detailed in Stage 3 above), the RGoB is well-placed to revise the environmental laws analysed in Section I (apart from NEPA 2007 that is deal with in Stage 3 above).

Each law has been reviewed in Section I, therefore this section will not repeat the points made in that analysis. Section I can be referred to and the following criteria are provided for guidance:

1. Establish a Working Group Committee as stated above. In all cases, the review must consider updates required because of the Civil Service Reform Act 2022.
2. In all cases, the review must consider any updates required because of amendments or proposed amendments to NEPA 2007. (As per Stage 3)
3. In all cases, the review must consider any updates required because of changes or proposals concerning the law related to climate change. (As per Stage 3)
4. In all cases the review must update and incorporate the processes established in Stages 1 and 2.
5. In all cases the review must update and incorporate any relevant requirements under international law and international best practice.
6. The proposals should be submitted to the Leadership Committee.

It is suggested that the laws should be considered in chronological order as the earliest legislation is likely to require more amendments and consideration.

However, there may be specific priorities that override this approach. Additionally, if RGoB considers that an approach to climate law should include amendment to existing legislation, that may also affect the prioritisation.

Nevertheless, a starting point in terms of prioritisation would be as per the listing below:

Plant Quarantine Act 1993

Mines and Minerals Act 1995 / Mines and Minerals Bill 2020

Environmental Assessment Act 2000
Pesticide Act 2000
Seeds Act 2000
Livestock Act 2001
Electricity Act 2001
Food Act 2005
Land Act 2007
Waste Prevention and Management Act 2009
Water Act 2011
Disaster Management Act 2013
Road Act 2013
Biosafety Act 2015
Biodiversity Act 2022
Forest and Nature Conservation Act 2023

D. Capacity Building

There is a high need for capacity-building across all ministries and offices of the RGoB with respect to the environment and environmental law. The stakeholder sessions of September and November 2026 presented consistent feedback identifying the lack of capacity as a persistent issue challenging effective administration of Bhutan's environmental laws and impeding implementation of Bhutan's legal reforms. Such feedback also called for capacity-building for the ministries and offices of the RGoB, which would empower them to better ensure Bhutan's laws fulfil Bhutan's environmental policies and align with Bhutan's obligations to international environmental standards and best practices. Across the thematic areas discussed in Section II, there were specific forms of capacity-building emphasised as being important for all RGoB ministries and offices responsible for the environment and environmental law:

- Capacity-building regarding scientific and technical expertise regarding the environment
- Capacity-building in environmental governance, policy, and law (not just for international environmental law, but for environmental law more generally)
- Capacity-building in law for members of government attending international meetings such as the Conference of the Parties (CoPs) for the UNFCCC and CBD
- Capacity-building in information technology and technology infrastructure
- Capacity-building regarding research and development, not just for science and technology but also governance, policy, and law
- Capacity-building for human resources

The details for capacity-building programmes meeting the above requirements are specific to Bhutan's context. The Consultancy Team considers such details as being best known to the RGoB, since the RGoB has direct experience with the resource challenges facing ministries in the administration and implementation of environmental laws. However, the Consultancy Team notes its findings in Section I and Section II, and following the previous recommendations presented in Section III the Consultancy Team recommends a staged process to fully address the capacity-building requirements.

Specifically, the Consultancy Team recommends the establishment of a Working Group Committee on Capacity-Building which contains representatives of each ministry related to Bhutan's environmental laws. The Working Group Committee on Capacity-Building should then undertake the following actions:

- Perform a needs assessment, with the committee identifying the specific knowledge, skills, technology, infrastructure, and resources needed for RGoB ministries to undertake the recommendations issued in the previous subsections of this Section III.
- Prioritise the needs for capacity-building to align with Bhutan's context.
- Identify the appropriate capacity-building providers. The Working Group Committee on Capacity-Building should seek capacity-building providers that can design and deliver capacity-building programmes that align with the unique circumstances of the RGoB in Bhutan's context.
- Identify the appropriate donors for funding needed to secure the capacity-building

providers and enable their design and delivery of capacity-building programmes.

- Work with chosen capacity-building providers to design the required capacity-building programmes, estimate the required budgets for each programme, obtain the funding needed for each programme, and formulate the appropriate sequence for delivery of each programme.
- Work with chosen capacity-building providers to deliver the above capacity-building programmes.

Section IV - Future Projects

The present Report focused on review and harmonisation of Bhutan's environment and climate change laws, pursuant to the Terms of Reference (ToR) issued by the OAG and RSPN which called for analysis and subsequent recommendations to ensure Bhutan's compliance with international environmental standards and best practices. In fulfilment of the OAG and RSPN requirements, the Consultancy Team performed a desk review and engaged with stakeholders through a survey and multiple workshops, and from those activities conducted an analysis of a suite of environmental laws specified by the OAG. In doing so, the Consultancy Team worked with the OAG to ensure that the various stakeholders in Bhutan's environmental laws had multiple opportunities to express their thoughts and perspectives regarding Bhutan's alignment with international environmental law.

The analysis drew upon the desk review and stakeholder engagement to 1) assess the extent of compliance issues faced by Bhutan's environmental laws with international standards and best practices and 2) ascertain the challenges faced by RGoB in overcoming the compliance issues. To resolve such challenges and improve Bhutan's compliance with international standards and best practices, the analysis then proceeded to provide recommendations that call for a staged process of activities, with each stage involving decisions by the RGoB with respect to appropriate solutions. The sequence of stages enables Bhutan to act upon the findings and recommendations of the Report in a way that promotes context-specific reforms appropriate for Bhutan's circumstances and strategic goals. The Consultancy Team assembled the preceding components of analysis into the present Report.

It should be noted that the Report does NOT prescribe specific solutions for the RGoB but rather works to inform the RGoB about the complexities associated with potential actions. The Consultancy Team maintains a respect for the sovereignty of Bhutan and the agency of the RGoB in addressing Bhutan's context. Further, the Consultancy Team acknowledges that the Bhutanese people have the best understanding of their own concerns and interests, and that the RGoB has the best knowledge of Bhutan's political, economic, social and policy context. Hence, while the Report identifies issues and potential options to address those issues, the Reports avoids statements about which options the RGoB should choose. Rather, the purpose of the Report is to enable the RGoB to make *informed* decisions, with the Report providing 1) critical analysis clarifying the problems that challenge Bhutan's fulfilment of international standards and best practices, and 2) clarification of pathways that assist RGoB decisions to resolve those problems. In essence, the Report contains the insights of the Consultancy Team regarding the complexities facing the RGoB, such that the RGoB can then combine the Report with the RGoB's own direct understanding of Bhutan to make decisions for action appropriate for Bhutan's context.

Outside the contents of the Report, the Consultancy Team can provide its expertise to further assist the RGoB in the future. That is, as the RGoB follows the staged process presented in Section III and makes decisions regarding appropriate reforms, the Consultancy Team is available to assist the RGoB in the implementation of those reforms. Specifically, the Consultancy Team can provide its expertise to assist the RGoB with in number of areas that include the following:

- **Capacity Building** – Where there are needs for capacity building in relation to environmental law, international environmental law and associated processes, the Consultancy Team can provide programmes and support accordingly.
- **Review of Processes** – The Report refers to the review of processes that are consistent with international best practice and international standards. The Consultancy Team can contribute to the development and design of those processes.
- **Legal Review and Drafting** – The Report refers to the need for the revision of a range of different areas of law. The Consultancy Team can play a role in the various stages of reviewing and drafting of primary and secondary legislation.
- **Climate Change Law** – The Report provided four options for reforms to bring Bhutan’s environmental laws closer to international standards and best practices regarding climate change. For all the options, there is a need for greater understanding by offices in diverse ministries of the RGoB of the international standards and best practices regarding climate change. Such a need can be addressed by training that educates RGoB personnel with 1) knowledge, skills, and values associated with current international laws and institutions for climate change, and 2) comparative experiences of other countries regarding climate change laws, especially in terms of experiences in meeting international standards and best practices on climate change. The Consultancy Team can design and deliver such training for both aforementioned items.

- **Environmental Governance** – The Report covered areas of environmental governance covering topics of environmental information, citizen engagement, and procedural rights. There is a need across all ministries of the RGoB for greater awareness and understanding of international standards and best practices with respect to environmental governance. In addition, there is a need for greater awareness and understanding of how to implement and practice international standards and best practices for environmental governance, drawing upon international programmes and comparative experiences from other countries. The Consultancy Team can design and deliver training responding to all the needs.
- **Environmental Impact Assessment** – The Report identified the issues that challenge Bhutan’s system for environmental impact assessments. To effectively address those issues, there is a need for greater understanding by offices in multiple ministries of the RGoB regarding the principles, requirements, and operations of environmental impact assessment systems, both with respect to international standards and best practices but also with respect to other countries. The Consultancy Team can design and deliver a training program providing the understanding.
- **Biodiversity Law** – The Report highlighted the issues associated with Bhutan’s laws for biodiversity. In undertaking reforms in biodiversity-related laws, there is a need to improve the understanding in the RGOB of biodiversity law as a field, particularly with respect to 1) the knowledge, skills, and values held by current international laws and institutions on biodiversity, and 2) comparative experiences of other countries in meeting international standards and best practices for biodiversity. The Consultancy Team can design and deliver such training to promote such understanding.
- **Strategic Implementation** – The Report highlights a staged strategy. The Consultancy Team can advise on implementation including practical delivery modalities and monitoring, evaluation and learning.

For all the above, the Consultancy Team is available to advise and assist the RGoB in design and delivery of capacity-building and technical assistance programme. With respect to design, the Consultancy Team can aid in development of proposals, project funding, training content, and training pedagogy. With respect to delivery, the Consultancy Team can serve as trainers and advisors regarding each of the above areas, either in-person in Bhutan or remotely via on-line technology platforms.

Annex I

Survey Data

An electronic survey was undertaken by the consultancy team in September 2025. The survey sought the views of the members of the Working Committee and representatives from different branches of the RGoB as well as certain representatives from NGOs and educational institutions. Participation in the survey was managed by the OAG.

Participation in the survey was based on anonymity.

The following results informed the consultancy team in terms of the content of the final report and provided insights that assisted in the development and delivery of the workshop and consultations that took place in Paro between 24-26 September 2025.

The results are as follows:

Survey - Harmonization of Environmental and Climate Law in Bhutan

1. Introduction

Welcome to this survey which is being undertaken as part of a review for the purposes of the harmonisation of environmental and climate laws in Bhutan commissioned by the Office of the Attorney General (OAG) and Royal Society for the Protection of Nature.

The Working Committee seek to ensure all stakeholders are consulted. As a recipient of this survey, you are one of the stakeholders that has been named by the Working Committee for this project.

This survey is designed to provide the first step in drawing on your experience and expertise and as a way of finding out your opinions and views. Therefore, it is not necessary to provide very in-depth responses at this stage.

Stakeholders have been drawn from different areas of the RGoB. Some other experts from relevant NGOs, civil society and other national organisations are also being consulted.

The survey has been developed by the international consultants undertaking this work: Mr David Morgan, Dr Jonathan Liljeblad and Dr Stephen Turner. The international consultants will be visiting Bhutan later in September to further this work and to consult with you and other stakeholders directly.

This is a first step in the consultation process. We would be grateful if you could spare about 10-15 minutes of your time to complete the survey. We request your name and email address so that we may contact you for a follow-up discussion. We will keep your name and your answers confidential to ourselves.

If you are not able to answer any of the question or they are not relevant to you, you can omit them. We look forward to meeting you in person later in September.

2. Background to the Survey

Bhutan faces challenges in maintaining its environmental commitments and implementation of its existing legal frameworks in the face of development pressures, climate change, and evolving international obligations.

These challenges necessitate the harmonization of environmental laws to ensure effective implementation and protection of the environment. One of the primary challenges is the fragmentation and overlap of environmental laws across various fields. This can lead to confusion, inconsistencies, and inefficiencies in enforcement.

Additionally, some environmental laws may be outdated, failing to address contemporary environmental issues such as climate change, biodiversity loss, waste and pollution. Another challenge is the limited capacity and resources available for enforcing environmental laws leading to non-compliance and environmental degradation. Furthermore, a lack of public awareness and understanding of environmental and climate laws can hinder their effectiveness.

Which of the following areas of law are relevant to your role?

Statute	% Participants	No. Participants
Forest and Nature Conservation Act 2023	40%	10
Biodiversity Act 2022	48%	12
Environmental Assessment Act 2000	40%	10
Waste Prevention and Management Act 2009	32%	8
Pesticide Act 2000	20%	5
Biosafety Act 2015	20%	10
Livestock Act 2001 / Livestock Bill 2024	24%	6
National Environment Protection Act 2007	40%	7
Mines and Mineral Act 1995 and Mines and Minerals Bill 2020	24%	5
Road Act 2013	16%	5
Seeds Act 2000	28%	10
Electricity Act 2001	20%	
Food Act 2005	20%	
Disaster Management Act 2013	20%	
Plant Quarantine Act 1993	20%	
Civil Service Reform Act 2022	40%	

3. Personal Details

4. Which of the following areas of law are relevant to your role? (Tick as many as you find appropriate)25

Water Act 2011	52%	13
Forest and Nature Conservation Act 2023	40%	10
Biodiversity Act 2022	48%	12
Environmental Assessment Act 2000	40%	10
Waste Prevention and Management Act 2009	32%	8
Pesticide Act 2000	20%	5
Biosafety Act 2015	20%	5
Livestock Act 2001 / Livestock Bill 2024	24%	6
National Environment Protection Act 2007	40%	10
Mines and Mineral Act 1995 and Mines and Minerals Bill 2020	24%	6

Road Act 2013	16%	4
Seeds Act 2000	28%	7
Electricity Act 2001	20%	5
Food Act 2005	20%	5
Disaster Management Act 2013	20%	5
Plant Quarantine Act 1993	20%	5
Civil Service Reform Act 2022	40%	10

5. Which of the following thematic areas (if any) are relevant to your role?

Climate Change	76%	16
Citizen Participation / Procedural Environmental Rights	52%	11
Environmental Assessments	57%	12

Biodiversity	57%	12
Water	52%	11

6. In what areas, if any, do you see the need for further harmonisation or updating of law relating to the environment and / or climate change in Bhutan (Max 100 words)

Plant Quarantine, Food Act, Road Act

In the process of environmental assessment and issuance of environmental clearances for projects/activities, proponents are subjected to requirement of multiple laws. Each law sets certain requirements or standards which seems to be over lapping or repetitive. The implementing agencies cannot agree upon which comes first. For example, whether the Forestry clearance should be obtained before need to conduct In-depth research and studies on Pest and disease threat to agriculture and environment including invasive plant species for new invasion

Within the broad category of the environmental and climate change laws (which currently also include food-related laws), the laws that relate specifically to the environment and climate change, such as the National Environment Protection Act (NEPA), Environmental Impact Assessment Act, Waste Management and Prevention Act, Forest and Nature Conservation Act and Water Act, may require harmonisation, removing overlapping provisions, and ensuring consistency with each other. Although the NEPA is one of the main environmental conservation laws, it has not been reviewed or revised from the perspective of the current climate change challenge, and it will need to address this issue unless a new climate change law is proposed.

maybe the current laws need to be updated in the context of the new reform done in the civil service

Merge and reduce laws (environment, water, forest, waste and biodiversity can be merged and harmonised), and the enforcing agency should enforce, and agencies responsible for giving natural resources utilisation (energy, geology and mines, etc) should implement activities while ensuring compliance.

Clear mandate and resources should be given to agencies.

Before the environmental clearance. We are also not clear if approvals from all the relevant agencies for a specific project becomes a requirement to apply for or issue environmental clearance.

NEPA 2007, FNCA 2023, and Biodiversity Act 2022 could be harmonised. Seed Act 2000 and Plant Quarantine Act 1993 could be updated. (Could add provisions on invasive species in the PQA)

Bhutan needs to harmonize and update climate and environmental policies particularly in water governance, Agriculture, Climate, Food systems and disaster risk management. Currently the Food Act and Biosafety Act are not explicitly made references to the environment and climate change impacts. For instance, risk assessments of the approval of the GMOs and its impacts has a direct link to the environment while food safety and food security risks are also associated with climate change. Therefore, it is important to harmonize all the laws and regulations in relation to climate change and environment to avoid any discrepancies in the implementation and understanding.

Electricity Act 2001 is currently under review and proposing as Energy Bill. This Bill will consider some aspects of climate change in relation to energy projects, but in overall the Energy Bill will make reference to Environment Act.

I see the need to harmonise and update Bhutan's environmental and climate change laws because they are currently scattered across different Acts with overlaps and gaps. Many of these laws were enacted before Bhutan's international climate commitments and therefore do not fully reflect adaptation, mitigation, or resilience measures. Key issues such as coordination between agencies, integration of climate concerns into sectors like agriculture, water, and energy, and new areas like carbon markets and green finance are not adequately addressed. Laws also need to better support public participation, access to justice, and accountability. A more consolidated and updated legal framework would make enforcement clearer, reduce duplication, and help Bhutan meet both its Constitutional mandate to protect the environment and its global climate obligations.

Water Act needs to be updated with clear mandates for implementing Agencies. There is a need for a separate law for promotion of global warming and adaptation. Also, Meteorological and climate services law to cover early warning, data collection, climate services, climate change services and forecasting
Seed act, Pesticide act and Plant Quarantine act

With development comes destruction to nature, forests and the environment, thereby posing a threat to the Constitutional mandate of preserving the 60% forest cover for all time. When laws are drafted it is crucial that they correspond to each other; in other words laws must be harmonised. Therefore, the urban planning/ development laws, the land laws must be in line with the other laws that govern the protection of the environment. and also the main source of revenue for our country is the hydropower, but to estb a plant, nature is destroyed and the same goes for mining. laws need to be harmonised and looked into in the perspective of climate change and preserving the environment.

Water Act- in terms of adaptation to climate change impacts

Need to conduct In-depth research and studies on Pest and disease threat to agriculture and environment including invasive plant species for new invasion

7. In what areas, if any, do you see the need for environmental and/or climate change law in Bhutan to be further aligned with international standards?

Too early to comment from my side, but generally harmonisation and alignment requires both with international standards and within the nation.

Bhutan's climate change policies are already in alignment with the international standards. Bhutan does not have climate change laws.

In the following areas with international standards;

Climate MRV & NDC frameworks (UNFCCC/IPCC)

Biodiversity & genetic resources (CBD/Nagoya/CITES)

Water & air quality standards (WHO/UNECE)

Food safety & SPS (Codex, WTO)

Aligning with the international standards on the Convention on Biological Diversity and the Cartagena Protocol on Biosafety to strengthen the biosafety and GMO regulation in line with the standards.

Harmonizing and aligning with the CODEX and Global best practices to ensure safe and quality food without impact to the environment and climate change.

I see the need to align Bhutan's environmental and climate change laws more closely with international standards, especially in areas like climate reporting, adaptation planning, biodiversity protection, and disaster risk reduction. Laws should also cover new issues such as carbon markets, green finance, and renewable energy, while improving public participation and accountability. This would help Bhutan meet its global commitments and strengthen its own resilience.

Seed act

The Constitution of the Kingdom of Bhutan 2008 lays down the mandate to keep the country under 60% forest cover. However, we do not have a specific law that governs Climate Change. it would be better if there's a law enacted for the same to address climate change challenges and issues related to that. We can enhance the EIA framework to ensure independent review and monitoring. in terms of waste management which is one the biggest challenges Bhutan faces, the law could be stricter in terms enforcement like that in countries like Japan.

Environmental (Air Quality) and Water Quality Standards. However, not necessary to adopt the same standards.

Meteorological and climate services law to algin with World Meteorological Standards. The provision for this theme can also be integrated with the new climate change law for adaptation and promotion of global warming. Another option is to revise the existing laws to include these provisions.

8. In what areas, if any, do you see potential fragmentation or overlap between different areas of law, implementation or enforcement relating to the environment and/or climate change in Bhutan? (Max 100 words)

Environment Protection

Environmental Assessment

Waste Management and Prevention

Water

Forest and Nature Conservation

Biodiversity

Biosafety

infrastructure development, in agriculture, construction of irrigation channels.

Too many agencies and laws for each agency (environment in the present context) make the mandate fragmented and makes to overlapping mandates due to differences in common consensus.

Forest Nature and conservation Act 2023, National Environment and Protection Act, 2007, water Act, Biodiversity Act 2022 and Road Act, 2013- some of the provisions are overlapping these Acts

Potential overlap between NEPA 2007 and FNCA 2023. Potential fragmentation in the implementation of the Water Act.

The biggest areas of fragmentation and overlap in Bhutan are in climate, disaster governance, water management, biodiversity use, waste and pollution control, agriculture-climate, food security, and emissions reporting.

The Agency responsible for Environmental Risk Assessment is not clearly defined in Biosafety Act of Bhutan 2015

I see fragmentation and overlap in Bhutan's environmental laws because several Acts and agencies regulate similar areas like forests, water, waste, and biodiversity. This creates duplication, inconsistent enforcement, and gaps in accountability. A more harmonised framework would bring clarity and improve coordination.

Forest and nature Conversation Act, Seed Act, Biodiversity Act and plant quarantine

The National Land Commission is established as an apex, independent decision making body in terms of land management and governance as per the Land Act, 2007. In a broader sense, everything that is on the land is linked to the land. however, the other legislations like the forest Act, the Environment Assessment Act, the Road Act etc have their own mandates which sometimes create confusion on what really are the LAnd Commission's powers in terms of land The Land Act also covers provisons on right of trees, the easement right and also management of minerals. without land, nothing exist.

Overlaps exist between animal health laws, environmental regulations and water resource management, often leading to unclear responsibilities. For instance, waste management from farms and animal processing units are regulated by different agencies with limited coordination.

There could be overlap between Biodiversity and Environment protection Act

Law and governance

9. In your opinion what are the most pressing issues in terms of updating the following areas of law.

Climate Change	78%	14
Citizen Engagement / Procedural Environmental Rights	50%	9
Environmental Assessments	39%	7
Biodiversity	33%	6
Water	33%	6

a) In your opinion what are the most pressing issues in terms of updating the law related to Citizen Engagement / Procedural Environmental Rights

requires consultation and consensus

Awareness

Awareness on environmental law and their rights

Civic Engagement Start to End

Private Participation / E commerce

b) In your opinion what are the most pressing issues in terms of updating the law related to Environmental Assessments

clear cut mandates and provisions within the budgeting aspects for commissioning environmental assessments.

harmonisation

support from the local communities

There is an environment assessment Act enacted but the implementation is difficult, need to make a laws more enforceable and stronger one.

Dated law.

c) In your opinion what are the most pressing issues in terms of updating the law related to Biodiversity.

Harmonisation

Recently updated but not too much awareness

Pest and disease

d) In your opinion what are the most pressing issues in terms of updating the law related to Water

Water abstraction rights and competitive authorities

Harmonisation

10. Are there other comments that you have that are not covered in the above questions

There is a need for a comprehensive legal review of existing climate related laws in order to address the overlaps, current issues and harmonize into one law thereby aligning with international standards and agreements.

Quality and standards

11. Are there particular areas that you would like to discuss with the international consultants

It would be beneficial to have a succinct recommendation from international consultants on areas where Bhutan needs to improve its climate change initiatives, and whether incorporating climate change mandates under existing laws would suffice, or whether it would be more efficient to have a specific climate change law.

With a review of the law, I expect a proper institutional framework will also be proposed.

Annex II

Second workshop (Online) feedback on report findings (26 Nov 25)

1. Report suggests only problem with laws is an administrative problem. Recommend lack of Research and Development capacity is included as an issue. After reforms, no agency has good R and D. Do not feel administrative issues are root cause of problems.
2. Good to see outsider perspectives as from our side we see a harmonized system. Most things are very technical. Are there any Acts that are missing? In September 2025 - 5th Biodiversity Plan was launched – consultants should read this.
3. Dept of Local Governance and Disaster Management – acknowledge disaster management and climate change are related. In the future projects there is no mention of disaster management – why?
4. JSW – currently carrying out research on Green Bench. Found it needs to be established properly with awareness raising and mechanisms.
5. Land Commission – work is timely as working in collaboration with other agencies on National Special Data Infrastructure. Land Commission working on reform of Land Act – feedback will be helpful.
6. Dept of Livestock – Livestock Bill 2025 being discussed in Parliament next month.
 - a) Land management and pastoral governance not captured in the bill;
 - b) Mechanism for livestock – climate change growing concern that is missing from the bill;
 - c) Need to harmonize bill with other Acts;
 - d) Coordination with other Departments needed to harmonize new bill.
7. Food Authority
Biosafety Act 2015 includes right to participation. Specific to food products derived from modern technology – bio GMOs in the country. Excluded Environmental Impact Assessment from law. Access to Justice included in Chapter 7 Sections 44-45 please read. Also have rules, regulations and SOPs.

8. Dept of Water

Agree to everything. Water Act under revision and most of your findings will be taken care of. Previously many agencies involved in water management and therefore responsibilities fragmented. Re water hazards – Bhutan has a Hazards Act and therefore do not understand why Water Act needs this.

9. Water and Sanitation Division

Question is legal framework fair and pragmatic. Chapter 16 – Section 71 creates an offence but no mention of intent that is fundamental in other criminal laws.

Secondworkshop (26 Nov 25) – additional feedback on report recommendations

Food and Drug Authority

Following Transformation Initiative need to amend a number of the Acts as Food and Drug Authority now under a different minister.

Biosafety Act should be included.

Hope FDA database can be integrated into wider database.

Food Act does not directly relate to climate change.

NEIS – share public information through media which is more effective than specific information system.

Recommendations on future projects

1. Development of unified environment and climate governance act or framework
2. Reporting system – development of data
3. Single legal environmental legal permit system

Bhutan Standards Bureau

Request next steps include standards in recommendations.

Disaster Management

Comments on access to justice

Request provide information on access to justice and environmental assessments as this will help us improve new Act.

Senior Level Workshop (27 Nov 25)

Feedback on findings

Capacity building needed of legal practitioners – whenever we go to COP we are never accompanied by a legal professional as no one can participate.

Land Act 2007 drafted in 2005-2006 had narrow focus. Now scope is wider and thinking about how to take on board your points and data repository and governance. Central data repository – database developed by CGI – twelve agencies worked together to collect data. Focussed on planning and biodiversity. Governance and coordination – established Integrated Land Use framework with a High-Level Steering Group, Working Group and Technical Working Groups. Broadly three steps:

1. Data collection from all sectors;
2. Capacity building and data cleaning;
3. Harmonization of data and plans.

Technical level will resolve 50-60% of issues.

Land Commission is a neutral agency.

Harmonization of sectorial plans.

Water

Integrated Water Management System. Please include indigenous water use. Communities have different rights to water use.

CSOs

Please include CSO representation into Working Groups.

Senior Level Workshop (27 Nov 25)

Feedback on recommendations

Data based solution. Right now using IS XX guidelines. Future project can provide guidance on joint database.

Views on current environment laws should acknowledge 21st century economic roadmap.

Dept of Agriculture

Responsible for 2 Acts – Seed Act and Pesticide Act – both 25 years old.

Following reforms – developing Agriculture Bill incorporating previous legislation. Currently conducting Legislative Impact Assessment. Your report will help us. Recently implemented 2025 Seed Rules and Regulations.

You should include 5th National Biodiversity Action Plan.

Good recommendations – a lot of gaps and issues.

Dept of Water

Water Act 2011 – currently in process of consulting on new law. Plan to upscale the skills.

Dept of Mines

Did not see in report anything on Social Safety Nets – loss and damage and risk assessment.

Dept of Infrastructure Development

Asked how project would proceed after the final report is submitted.

Discussion on separate climate and biodiversity laws.

Biodiversity – very wide. Climate law – also very wide. Request you provide best practices from world to be included in next draft report.

Annex III

National Consultants Report (2025)

Author: Namgay Dorji

Title: Preliminary Report on the Harmonization of Environmental and Climate Laws

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 6. Biosafety Act of Bhutan 2015
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 - 7.2. Analysis of the Act's consistency with the Constitution of the Kingdom of Bhutan 2008;
 - 7.3. Analysis of the Act's consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation
8. Mines and Minerals Management Act 1995
 - 8.1. Analysis of inconsistencies among the Acts
 - 8.2. Analysis of the Act's consistency with the Constitution of the Kingdom of Bhutan 2008;
 - 8.3. Analysis of the Act's consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation
9. Pesticides Act of Bhutan 2000
 - 9.1. Analysis of inconsistencies among the Acts
 - 9.2. Analysis of the Act's consistency with the Constitution of the Kingdom of Bhutan 2008
 - 9.3. Analysis of the Act's consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation
10. Livestock Act of Bhutan 2001
 - 10.1. Analysis of inconsistencies among the Acts
 - 10.2. Analysis of the Act's consistency with the Constitution of the Kingdom of Bhutan 2008;
 - 10.3. Analysis of the Act's consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation
11. Road Act of Bhutan 2013
 - 11.1. Analysis of inconsistencies among the Acts
 - 11.2. Analysis of the Act's consistency with the Constitution of the Kingdom of Bhutan 2008;
 - 11.3. Analysis of the Act's consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation
12. Seeds Act of Bhutan 2000
 - 12.1. Analysis of inconsistencies among the Acts
 - 12.2. Analysis of the Act's consistency with the Constitution of the Kingdom of Bhutan 2008;
 - 12.3. Analysis of the Act's consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation
13. Electricity Act of Bhutan 2001
 - 13.1. Analysis of inconsistencies among the Acts
 - 13.2. Analysis of the Act's consistency with the Constitution of the Kingdom of Bhutan 2008;

13.3. Analysis of the Act's consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

14. Food Act of Bhutan 2005

14.1. Analysis of inconsistencies among the Acts

14.2. Analysis of the Act's consistency with the Constitution of the Kingdom of Bhutan 2008;

14.3. Analysis of the Act's consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

15. Disaster Management Act of Bhutan 2013

15.1. Analysis of inconsistencies among the Acts

15.2. Analysis of the Act's consistency with the Constitution of the Kingdom of Bhutan 2008;

15.3. Analysis of the Act's consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

16. Plant Quarantine Act of Bhutan 1993

16.1. Analysis of inconsistencies among the Acts

16.2. Analysis of the Act's consistency with the Constitution of the Kingdom of Bhutan 2008;

16.3. Analysis of the Act's consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

V. Conclusion

I. List of acronyms

BAFRA	Bhutan Agriculture and Food Regulatory Authority
BFDA	Bhutan Food and Drug Authority
CCPC	Civil and Criminal Procedure Code of Bhutan 2001
CSRA	Civil Service Reform Act of Bhutan 2022
EAA	Environmental Assessment Act 2000
FNCA	Forest and Nature Conservation Act 2023
GCF	Global Climate Fund
GNH	Gross National Happiness
MMMA	Mines and Minerals Management Act 1995
MoF	Ministry of Finance
NEC	National Environment Commission
NEPA	National Environment Protection Act 2007
NJC	National Judicial Commission
PCB	Penal Code of Bhutan 2004
PFA	Public Finance Act of Bhutan 2007
RSPN	Royal Society for Protection of Nature
WPMA	Waste Prevention and Management Act of Bhutan 2009

II. Introduction

Background

Bhutan's commitment to environmental preservation and sustainable development is enshrined in its Constitution that is rooted in the philosophy of GNH.

The Constitution of the Kingdom of Bhutan 2008 congealed the values of environmental protection, peaceful coexistence and respect for nature in Bhutan, which existed for centuries before its crystallisation under the vision of Gross National Happiness propounded by His Majesty the Fourth King in the early 1970s:

“Every Bhutanese is a trustee of the Kingdom'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, through the adoption and support of environment-friendly policies and practices.

The Royal Government shall protect, conserve, and improve the pristine environment and safeguard the biodiversity of the country; prevent pollution and ecological degradation; secure ecologically balanced sustainable development; and ensure a safe and healthy environment.

The Government shall ensure that, in order to conserve the country's natural resources and to prevent degradation of the ecosystem, a minimum of sixty percent of Bhutan's total land shall be maintained under forest cover for all time.

Parliament may enact environmental legislation to ensure sustainable use of natural resources and maintain intergenerational equity and reaffirm the sovereign rights of the State over its own biological resources.

Parliament may, by law, declare 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.”[1]

These constitutional requirements have been embedded and further strengthened in several environmental legislations during a period spanning two decades. Although a few Acts were adopted before the Constitution and may oblige orientation with the Constitution, most legislations are aligned with the above requirements.

The 16 environmental laws touch on multifaceted subjects ranging from environmental protection, water conservation and management, forest and nature conservation, waste prevention and management, mines and mineral management, biodiversity, biosafety, electricity, disaster management, and roads to food and agriculture-related laws on pesticide, livestock, seeds, food, and plant quarantine.

The relevant ministries or the commission for the policy purpose for the 16 Acts largely fall on the National Environment Commission and five ministries: the Ministry of Energy and Natural Resources, the Ministry of Health, the Ministry of Agriculture and Livestock, the Ministry of Infrastructure and Transport, and the Ministry of Home Affairs. These Acts are implemented with the support of two regulatory authorities, one Centre and five Departments: the Bhutan Food and Drug Regulatory Authority, the Bhutan Construction and Transport Authority, the National Biodiversity Centre, the Department of Forests and Park Services, the Department of Water, the Department of Environment and Climate Change, the Department of Geology and Mines, and the Department of Local Governance and Disaster Management.

Purpose and Scope

Among the environmental legislation, the oldest Act, the Plant Quarantine Act, was adopted in 1993, and the latest Act, the Forest and Nature Conservation Act, was adopted in 2023. Within the period 1993 to 2023, 16 environmental legislations, excluding delegated legislations, were adopted. While efforts were taken to ensure consistency among these Acts during the drafting process, extending even to effecting amendments as remedial measures, discrepancies and overlaps still exist, leading to confusion about the mandates of various environmental agencies and ineffectual implementation.

Therefore, this Report covers a review of 16 environmental legislations provided below into four broad areas of analysis:

1. Analysis of inconsistencies between the Dzongkha and English text of each Act;
2. Analysis of inconsistencies between the individual Act and other Acts;
3. Analysis of inconsistencies between the individual Acts and the Constitution of Bhutan; and
4. Analysis of inconsistencies between the individual Acts and the Civil Service Reform Act 2022 and the civil service transformation initiatives.

This report does not cover issues on the technical aspects of drafting, including legislative drafting language or format unless it has a direct bearing on the scope.

1. Water Act of Bhutan 2011
2. Forest and Nature Conservation Act of Bhutan 2023
3. Biodiversity Act of Bhutan 2022
4. Environmental Assessment Act 2000

5. National Environmental Protection Act 2007
6. Biosafety Act of Bhutan 2015
7. Waste Prevention and Management Act of Bhutan 2009
8. Mines and Minerals Management Act 1995
9. Pesticides Act of Bhutan 2000
10. Livestock Act of Bhutan 2001
11. Road Act of Bhutan 2013
12. Seeds Act of Bhutan 2000
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16. Plant Quarantine Act of Bhutan 1993

III. Executive Summary

This review of Bhutan's environmental and climate laws reveals a pressing need for harmonization to address fragmentation, constitutional misalignments, and a need for upgradation based on the emerging changes and context. The analysis spans 16 Acts,[2] and the process included identifying critical gaps such as outdated institutional references, redundant penalties for environmental offences, procedural overreach that risks violating citizens' privacy rights, and identifying inconsistencies between the Dzongkha and English texts.

Inconsistencies between Dzongkha and English texts, including omissions or additions of extra words, omissions of conjunctions (such as and/or), inaccurate translations and editorial errors, were found in most of the Acts. These findings reveal the need for technical consistency to curtail discrepancies in translations and standard administration of drafting techniques. The analysis of

inconsistencies between the Dzongkha and English texts of three Acts[3] is excluded from this Report, as the texts were non-existent.

A breakdown of contradictions between the individual Acts and other Acts found most inconsistencies, with each Act exhibiting some discrepancies from other Acts. Duplicating provisions, upgradation of terms in line with other Acts, upholding delineation of duties among relevant agencies and averting parallel processes, legality of search and seizures and ensuring consistency with the CCPC are some common findings.

Examination of contradictions between the individual Acts and the Constitution of Bhutan revealed few inconsistencies, particularly those Acts enacted before or during the time of the adoption of the Constitution, indicating the need to ensure procedural safeguards based on constitutional guarantees. Notably, the powers conferred to NEC by the National Environment Protection Act 2007 to function as a Court may be viewed as unconstitutional, while the Forest and Nature Conservation Act 2023 and Livestock Act 2001 permits warrantless searches, contravening due process.

Scrutiny of inconsistencies between the individual Acts and the CSRA 2022 and the civil service transformations displayed requirements to align the nomenclatures (name of Ministries, departments, regulatory authorities, and so forth) in line with the CSRA 2022 and the related transformation implementation, such as removing Boards under the existing Acts.

By addressing these issues, Bhutan can eliminate legal ambiguities, enhance enforcement efficiency, and reinforce its global leadership in environmental stewardship. The harmonized framework will bridge the gap between tradition and modernity, ensuring that development aligns with the principles of GNH.

IV. Review of Environmental Laws

1. Water Act of Bhutan 2011

The Water Act of Bhutan 2011 aims to ensure that the water resources are protected, conserved and/or managed in an economically efficient, socially equitable and environmentally suitable manner and to establish suitable institutions. The Act contains 17 chapters, including preliminary and miscellaneous. The other chapters cover the functions and powers of authorities; mechanisms for implementation by competent authorities; planning and management of water resources; River Basin Committee; Water Abstraction and Use; Prevention and Control of Water Pollution; specific requirements and procedures for various water uses; construction and safety of water infrastructure; water users' association; water-related emergencies and other special circumstances; financial provisions; dispute settlement and appeals; and monitoring and enforcement; offences and penalties.

1.1. Analysis of inconsistencies among the Acts

The Water Act of Bhutan 2011 ("Water Act") is almost consistent with the existing laws of Bhutan, except for the general repeal provision, a common occurrence under most legislation, and overlapping offences under the PCB.

1.1.1. Section 3

"This Act hereby repeals the provisions of any other Acts, regulations and administrative instruments which are inconsistent with this Act."

This section assumes the supremacy of this Act over other Acts that are in force, and most of the Acts in the past comprised of such a clause which is an outdated approach. Any Act or section of another Act, that conflicts with this Act or is intended to be repealed must be specifically mentioned.

It is recommended to amend the section as "This Act shall supersede the provisions of any other Acts, regulations or administrative instruments relating to the regulation of water which are inconsistent with this Act."

1.1.2. Section 41 (b)

Replace 'must' with 'shall' to maintain conformity with the Legislative Drafting Manual 2016.

1.1.3. Section 44 (j)

This section is incomplete. "j) A water user acting in contravention of subsection shall have no right to claim compensation for non-availability of water." The specific subsection whose contravention shall have no right to claim compensation is lacking. Deriving from context, section

44 (j) applies to section 44 (i) which states “i) If the water resource for irrigation is deemed insufficient, a water user shall not initiate any activities that would require additional water, including conversion of kamzhing to chhuzhing.”

It is recommended to amend section 44 (j) to add (i) after the words ‘sub-section’.

1.1.4. Sections 58 and 59

Section 58 states, “Charges and other fees collected pursuant to this Act and its regulations shall be ploughed back for establishment, operation and maintenance of water-related activities and attainment of the relevant principles of Integrated Water Resources Management. This provision does not limit in any way the obligation pursuant to section 57 or additional funding from other sources.” And section 59 provides that “Payment for environmental services shall be implemented through Regulation under this Act, which shall include appropriate institutional arrangements to administer the funds.”

These sections conflict with the Public Finance Act of Bhutan 2007, under which the Ministry of Finance is the competent authority for financial matters within the purview of the government. The disbursement of budgets to the government agencies must follow prescribed processes, including the mandate of the government agencies to make budget proposals based on which the yearly budgets are allocated by the MoF. Further, administration of funds, if created, must be administered according to the Public Finance Act.

It is recommended to repeal section 58 and amend section 59 to provide “Payment for environmental services shall be implemented through Regulation under this Act, which shall include appropriate institutional arrangements to administer the funds in consonance with the Public Finance Act.”

1.1.5. Section 76 (a) duplicates provisions under the PCB

The offence of providing false or misleading information under section 76 (a) of the Water Act is covered generally under sections 309 (d), 310, 426, and 427 of the PCB although the penalty is the same. Therefore, it may be recommended to remove subsection (a) of section 76 of the Water Act, as the offence and penalty for reporting or providing false information is already covered under the PCB generally.

1.2. Analysis of the Act’s consistency with the Constitution of the Kingdom of Bhutan 2008;

Our analysis did not find any inconsistencies between the Water Act and the Constitution presumably owing to the reason that the Water Act was enacted in 2011, at least three years after the adoption of the Constitution of the Kingdom of Bhutan 2008 (“Constitution”).

1.3. Analysis of the Act’s consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

The inconsistency of the Water Act with the CSRA and the civil service transformation relates mostly to aligning nomenclatures, such as the name of Ministries, and authorities.

1.3.1. Section 15 (a)

In line with section 8(3) of the CSRA, amend section 15 (a) to change the reference to the ‘Ministry of Works and Human Settlement’ to the ‘Ministry of Industry, Commerce and Employment’.

1.3.2. Section 15 (d)

In line with section 8(7) of the CSRA, amend section 15 (d) to change the reference to the ‘Ministry of Agriculture’ to the ‘Ministry of Agriculture and Livestock’.

1.3.3. Section 15 (e)

In line with section 8(3) of the CSRA, amend section 15 (e) to change the reference to the ‘Ministry of Economic Affairs’ to the ‘Ministry of Industry, Commerce and Employment’.

1.3.4. Section 15 (f)

In line with section 35 of the CSRA, amend section 15 (f) to change the reference to the ‘Bhutan Electricity Authority’ to the ‘Electricity Regulatory Authority’.

1.3.5. Section 15 (g) (i)

In line with section 8(3) of the CSRA, amend sections 15 (g) and (i) to change the reference to the ‘Ministry of Home and Cultural Affairs’ to the ‘Ministry of Home Affairs’.

1.3.6. Section 42 (b)

In line with section 8(3) of the CSRA, amend section 42 (b) to change the reference to the ‘Ministry of Works and Human Settlement’ to the ‘Ministry of Industry, Commerce and Employment’.

2. Forest and Nature Conservation Act of Bhutan 2023

2.1. Analysis of inconsistencies among the Acts

The FNCA is in line with the existing laws of Bhutan, except for the general repeal section.

2.2.1. Section 4 (2)

This subsection broadly repeals provisions of existing Acts, including rules and regulations inconsistent with this Act and, in effect, assumes the supremacy of this Act over other Acts that are in force, and most of the Acts in the past comprised of such a clause, which is an outdated approach. Any Act or section of another Act, that conflicts with this Act or is intended to be repealed must be specifically mentioned. Remove subsection 4 (2).

2.2.2. Sections 12 and 18

Section 12 states that “Any power of forestry official under Section 13 to 21 of this Act shall be exercised in accordance with the Civil and Criminal Procedure Code of Bhutan.” In contrast, section 18 provides “Any forestry official may conduct search in the forest-based industry

including construction site without Court warrant in presence of the proprietor or management upon reasonable suspicion of an offence.”

Section 12 states that the power to inspect, enter, search, and arrest must be in line with the CCPC while section 18, however, states that forestry officials may conduct a search without a warrant, which is not tied to the stipulated grounds for search without a warrant under the CCPC. According to the CCPC, the basic principle for a search without warrant is if a person is arrested without a warrant, the jurisdiction under the immediate control of such as person may be searched (section 176) or if a person is in hot pursuit for a felony offence (section 177) or the consent is given by a third party to search (section 179). Even in the sphere of administrative search, a search without a warrant may be permitted only if it is not possible to seek a search warrant, or there is a risk of destroying evidence and post-search requirements, such as reports being submitted, are prescribed. The search conducted without a warrant must be proportionate to the actions of forest-based industries, in addition to the nature of the search itself. If it is a full-

blown search, a warrant may be required, while a surface-level inspection may be allowed without a warrant. Therefore, sections 12 and 18 of the FNCA must be reconciled to ensure consistency within the Act and also with the CCPC.

It is recommended to amend section 18 of the FNCA to require a search warrant, and if circumstances are foreseen under which seeking a search warrant may not be feasible, these conditions must be mentioned in the section.

2.2. Analysis of the Act’s consistency with the Constitution of the Kingdom of Bhutan 2008;

The FNCA was adopted in 2023, and being one of the latest Acts, it conforms with the Constitution.

2.3. Analysis of the Act’s consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

The FNCA repealed the Forest and Nature Conservation Act 1995, and it is one of the latest Acts to be enacted by the Parliament after the adoption of the CSRA. Hence, the Act conforms with the CSRA and the civil service transformation.

3. Biodiversity Act of Bhutan 2022

The Biodiversity Act of Bhutan 2022 is the key legislation that regulates access to and utilisation of genetic resources and traditional knowledge associated with biological resources in Bhutan. Genetic resources apply to all material of plant, animal, microbial or other origins containing functional units of heredity and include the biochemical composition of genetic resources, genetic information regardless of how the genetic information is stored or knowledge of how the hereditary material works in an organism and derivatives. Traditional knowledge in the present context means the knowledge, innovation and practice of communities or individuals relating to the use,

properties, values and processes of any biological and genetic resources or any part thereof. With the definition of genetic resources serving as a basis, the Act comprises 12 Chapters, including the preliminary and miscellaneous chapters. The main chapters of the Act cover on: the Competent National Authority and the National Focal Point and their functions; conservation, and sustainable use of genetic resources; the sui generis system for the protection of plant varieties; access to genetic resources; access to traditional knowledge associated with genetic resources; fair and equitable sharing of benefits; Bhutan Access and Benefit Sharing Fund; registry, records and disposal; monitoring and enforcement; and offence and penalties.

3.1. Analysis of inconsistencies among the Acts

The Biodiversity Act of Bhutan 2022 (“Biodiversity Act”) is consistent with the existing laws of Bhutan with only one observation to be made under Chapter 8.

Chapter 8 of the Biodiversity Act provides for the Bhutan Access and Benefit Sharing Fund, which shall be administered and managed by the National Focal Point. The PFA is the main law governing public finance in Bhutan, including the creation of funds. Section 169 and 170 of the PFA specifically states that the Government may establish funds, if necessary, which, nonetheless, shall be kept to a minimum, and the MoF shall establish rules for the administration of such funds. Therefore, in this line, it may be necessary to insert a new provision after section 132 of the Biodiversity Act, which references the requirements under the PFA. While the part on the Bhutan Access and Benefit Sharing Fund itself may be created according to the Biodiversity Act, the MoF may frame rules to govern such funds, which accordingly must be adhered to by the National Focal Point and the National Competent Authority.

Even if such a section is not inserted under the Act, an understanding to that effect must exist between the National Biodiversity Center and the MoF that may be covered under the rules or regulations framed under the Biodiversity Act.

3.2. Analysis of the Act’s consistency with the Constitution of the Kingdom of Bhutan 2008;

The Biodiversity Act is also among the latest Acts enacted by the Parliament and is in line with the constitutional requirements.

3.3. Analysis of the Act’s consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

The Biodiversity Act only needs alignment of terminology, such as names of ministries along the civil service transformation initiatives.

3.3.1. Section 13

In line with section 7 of the CSRA, replace the ‘Ministry of Agriculture and Forests’ with ‘Ministry of Agriculture and Livestock’.

3.3.2. Section 16

In line with section 7 of the CSRA, replace the ‘Ministry of Agriculture and Forests’ with ‘Ministry of Agriculture and Livestock’.

4. Environmental Assessment Act 2000

The Environmental Assessment Act 2000 was adopted to establish the process for assessing the potential effects of strategic plans, policies, programs and projects on the environment and for determining policies and measures to reduce potential negative effects and promote environmental benefits. The Act comprises ten chapters, including general and miscellaneous chapters. The main chapters focus on: environmental clearance; the environmental assessment process; provisions on seeking, providing, or publishing information; functions and powers of the competent authority; monitoring and control; offenses and penalties; performance of duties; and appeals and dispute resolution.

4.1. Analysis of inconsistencies among the Acts

The EAA showed no instances of inconsistencies with the existing laws of Bhutan.

4.2. Analysis of the Act’s consistency with the Constitution of the Kingdom of Bhutan 2008;

The EAA, even though adopted eight years before the Constitution, conforms with the Constitution. The aim of the Act to determine the potential effects of strategic plans, programs and policies on the environment and generate policies and measures to reduce potential negative effects and promote environmental benefits have been replicated under an independent Article under the Constitution within the umbrella mandate of the government to protect, conserve, and improve the pristine environment and safeguard the biodiversity of the country; prevent pollution and ecological degradation; secure ecologically balanced sustainable development; and ensure a

[4]

safe and healthy environment.

4.3. Analysis of the Act’s consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

4.3.1. Section 38

This section of the EAA states that the Secretariat may appoint an Environmental Assessment Advisory Board to provide technical advice on the environmental assessment and the environmental terms for a project. In contrast, section 13 of the CSRA repeals Boards in all the existing laws under civil service and mandates the ministry to carry out such functions of the Board. Section 14 of the CSRA supplements and empowers the ministries to constitute commissions, councils, committees, or authorities to carry out delegated functions of the ministries. In this line, it is recommended to amend section 38 of the EAA and provide the power to constitute commissions, councils, or committees when required instead of a Board. Further, the power may be given to the NEC instead of the Secretariat.

5. National Environment Protection Act 2007

The National Environment Protection Act 2007 aims to establish an effective system to conserve and protect the environment through a competent authority and regulate and promote sustainable development equitably. It comprises ten chapters, including the preliminary and miscellaneous. The key chapters contain environmental protection principles, mandates and powers of authorities, protection of environmental quality, protection of forest, biodiversity and integrity, environmental financing and incentives, right to information and citizen's participation, inspection and verification procedure, and offences and penalties.

5.1. Analysis of inconsistencies among the Acts

Certain provisions under the NEPA overlaps with the provisions under the Waste Prevention and Management Act of Bhutan (WPMA).

5.1.1. Section 54(c)

The NEC is mandated under section 54 (c) of NEPA to lay down, after consultation, restrictions and procedures on the disposal of waste, which has been adequately covered in detail under the WPMA. Although the NEC is also the regulatory authority under the WPMA, the mandate for waste disposal must be according to the WPMA, and any mention of waste disposal that covers the substantive part must be done so in reference to the WPMA.

5.1.2. Sections 60-62

Sections 60 to 62 of the NEPA provide for waste management, which has been adequately covered in detail under the WPMA. Although the NEC is also the regulatory authority under the WPMA, the mandate for waste disposal must be according to the WPMA, and any mention of waste disposal that covers the substantive part must be done so in reference to the WPMA.

5.1.3. Section 72

Sections 72 of the NEPA stipulate the role of the NEC in establishing regulatory controls over the import and use of genetically modified organisms which has been postulated under the Biosafety Act of Bhutan 2015 ("Biosafety Act") sufficiently covering the regulation of every aspect of genetically modified organisms originally by the National Biosafety Board, replaced with the Ministry of Agriculture and Livestock according to the civil service transformation. Although the general repeal clause under the Biosafety Act supersedes any law inconsistent with the Biosafety Act, to avoid scattered provisions on the same subject under different Acts and creating implementation hurdles and confusion among the users, it is recommended to repeal section 72.

5.1.4. Section 91

Section 91 states that an appeal against the decision of the Commission may be made to the High Court. Although legislation such as the Alternative Dispute Resolution Act of Bhutan 2013 provides a route of appeal directly to the High Court, in the current context, the Commission is not executing the function of a dispute resolution body as a tribunal, and hence, for a dispute

related to request for information, it does not seem proportionate to merit an appeal directly to the High Court. Even for taxation matters where different tiers of appeals are prescribed, the resort to the courts commences with the trial court as the court of first instance. Although other provisions of the NEPA rendered the NEC the status of a civil court for the resolution of environmental disputes, under Part III of this Report, an analysis of the unconstitutionality of those provisions is provided for further reference.

It is recommended to amend section 91 to allow an appeal against the decision of the Commission to 'a court of competent jurisdiction' instead of the 'High Court'.

5.2. Analysis of the Act's consistency with the Constitution of the Kingdom of Bhutan 2008;

Adopted one year before the Constitution, the NEPA is the key legislation for environmental protection in the country and provides in compliance with the Constitution for governing the sustainable use of natural resources, maintaining intergenerational equity and reaffirming the sovereign rights of the State over its biological resources. Yet, some provisions of the NEPA have inadvertently encroached on the constitutional provisions of separation of power, explained in detail below. Understandably, this inconsistency may be ascribed to the NEPA being enacted before the Constitution.

5.2.1. Section 36

Section 36 of the NEPA specifies that the Commission shall be deemed to be a civil court and proceedings before the Commission shall be deemed to be judicial proceedings when the Commission decides to hear cases before it. It further states that the Commission may decide to establish an environmental tribunal and communicate its decision to the Government and Chief Justice for its constitution.

This section directly contravenes the articles of the Constitution^[5] that ensure the separation of power between the three arms of the government. The judicial authority lies with the Royal Court of Justice which includes the Supreme Court, High Court, District and Dungkhag Courts or other courts established from time to time by the Druk Gyalpo on the recommendation of the NJC. Therefore, no government agency can assume to fulfil the mandate of a court, whether civil or criminal. Even the creation of additional courts or tribunals can only be established by the Druk Gyalpo, on the recommendation of the NJC.

It is recommended to repeal section 36 of the NEPA to safeguard the Constitutional objectives.

5.2.2. Sections 48 to 52

These sections enable the Government to establish an Environmental Tribunal to hear specific environmental disputes when the Commission decides not to hear the disputes.

According to Article 21(16) of the Constitution, the establishment of Tribunals, on the recommendation of the NJC is the prerogative of the Druk Gyalpo, Therefore, enabling the government to establish an environmental tribunal may derogate from the constitutional requirement of NJC submitting a recommendation to the Druk Gyalpo, for establishing a tribunal. Article 21 (16) additionally prescribes that "Parliament may, by law, establish impartial and independent Administrative Tribunals as well as Alternative Dispute

Resolution centres.” Deriving from this article, the Alternative Dispute Resolution Act 2013 has been adopted, according to which, processes for the appointment of arbitrators and arbitral proceedings are set out in detail. Section 46 of the ADR Act 2013 excludes disputes related to criminal offences from the purview of matters permitted for arbitration. Therefore, even if environmental disputes are submitted for arbitration based on the consent of both parties, only offences that are civil may be arbitrated as environmental criminal offences cannot be arbitrated.

The independence of the tribunal may also be another issue if the government establishes an Environmental Tribunal, as the government appoints the members of the Tribunal. The NEC comprises the Prime Minister or the Minister of the relevant Ministry as the Chairperson, along with four or five members from relevant ministries nominated by the Chairperson. Therefore, both from the constitutionality lens and the independence and impartiality benchmark, sections 48 to 52 are recommended to be repealed.

If a separate environmental tribunal is foreseen as indispensable for the resolution of environmental disputes, the NEC is recommended to initiate dialogues with the NJC to scrutinise the prospect of establishing a new environmental tribunal in conformity with the Constitutional prerequisites. Or another option would be for the environmental disputes (civil in nature) to be submitted for arbitration according to the ADR Act 2013 if both parties to the dispute agree to the same.

It is recommended to repeal sections 48 to 52 of the NEPA.

5.3. Analysis of the Act’s consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

The NEPA needs to align only the reference to the Department in line with the civil service transformation initiatives.

5.3.1. Section 69

Section 69 of NEPA states that the NEC shall constitute a high-level committee comprising relevant agencies such as the Department of Forestry. However, the civil service transformation has changed the name of the ‘Department of Forestry’ to the ‘Department of Forests and Park Services’, which has also been reflected under the FNCA.

It is recommended to amend section 69 and replace the ‘Department of Forestry’ with the ‘Department of Forests and Park Services’.

6. Biosafety Act of Bhutan 2015

The Biosafety Act of Bhutan 2015 aims to provide for the protection, conservation and safeguarding of biodiversity in the country and to achieve that end, the Act governs all genetically modified organisms, products derived from genetically modified organisms, and all stages of import, export, and direct use of products that have genetically modified content within the country. The Act explicitly excludes from the scope of the Act, traditional and domestic methods of animal and plant breeding, traditional and domestic

exchange and sale of local seeds, plants, and livestock, and gene sequencing, tissue culture, and other similar methods, which do not involve the use of modern biotechnology, and products derived from genetically modified organisms for pharmaceuticals for human and veterinary use. The Act comprise 8 chapters, including key components on the administration of biosafety, main principles and prohibitions, risk assessment, management and communication, labelling and compliance monitoring, public awareness and access to information, liability, compensation, enforcement and penalties.

6.1. Analysis of inconsistencies among the Acts

The examination of the Biosafety Act did not reveal any inconsistency with the country's existing laws outside the purview of the CSRA and the civil service transformation.

6.2. Analysis of the Act's consistency with the Constitution of the Kingdom of Bhutan 2008;

Adopted seven years after the Constitution, the examination of the Biosafety Act did not reveal any inconsistency with the Constitution.

6.3. Analysis of the Act's consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

The analysis of the Biosafety Act's consistency with the CSRA and civil service transformation initiatives demonstrated the need to abolish the constitution and functions of the Board and replace them with the concerned ministry in addition to aligning the names of ministries and authorities.

6.3.1. Section 5

The civil service transformation, as reflected under sections 13 and 14 of the CSRA, has repealed Boards under all the existing laws and the concerned ministry is mandated to carry out the functions of the Board. In line with sections 13 and 14 of the CSRA, repeal sections 5 and 7.

6.3.2. Section 7

Section 26 of the CSRA states that the Bhutan Agriculture and Food Regulatory Authority, Bhutan Narcotic Control Authority, and Drug Regulatory Authority shall merge and function as the Bhutan Food and Drug Authority.

In line with sections 26 and 27 of the CSRA, amend section 7 to change the reference to the 'Bhutan Agriculture and Food Regulatory Authority' to the 'Bhutan Food and Drug Authority'.

6.3.3. Section 14

Section 26 of the CSRA states that the Bhutan Agriculture and Food Regulatory Authority, Bhutan Narcotic Control Authority, and Drug Regulatory Authority shall merge and function as the Bhutan Food and Drug Authority.

In line with sections 26 and 27 of the CSRA, amend section 7 to change the reference to the 'Bhutan Agriculture and Food Regulatory Authority' to the 'Bhutan Food and Drug Authority'.

Sections 6, 7, 8, 9, 10, 11, 12, 13, 15 (6) (7) (11) (13), 44, 45, 56 and 58 (9)

In line with sections 13 and 14 of the CSRA, amend sections 6, 7, 8, 9, 10, 11, 12, 13, 15 (6) (7) (11) (13), 44, 45, 56 and 58(9) of the Biosafety Act to change the reference made to the 'Board' or 'Chair' as the case may be to the 'Ministry of Health'. The civil service transformation, as reflected under the CSRA, has repealed Boards under all the existing laws and the concerned ministry is mandated to carry out the functions of the Board.

6.3.5. Section 58 (4)

Section 26 of the CSRA states that the Bhutan Agriculture and Food Regulatory Authority, Bhutan Narcotic Control Authority, and Drug Regulatory Authority shall merge and function as the Bhutan Food and Drug Authority.

In line with sections 26 and 27 of the CSRA, amend section 58 (4) to change the reference to the 'Bhutan Agriculture and Food Regulatory Authority' to the 'Bhutan Food and Drug Authority'.

6.3.6. Section 58 (18), (21)

In line with section 8(7) of the CSRA, amend section 58 (18) (21) of the Biosafety Act to change the reference made to the 'Ministry of Agriculture' to the 'Ministry of Health'.

7. Waste Prevention and Management Act of Bhutan 2009

The Waste Prevention and Management Act of Bhutan 2009 aims to protect and sustain human health through the protection of the environment by reducing waste generation at the source, promoting the segregation, reuse and recycling of wastes, environmentally sound disposal of waste, and effective functioning and coordination among implementing agencies. It comprises 11 chapters with the key topics on waste prevention and management principles, responsibilities of the public and implementing agencies, Authority of the NEC, powers, duties and mechanisms of implementing agencies, finance, general procedure, and offences and penalties.

7.1. Analysis of inconsistencies among the Acts

The WPMA shows few inconsistencies in terminologies, while the substantive aspect is in line with the existing laws.

Chapter II stipulates the waste prevention and management principles that were imported from the NEPA. Excluding sections 4 and 11 which are specifically applicable to waste prevention and management, the other sections under Chapter 11 of the WPMA duplicates Chapter II of NEPA. It is recommended to repeal sections 5 to 10 of the WPMA and insert a new section referencing to Chapter II of the NEPA as principles applicable to waste management and prevention in the country.

7.1.1. Section 58 (2)

The definition of 'agency' under section 58(2) of the WPMA includes companies incorporated under the Companies Act of the Kingdom of Bhutan 2000 which has been repealed by the Companies Act of Bhutan 2016.

It is recommended to amend section 58 (2) to change the reference made to the 'Companies Act of the Kingdom of Bhutan 2000' to the 'Companies Act of Bhutan'.

7.1.2. Section 58 (13)

The definition of 'local authority' under section (58)13 of the WPMA refers to the 'Waste Prevention and Management Bill' instead of the 'Waste Prevention and Management Act'.

It is recommended to amend section 58 (13) of the change the reference made to 'Waste Prevention and Management Bill' to 'Waste Prevention and Management Act'.

7.1.3. Section 58 (18)

The definition of 'person' under section 58(18) of the WPMA refers to the 'Companies Act, 2000', which has been repealed by the Companies Act of Bhutan 2016.

It is recommended to amend section 58 (18) to change the reference made to the 'Companies Act of the Kingdom of Bhutan 2000' to the 'Companies Act of Bhutan'.

7.2. Analysis of the Act's consistency with the Constitution of the Kingdom of Bhutan 2008;

The WPMA adopted one year after the Constitution, is consistent with the Constitution.

7.3. Analysis of the Act's consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

The inconsistency of the WPMA with the CSRA and the civil service transformation relates mostly to aligning nomenclatures such as the names of Ministries and agencies.

7.3.1. Section 21

In line with section 8(3) of the CSRA, amend section 21 of the WPMA to change the reference to 'Ministry for Works and Human Settlement' and 'City Corporations' to the 'Ministry of Industry, Commerce and Employment' and 'Thromdes' in line with the Local Government Act of Bhutan 2009.

7.3.2. Sections 22 (a), (a) (i), (a) (ii)

In line with section 8(3) of the CSRA, amend sections 22 (a), (a) (i), (a) (ii), to change the reference to the 'Ministry of Economic Affairs' to the 'Ministry of Industry Commerce and Employment'.

7.3.3. Section 22 (d)

In line with section 8(7) of the CSRA, amend section 22 (d) to change the reference to the 'Ministry of Agriculture' to the 'Ministry of Agriculture and Livestock'.

7.3.4. Section 22 (f)

In line with section 28 of the CSRA, amend section 22 (f) to change the reference to the 'Department of Information Technology, Ministry of Information and Communication' to the 'Government Technology Agency'.

7.3.5. Section 22 (h)

In line with section 23 of the CSRA, amend section 22 (h) to change the reference to the 'Road Safety and Transport Authority, Ministry of Information and Communication' to the 'Bhutan Construction and Transport Authority'.

7.3.6. Section 22 (i)

In line with section 22 (i) of the CSRA, amend section 22 (i) to change the reference to the 'Drug Regulatory Authority' to 'Bhutan Food and Drug Authority'.

8. Mines and Minerals Management Act 1995

The Mines and Minerals Management Act 1995 was enacted with the vision of governing the mining activities in the country. The Act applies to the grant of mining leases, carrying out exploration, mining and related activities, and developing minerals in line with the government policies with due respect for efficient use of the resources, protection of the environment, and worker and public health and safety. The Act contains 9 chapters covering mainly the administration of mining activities in the country, management of exploration and mining activities, proper conduct of mining operations, mineral levies, and offences and penalties.

8.1. Analysis of inconsistencies among the Acts

8.1.1. Cover Page Title

There is a need for the Title of the Act on the cover page to truly reflect the title provided in section 1 of this Act i.e. "Mines and Minerals Management Act 1995"

8.2. Analysis of the Act's consistency with the Constitution of the Kingdom of Bhutan 2008;

The MMMA was adopted in 1995, at least 13 years before the Constitution, and with that background, certain alignments, particularly references to the government and the State, must be made based on the context and constitutional division of mandate between the government and the State.

8.2.1. Section 5

Section 5 of the MMMA references the Thrimshung-Chhenpo and states that the ownership of minerals is vested in the government, whether in private or government land, which was the practice before the Constitution was adopted. After the adoption of the Constitution in 2008, Article 1 (13) provides that the rights over mineral resources, rivers, lakes and forests shall vest in the State and are the properties of the State, which shall be regulated by law.

It is recommended to amend section 5 of the MMMA to provide that "the rights over mineral resources, rivers, lakes and forests shall vest in the State and are the properties of the State, which shall be regulated by this Act".

8.3. Act's consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

The MMMA needs to align the names of the divisions and ministries in line with the civil service transformation initiatives.

8.3.1. Section 4 (a)

The 'Division of Geology and Mines' has been upgraded to the 'Department of Geology and Mines'. It is recommended to amend section 4(a) to change the reference to the 'Division of Geology and Mines' to the 'Department of Geology and Mines'.

8.3.2. Section 4 (r)

In line with section 8(2) of the CSRA, amend section 4(r) to change the reference to the 'Ministry of Trade and Industry' to the 'Ministry of Energy and Natural Resources'.

8.3.3. Sections 10, 11, 12, 13, 14, 15, 17, 18, 19, 22, 24, 25, 27, 28, 29, 30, 31, 35, 36, 38, 39, 40, 45, 48, 52

The 'Division of Geology and Mines' has been upgraded to the 'Department of Geology and Mines'. It is recommended to amend the sections stated above to change the reference to the 'Division' to the 'Department'.

8.3.4. Section 14 (viii)

The 'Division of Revenue & Customs' has been upgraded to the 'Department of Revenue and Customs'. It is recommended to amend section 14 (viii) to change the reference to the 'Division of Revenue & Customs' to the 'Department of Revenue and Customs'.

8.3.5. Section 52

Section 52 states that "However, where the Division has to carry out activities in forest areas in accordance with this Act, it shall do so in consultation with Division of Forests." It is recommended to amend this section to change the reference made to Division of Forests to the relevant authority to ensure a flexible approach as the Division of Forests is too specific while the authority to make decisions on forest may also lie at a ministerial level.

9. Pesticides Act of Bhutan 2000

The Pesticides Act of Bhutan 2000 aims to ensure that integrated pest management is pursued, limiting the use of pesticides as the last resort. Further, the act also aims to ensure that only appropriate types and quality of pesticides are introduced into Bhutan and to ensure that pesticides are effective when used as recommended. The act also aims at minimizing deleterious effects to human beings and the environment consequent to the application of pesticides, and to enable privatization of sale of pesticides as and when required. The Act contains 5 chapters, including preliminary and

miscellaneous. The other chapters cover the import, sale and use of pesticides; enforce rules and procedures; and sanctions.

9.1. Analysis of inconsistencies among the Acts

The following are the specific inconsistencies of the Pesticides Act of Bhutan 2000 (Pesticides Act) with other acts:

9.1.1. Section 3.7

Although the introductory part of section 3 (Definitions) stipulates that “In this Act unless the context otherwise requires”, there is a need to cross check the definition of “Label” in the Pesticides Act with the definition of the same in the Food Act of Bhutan 2005 (section 91 (XXIV)).

9.1.2. Section 3.9

Although the introductory part of section 3 (Definitions) stipulates that “In this Act unless the context otherwise requires”, there is a need to cross check the definition of “Sell” in the Pesticides Act with the definition of the same in the Food Act of Bhutan 2005 (section 91 (XXVI)).

9.1.3. Sections 15.2, 15.3, and 15.4

The part on entry, search and seizure under section 15 may require to be aligned with the CCPC to ensure that the due process of law is adhered to transparently and accountably. If immediate actions are necessitated due to the nature of pesticides that may pose danger to human life, it is recommended to clearly provide on the nature of inspections, entry and searches that may require a warrant and those that may not require a warrant and clearly specify the conditions of such entry, search, seizures. It may also be provided that routine inspections to ensure adherence to the Pesticides Act are allowed without a warrant in line with the current practice.

9.1.4. Sections 16.1 and 16.2

The sections 16.1, and 16.2 of the Pesticides Act needs to be reviewed and amended in light of section 31 of the CCPC that provides for registration of a case with the Courts which is more relevant instead of “submitting a complaint to a court” as reflected in sections 16.1 and 16.2 of the Pesticides Act.

9.1.5. Section 18

The section 18 of the Pesticides Act has no specific penalty stipulated and hence the provision is redundant.

9.2. Analysis of the Act’s consistency with the Constitution of the Kingdom of Bhutan 2008

9.2.1. Sections 15.2, 15.3, and 15.4

The analysis under number 9.1.3 may also conflict with sections 1 and 19, Article 7, of the Constitution that guarantees due process of law, and right to privacy if the process is not clearly

stipulated under the Pesticides Act and not aligned with the CCPC. Any deviations from the CCPC must be clearly highlighted as reasoned above.

9.3. Analysis of the Act's consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

9.3.1. Cover Page

The "Minister of Agriculture" in the cover page of the Pesticide Act need to be amended to "Ministry of Agriculture and Livestock" pursuant to section 8(7) of the CSRA.

9.3.2. Section 3.1

The Definition of 'Minister' under section 3.1, Pesticide Act need to be amended to "Ministry of Agriculture and Livestock" pursuant to section 8(7) of the CSRA.

9.3.3. Section 3.2

The Definition of 'Board' under section 3.2, Pesticide Act need to be amended to "Ministry of Agriculture and Livestock" pursuant to section 13 of the CSRA or alternatively consider constituting 'commissions, councils, committees, or authorities' to carry out delegated functions of the Ministry under section 14 of the CSRA.

9.3.4. Section 3.3

The Definition of 'Secretary' under section 3.3, Pesticide Act need to be reviewed and revised based on the amendment made in the definition of the "Board" of the Pesticide Act.

9.3.5. Sections 4.2, 4.3, 6.3 and 7

The use of the term 'Board' under sections 4.2, 4.3, 6.3, and 7 under the Pesticide Act need to be reviewed and revised based on the amendment made in the definition of the "Board" of the Pesticide Act.

9.3.6. Section 7

The "Minister of Agriculture" under section 7, Pesticide Act need to be amended to "Ministry of Agriculture and Livestock" pursuant to section 8(7) of the CSRA and taking into account the implications of the amendment made in the definition of the "Board" of the Pesticide Act.

9.3.7. Section 7 (a-m)

The subsections under section 7 (a-m) needs to be reviewed in terms of relevancy and existence/nonexistence of the disciplines mentioned (in light of the intended purpose of those disciplines).

9.3.8. Section 8

The use of the term 'Board' under section 8 (including subsections 8.1, 8.2, and 8.3), Pesticide Act need to be reviewed and revised based on the amendment made in the definition of the "Board" of the Pesticide Act.

9.3.9. Sections 9.1 and 9.2

The use of the term 'Board' under sections 9.1 and 9.2, Pesticide Act need to be reviewed and revised based on the amendment made in the definition of the "Board" of the Pesticide Act.

9.3.10. Section 14.1

The "Minister of Agriculture" under section 14.1, Pesticide Act need to be amended to "Ministry of Agriculture and Livestock" pursuant to section 8(7) of the CSRA. Further, reference to Quality control and Regulatory Services (QCRS) in the section needs to be verified and amended since QCRS was replaced by BAFRA which in turn is replaced by BFDA.

10. Livestock Act of Bhutan 2001

The Livestock Act of Bhutan 2001 aims to ensure that only quality and appropriate breeds of livestock, poultry and fish are introduced and to ensure that the units used for semen and embryo production and storage are free from diseases. Further, the act also aims to prevent spread of diseases, particularly the notifiable and zoonotic diseases. The act also stipulates safety standards to be followed in the processing of meat, fish, eggs, and dairy products for consumption and lastly the act aims to enable privatization of production, import and export, process, and sale of animals, animal products, feeds, drugs, and other inputs necessary for enhancing livestock products.

10.1. Analysis of inconsistencies among the Acts

The inconsistencies of the Livestock Act of Bhutan 2001 ("Livestock Act") with the existing laws of Bhutan are as hereunder:

10.1.1. Section 4.4

"The District Animal Husbandry Officer or the Official authorized by the Ministry and the Gup will have the authority to enter any premise to inspect and identify such breeding stock."

This section fully authorizes the Ministry and the Gup to authorize the District Animal Husbandry Officer or an official to enter any premises to inspect and identify breeding stock supplied to farmers. This provision needs to be viewed from the privacy lens because even in the sphere of administrative search, a search without a warrant may be permitted only if there is a risk of destroying evidence and post-search requirements, such as reports being submitted, are prescribed. Further, a search without warrant may also be allowed if it is carried out pursuant to

some procedures like carrying out the search in the presence of the owner or person in control of that particular premises based some probable cause or reasonable suspicion.

Further, the word “premise” used in section 4.4 should be “premises” in light of the context in which the sentence is framed.

10.1.2.Section 5.5

“All semen and embryo consignments entering Bhutan should have valid import license issued by the Ministry.”

This section empowers the Ministry i.e. The Ministry of Agriculture and Livestock to issue import license. This needs to be reviewed in light of the import license generally being issued by Ministry of Industry, Commerce and Employment, or in some cases the MoF. Therefore, a thorough consultation between the three Ministries in pertinent so that duplication or creation of parallel processes are curtailed.

10.1.3.Section 5.6

“An Inspector may inspect artificial insemination units and laboratories used for semen processing and embryo storage at any time and impose such conditions necessary to prevent the spread of disease.”

This section empowers an Inspector to inspect artificial insemination units and laboratories used for semen processing and embryo storage at any time. This provision stands to benefit much from considering review of timing of inspection to “a reasonable time” rather than just “at any time” currently in existence.

10.1.4.Section 5.7

“The Semen and embryos shall be confiscated and disposed off without compensation if this Act is contravened.”

This section risks undermining the Court Processes since the section inadvertently provides immediate power to confiscate and dispose off (without compensation) the semen and embryo on contravention of the Act. The challenge here is who has the power to make the immediate decision of whether the Act was contravened or not since the Courts (if the person from whom the semen and embryos is seized decides to appeal to the court) has its own process that may not necessarily be immediate. However, if the semen and embryos pose risk of spreading diseases, the Ministry or the official authorized by the Ministry may be allowed to decide whether to confiscate and dispose off the seized semen and embryos.

It is recommended to amend this section to provide who has the power to confiscate and dispose off the semen and embryos and allow the aggrieved person the right to challenge the decision if such seized semen and embryos do not pose grave risk to human health and environment.

10.1.5. Section 10.1

“All establishments related to production, storage, and marketing of livestock and livestock products, veterinary drugs as well as feed shall be inspected; documents and records examined and samples taken for examination at any time by the inspector.”

This section gives broad powers to an inspector which may not be advisable in light of the CCPC that stipulates provisions for Search Warrant. It may however be advisable to delegate this process through some procedure in the Regulation upon creation of the delegating provision first in the principal act i.e. Livestock Act. Procedural requirements for providing notices to these establishments that they are subject to such inspections may be considered.

10.1.6. Sections 11 and 12

There is a need for “procedure for establishment of a certification agency” to be provided in this act the details of which can be empowered in the act to be provided in the Regulation. Similarly, there is also a need for the “procedure for recognition of foreign livestock certification agencies” that may also be empowered in the act to stipulate the detailed process in the regulation.

10.1.7. Section 18.4

The licencing of commercial establishments is generally within the domain of the Ministry of Industry, Commerce and Employment. Therefore, there is a need for establishing clarity on the licencing aspect first before such provisions are incorporated.

10.1.8. Section 19

It is advisable to make very specific references in terms of the exact section(s) or clause(s) rather than making very generic references like “any other related legislation” etc.

10.1.9. Section 20.2

The reference to “Board” in this section is redundant since there is no reference or definition of the Board in the Livestock Act.

10.1.10. Section 23.2

The power of an inspector to stop and detain any vehicle or enter any premises to inspect and examine livestock may be in contradiction to the CCPC that requires showing of probable cause for issuance of a search warrant by the Court. Further, the “detention” of any vehicle by an inspector may also be construed as a violation of the due process of law as provided under the CCPC. Section 178 of the CCPC provides that a vehicle may be searched where reasonable cause exists or upon the arrest of the driver/passenger, in the absence of which, searching a vehicle will require a search warrant in line with section 175 of the CCPC unless the search is conducted at the checkpoints/gates.

Section 24.1

“An Inspector shall be a public servant and shall be officially subordinate to such authority as the Ministry may notify.”

The position classification of an “Inspector” will be subject to the Civil Service Act of Bhutan 2010 and more specifically will be administered in line with the Bhutan Civil Service Rules and Regulations 2023 unless the Livestock Act intends to create a designation that is outside the scope of Civil Service. This section may also be considered under the definition clause for “Inspector” under the same act.

Section 25.1

10.1.11.

This section provides very broad power to an Inspector through the use of the word “require a person”. Such powers may be qualified by stipulating in the same section who “a person” is referred to so that it does not mean any person that may not be within the purview of the intent of the subsections under section 25.1.

10.1.12. Sections 25.2 and 25.3

These sections provide very broad power to an Inspector to search (without a warrant) or seize vehicle, tools, weapons, animal or poultry, based on some kind of “belief”. Such powers may need to be viewed in light of sections 180 and 181 (for provisions on seizure), and the provisions of chapter 29, 30, and 31 of the CCPC.

10.1.13. Sections 25.4 and 25.5

These sections provide broad power to an Inspector to detain any person based on suspicion of committing an offence. Such powers may need to be viewed in light of chapter 28 of the CCPC.

10.1.14. Section 26

The “power to compound the offence” may be a prerogative of a judge through the established due process of law. The process for compounding offences is clearly provided in sections 70-73, PCB and therefore there is a need to revisit section 26 of the Livestock Act through the stated provisions of the PCB.

Further, section 26.1 (i) “confiscation of anything illegally taken or the proceeds thereof” needs to be viewed in light of sections 180 and 181 (for provisions on seizure) of the CCPC.

10.1.15. Section 29.1

The specific provision under this section i.e. “which may extend from six months to one year” may be aligned to section 3, PCB.

10.2. Analysis of the Act’s consistency with the Constitution of the Kingdom of Bhutan 2008;

The following provision(s) may be inconsistent with the Constitution:

1.2.1 Section 4.4

This section empowers District Animal Husbandry officer or an official authorized by the Ministry and the Gup to enter any premises to inspect and identify breeding stocks supplied to the farmers stand the risk of coming in conflict with Section 19, Article 7 of the Constitution.

1.2.2 Section 5.6

This section empowers an Inspector to inspect artificial insemination units and laboratories used for semen processing and embryo storage at any time, stand the risk of coming in conflict with Section 19, Article 7 of the Constitution.

1.2.3 Section 29.1

The specific provision under this section i.e. “the penalty for repeated offences will be proportionately increased as per the rules drafted hereunder” may be in conflict with the section 1, Article 10 of the Constitution since such legislative power i.e. power to increase penalty may be viewed as a serious power that would likely take away people’s rights, will require parliamentary actions to legislate rather than delegated to the “rules”.

1.2.4 Section 35

The provision on Appeal under this section may undermine sections 1 and 2, Article 21 of the Constitution since the subject matter broadly is about the supremacy of Rule of Law and the question of access to justice.

10.3. Analysis of the Act’s consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

The inconsistency of the Livestock Act with the CSRA and the civil service transformation are as follows:

10.3.1. Section 3.14

In line with section 8(7) of the CSRA, amend section 3.14 to change the reference to the ‘Ministry of Agriculture’ to the ‘Ministry of Agriculture and Livestock’.

10.3.2. Section 3.17

In line with section 8(7) of the CSRA, amend section 3.17 to change the reference to the ‘Ministry of Agriculture’ to the ‘Ministry of Agriculture and Livestock’.

10.3.3. General observation and recommendation

In the Livestock Act, the administration of most of the provisions are referred to the “Ministry” which will cause confusion as to who in the “Ministry” is actually responsibly i.e. A particular person (designation) or a Department, Division, etc. This will also lead to lack of accountability since the reference to Ministry could be anyone in that Ministry or alternately the power would also be that of any person, department, or division in that Ministry.

11. Road Act of Bhutan 2013

The Road Act of Bhutan 2013 aims to establish a comprehensive framework for the development, management, and preservation of road networks to drive socioeconomic progress. It defines a safe and efficient road system, emphasizing coordinated governance between national and local authorities. The Act empowers the Department of Roads and relevant agencies with authority to oversee road construction, maintenance, safety, and management, while clarifying the roles of the Ministry, Department, and Local Governments. It prioritizes responsible use of road reserves, promotes private sector collaboration via public-private partnerships for infrastructure projects, and enforces measures to prevent damage to roads and related infrastructure. By integrating regulatory oversight, stakeholder collaboration, and sustainable practices, the law seeks to enhance road quality, ensure safety, and support long-term national development.

11.1. Analysis of inconsistencies among the Acts

The inconsistencies of the Road Act of Bhutan 2013 (“Road Act”) with the existing laws of Bhutan are as hereunder:

11.1.1. Section 20

There is a need for section 20 of the Road Act to have some alignment and reference to/ due regard for section 48 of the Local Government Act of Bhutan 2009 because the state of the two provisions in these two laws on the subject matter of “power of the local government” has no reference to one another whatsoever. Therefore, based on the context, there is a need for review and reconsideration of the provision to make the two provisions more consistent.

11.1.2. Section 24

There is a need for clarity as to who will accord approval for ‘construction of private road through both private and government land in order to connect to adjoining landed properties’.

11.1.3. Section 25

There is a need for clarity in terms of who or how the “lump sum fee” would be determined and what the procedure would be for processing request for ‘government land for constructing road to a new establishment’. To bring about this clarity, one option could be making reference to delegated legislation by empowering the authorization of delegated legislation for the said subject matter.

11.1.4. Section 26

There is a need for section 26 of the Road Act to take account of section 294, Land Act of Bhutan 2007. Section 26 stipulates that the access roads may be approved under section 23 (... may grant approval to construct any access road subject to such conditions as it may deem necessary). In doing so, i.e. while setting the conditions, it is important to be mindful of section 294 of the Land

Act of Bhutan 2007 that prohibits exclusive use right to a road constructed by them through the government land or government reserved forest land.

11.1.5. Sections 39 and 40

There is a need for reference to Government Procurement System prevalent at a particular point in time because the current provisions give power to the Department or the Local Government to engage any firm, company or corporation to carry out any road works or enter into concession agreements. Further, it may be advisable to consult the MoF on the application of these two sections.

11.1.6. Section 43

There is a need to take account of section 306, Land Act of Bhutan 2007 since the two sections seem to be in conflict with each other. The provisions of the Land Act may prevail over that of the Road Act in light of the Land Act of Bhutan 2007 being specific law governing matters related to land.

11.1.7. Section 61

There is a need to review this section in light of section 128, Land Act of Bhutan 2007 since the provision in the Land Act of Bhutan 2007 prohibits encroachment on any state owned and private registered land. Therefore, there is a need for greater clarity in section 61 of the Road Act through creation of processes for construction of footpath over “any land” so that the provision does not become an impediment to rights holders.

11.1.8. Section 77

This provision needs to be reviewed in light of section 4 (a), Bhutan Standards Act 2010 that mandates the Bhutan Standards Bureau to develop national standards and facilitate their implementation that may be in conflict with section 77 of the Road Act that also stipulates on development and determination of standards.

11.1.9. Sections 161 and 162

These sections need to be reviewed in light of section 4(2) of the FNCA because although section 161 through use of “notwithstanding” clause tries to override the provisions of the FNCA, section 4(2) of the FNCA (which is a later act and a specific act when it comes to forest and its associated subject matters) is broadly empowered to repeal all provisions of all existing Acts which are inconsistent with the FNCA.

11.1.10. Sections 173 and 174

There is a need for these sections to be aligned to the provisions in the Land Act, specifically sections 196-202 (for acquisition and substitution of registered land). This is primarily because the Land Act being the specific/principle legislation on the subject matter of ‘land’ will have primacy over other legislations.

11.1.11. Sections 195 and 197

These sections may need to take account of section 69 of the FNCA to ensure compliance to Technical Guidelines for plantation. While sections 195 and 197 empowers the Department of Road or the Local Government to grant permission to plant trees, shrubs, etc on the premises adjoining a road, section 69 of FNCA requires individuals or agencies carrying out plantation in state reserve forest land to seek approval of the Department of Forests and Park Services.

11.1.12. Sections 219 and 220

These sections need to be reviewed in light of section 4(a), Bhutan Standards Act 2010 that mandates the Bhutan Standards Bureau to develop 'national standards' and facilitate their implementation.

11.1.13. Chapter 19 (Offences and Penalties)

It is advisable that specific offences are named as such (possibly as a title to the section) followed by description of the specific offence which is partly already covered under the subsections. The drafting of the provisions in chapter 19 can be based on the sections in the PCB. To the extent possible, it may be worthy to explore the inclusion of offences and penalties especially the felony (subsections of section 237), section 238, the offence of misdemeanour (subsections of section 239), and the offence of petty misdemeanour (subsections of section 240) in the PCB.

11.1.14. Section 246

This section may be more appropriate for consideration in the laws on corporate governance.

11.1.15. Section 251

In this section, it may be advisable to mention 'Minister' instead of 'Ministry' based on the guidance provided in clause 1.3.1, Legislative Drafting Manual 2016.[6]

11.1.16. Section 252

It may be advisable to retain the rule making power with only one entity to avoid duplication of subordinate legislations.

11.1.17. Section 253

This section may be deleted since the Parliament has its own procedures set which is subject to the relevant laws applicable to both the houses of the Parliament and the Constitution.

11.1.18. Sections 255(25) and (26)

The definitions of "Minister" and the "Ministry" may be reconsidered to make it more definitive and guidance on such may be sourced from the CSRA.

11.1.19. Section 255(29)

The definitions of "Person" may be reviewed in light of the definition of "Person" provided in section 416(31), Companies Act of Bhutan 2016.

11.2. Analysis of the Act's consistency with the Constitution of the Kingdom of Bhutan 2008;

The following provision(s) may be inconsistent with the Constitution:

11.2.1. Section 44

This section may undermine section 1, Article 10 of the Constitution that vests all legislative powers with the Parliament. In the current case, section 44 of the Road Act seems to be creating

a restriction on the adoption of laws in the area of 'rights and obligations of landlords and tenants' that may prejudice the operation of an agreement between the Department or Local Government and the concessionaire.

11.2.2. Section 45

This section may undermine section 1, Article 10 of the Constitution that vests all legislative powers with the Parliament. In the current case, section 45 of the Road Act seems to be creating

a restriction on the application of laws in relation to the 'rights and obligations of parties to a lease granted'

11.3. Analysis of the Act's consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

The inconsistency of the Road Act with the CSRA and the civil service transformation are as follows:

11.3.1. Sections 6(3), 6(4), 11, 14, 16, 17, 19, 20(7), 21(3), 23, 30, 86, 161, 230(4)(b), and 255(10)

In line with section 22, CSRA, amend sections 6(3), 6(4), 11, 14, 16, 17, 19, 20(7), 21(3), 23, 30, 86, 161, 230(4)(b), and 255(10) to change the reference of 'Department of Roads' to the 'Department of Surface Transport'.

11.3.2. Section 19 Heading

In line with section 22, CSRA, amend the section heading for section 19 to change the reference of 'Department of Roads' to the 'Department of Surface Transport'.

11.3.3. Section 255(10)

The definition of "Department- Department of Roads" must be amended to include the amendment by implication of section 22 and 23 of the CSRA. Therefore, based on the context, the new definition of the Department under section 255 (10) should be bifurcated based on "Development functions" and "Regulatory functions".

12. Seeds Act of Bhutan 2000

The Seeds Act of Bhutan 2000 aims to regulate import and export of Agriculture seeds, to prevent introduction of plants and diseases and to promote seed industry in the country aimed at enhancing rural income and livelihood.

12.1. Analysis of inconsistencies among the Acts

The inconsistencies of the Seeds Act of Bhutan 2000 (“Seeds Act”) with the existing laws of Bhutan are as hereunder:

12.1.1.Section 15.2

The powers of a seed inspector to enter and search provided under section 15.2 of the Seeds Act may be aligned to section 168 of the CCPC that requires showing of probable cause for issuance of a search warrant by the Court.

12.1.1. Section 15.4

The powers of a seed inspector to seize (record, register, document or any other material object) provided under section 15.4 of the Seeds Act may need to be viewed in light of sections 180 and 181 of the CCPC.

12.2. Analysis of the Act’s consistency with the Constitution of the Kingdom of Bhutan 2008;

The following provision(s) may be inconsistent with the Constitution:

12.2.1.Section 2.6

The definition of “He” under section 2.6 needs to be reviewed since the current definition can be viewed as being discriminatory and in conflict with section 15, Article 7 of the Constitution.

12.2.2.Section 10

The provisions under section 10 pertaining to “Appeal” may be reviewed in light of (section 16, Article 7), and (section 1 and 7, Article 21) of the Constitution.

12.2.3.Section 15.5

The provisions under section 15.5 of the Seeds Act may be reviewed in light of section 1, Article 7 of the Constitution.

12.2.4.Section 18.2

The reference to “imprisonment or fines” in this section being subject to the rules of the Ministry may be in conflict with section 16, Article 7 read with section 8, Article 20 of the Constitution.

12.3. Analysis of the Act’s consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

The inconsistency of the Seeds Act with the CSRA and the civil service transformation are as follows:

12.3.1.Section 2.2

The definition of “Board” under section 2.2 must be aligned to section 13 of the CSRA since the CSRA has repealed all “Boards in all the laws and the functions of the Board is to be carried out by concerned ministries.

12.3.2.Section 3

In light of section 13 of CSRA, section 3 (including the subsections) of the Seeds Act may be reviewed since the functions of a Board is to be undertaken by a concerned ministry. Further, the reference to the “Ministry of Agriculture” may be replaced by “Ministry of Agriculture and Livestock” pursuant to section 8(7), CSRA.

12.3.3.Section 3.4

The power to appoint committee(s) vests with a concerned ministry^[7] and not with a Board. Therefore, this provision needs to be reviewed.

12.3.4.Section 3.5

This section needs to be reviewed in light of section 13 of CSRA since the functions of a Board is to be undertaken by a concerned ministry.

12.3.5.Section 3.6

This section needs to be reviewed in light of section 13 of CSRA since the functions of a Board is to be undertaken by a concerned ministry.

12.3.6.Section 4

The reference to the “Ministry of Agriculture” may be replaced by “Ministry of Agriculture and Livestock” pursuant to section 8(7), CSRA. Further, in the same section, the context in which Board is used in the section may be reviewed in light of section 13 of CSRA since the functions of a Board is to be undertaken by a concerned ministry.

12.3.7.Section 5

The reference to the “Ministry of Agriculture” may be replaced by “Ministry of Agriculture and Livestock” pursuant to section 8(7), CSRA. Further, in the same section, the context in which Board is used in the section may be reviewed in light of section 13 of CSRA since the functions of a Board is to be undertaken by a concerned ministry.

12.3.8.Section 7

The reference to the “Ministry of Agriculture” may be replaced by “Ministry of Agriculture and Livestock” pursuant to section 8(7), CSRA. Further, in the same section, the context in which Board is used in the section may be reviewed in light of section 13 of CSRA since the functions of a Board is to be undertaken by a concerned ministry.

12.3.9.Section 9

The section heading of section 9 may be “Revocation” instead of “Renovation” based on the context of the section (including the subsections, especially subsection 9.2).

12.3.10. Section 11

The reference to the “Ministry of Agriculture” may be replaced by “Ministry of Agriculture and Livestock” pursuant to section 8(7), CSRA. Further, in the same section, the context in which Board

is used in the section may be reviewed in light of section 13 of CSRA since the functions of a Board is to be undertaken by a concerned ministry.

12.3.11. Section 12

The reference to the “Ministry of Agriculture” may be replaced by “Ministry of Agriculture and Livestock” pursuant to section 8(7), CSRA.

12.3.12. Section 13

The reference to the “Ministry of Agriculture” may be replaced by “Ministry of Agriculture and Livestock” pursuant to section 8(7), CSRA.

12.3.13. Section 14.1

The reference to the “Ministry of Agriculture” may be replaced by “Ministry of Agriculture and Livestock” pursuant to section 8(7), CSRA.

12.3.14. Section 14.2

The reference to the “Ministry of Agriculture” may be replaced by “Ministry of Agriculture and Livestock” pursuant to section 8(7), CSRA. Further, in the same section, there is a need to verify and confirm the use of the term “public servant” based on the context in which the recruitment and appointment process of a Seed Inspector is administered.

12.3.15. Section 19

The reference to the “Ministry of Agriculture” may be replaced by “Ministry of Agriculture and Livestock” pursuant to section 8(7), CSRA.

12.3.16. Section 21

The reference to the “Ministry of Agriculture” in the heading (section 21) and in subsections 21.1 and 21.2 may be replaced by “Ministry of Agriculture and Livestock” pursuant to section 8(7), CSRA.

12.3.17. Section 22

The reference to the “Ministry of Agriculture” may be replaced by “Ministry of Agriculture and Livestock” pursuant to section 8(7), CSRA.

13. Electricity Act of Bhutan 2001

The Electricity Act of Bhutan 2001 aims to modernize and regulate Bhutan’s electricity supply industry to ensure sustainable development, energy security, and socioeconomic growth. The Key purposes include restructuring the sector, establishing the central regulatory body, and enabling technical oversight to maintain industry standards. The legislation encourages private sector participation to diversify investment and innovation, while empowering the government to form companies to advance the sector’s goals. The key

objectives focus on delivering a safe, reliable and nationwide electricity supply, enhancing revenue through electricity exports, and fostering socio-economic welfare. The Act prioritizes building a financially viable and self-reliant electricity industry to reduce dependency on external resources. It emphasizes the development of renewable energy resources, integrates environmental safeguards into industry expansion, and promotes efficiency in management and service delivery.

13.1. Analysis of inconsistencies among the Acts

The inconsistencies of the Electricity Act of Bhutan 2001 (“Electricity Act”) with the existing laws of Bhutan are as hereunder:

13.1.1. Section 6.2(ii)

The reference to the “Companies Act of the Kingdom of Bhutan, 2000” must be replaced by the “Companies Act of Bhutan 2016” in light of the developments in the corporate legislations.

13.1.2. Section 6.2(xii)

In the definition of the “Ministry”, it may be advisable to identify who or which entity would be responsible for assigning the responsibility of the electricity sector to a particular Ministry.

13.1.3. Section 6.3

It may be advisable to delete this section and consider usage of gender-neutral words throughout the Act.

13.1.4. Section 7.1 and 7.2

There is a need for specific linkage to be established for correlation between “Bhutan Electricity Authority” and reference to “Authority” only at this initial stage so that all references to ‘Authority’ are clear beyond section 7.1.

13.1.5. Section 8.1

In this section, it may be advisable to specify specific ‘terms and conditions’ of the members of the Authority or alternately create provision to provide the terms and conditions in the delegated legislation. Such provision is pertinent to ensure transparency and accountability and more importantly to give clarity to the Minister in charge while the Minister administers the powers.

13.1.6. Section 8.8

In this section, it may be advisable to specify “criteria” and “processes of appointment” for the vacant members of the Authority or alternately create provision to provide the “criteria” and “processes of appointment” in the delegated legislation. Such provision is pertinent to ensure transparency and accountability and more importantly to give clarity to the Minister in charge while the Minister administers his or her powers.

13.1.7. Section 9.3

In this section, it may be advisable to specify “criteria” and “processes of appointment” to appoint “staff” by the Chief Executive Officer or alternately create provision to provide the “criteria” and “processes of appointment” in the delegated legislation. Such provision is pertinent to ensure transparency and accountability and more importantly to give clarity to the Chief Executive Officer for administering the responsibilities prudently.

13.1.8. Section 10.4

The use of the word “Secretary” in this section (and other sections- 10.8, 10.9, and 10.16) may be changed to “Chief Executive Officer” or “CEO” to avoid usage of two terminologies to refer to the same position.

13.1.9. Section 10.17

This section may be rephrased since the two parts in the section seem to contradict each other.

13.1.10. Sections 11.1 (i), (ii), (iii), (v) and (vi)

The section 11.1 (i), (ii), (iii), (v), and (vi) under the “Functions of the Authority” state’s that the function of the Authority is to “develop”, “process”, “monitor”, “collect”, “impose”. These responsibilities will be more relevant functions of the Secretariat under the guidance of the Chief Executive Officer since administering these responsibilities will cause substantial administrative burden in light of the Authority meeting only around four times in a year.[8]

13.1.11. Section 11.1(vii)

It may be advisable to provide detailed dispute resolution processes in the Act or alternately create a provision that empowers the delegation of formulation of detailed dispute resolution processes through delegated legislation(s). Such provision is pertinent to ensure systemic approach through detailed processes that will ensure transparency in decision making.

13.1.12. Section 11.1(viii)

Such broad powers that have no clarity and may be used to escape accountability may be avoided so that the provisions in the law are able to confine it’s intent only to clear and specific provisions that will curtail ambiguous application of legal provisions.

13.1.13. Section 14

The provision i.e. “in accordance with the following principles:” after section 14.1(v) requires a definite reference numbering since this provision may cause difficulty while making reference during the application of this specific provision.

13.1.14. Section 15.2(ii)

The subsection (ii) under section 15.2 may be reviewed since the current provision is disconnected and may cause more confusion.

13.1.15. Section 17

There is a need to surgically review the “Powers and functions of the Minister” in context with “Functions of the Authority” provided through section 11. This observation is made largely due to the overlapping nature of the two broad provisions.

13.1.16. Section 19

In this section, it may be advisable to specify the “criteria” and “process for seeking and providing exemptions” by the Authority or alternately create provision to provide the “criteria” and “process for seeking and providing exemptions” in the delegated legislation. Such provision is pertinent to ensure transparency and accountability and more importantly to give clarity to the Authority for administering its wide powers prudently on this matter.

13.1.17. Section 22

This section creates the types of licence and on that note, it may be advisable to create the criteria’s, documentary requirements, processes, and timelines applicable for each type of licence.

13.1.18. Section 22.2(xi)

It may be advisable to refrain from inclusion of such broad provisions because such provisions make way for uncertainty that can be invoked negatively by the Authority as a tool of manipulation to disqualify a targeted applicant.

13.1.19. Section 22.3

To the extent possible, it may be advisable to specify the “report(s)” intended through this section.

13.1.20. Section 22.4

It may be prudent to specify the requirements in this legislation or the delegated legislation authorized by this Act so that there is clarity and transparency for an applicant and also for the Authority while making an application for a licence.

13.1.21. Section 23.2 (iii)

It may be advisable to define what “commercial confidentiality” means and more importantly to provide guidance on the parameters within which members of the public can inspect an application.

13.1.22. Section 29.1

It may be advisable to refrain from incorporating provisions that leave room for modifying ‘terms and conditions’ of a licence since that could be construed as or be cloaked to discourage applicants in the first place due to the possibility of relaxing of terms and conditions not being known to a genuine applicant due to the applicant not being privy to some information that leads to beneficial discounts through modification in the future once a licence has been obtained.

13.1.23. Section 20.3

Need to define or qualify what “national interest” in this Act means.

13.1.24. Section 31.3

To the extent possible, it may be advisable to specify the specific “terms and conditions” of renewal of licence by the Authority or alternately create provision to provide the “terms and conditions of renewal” in the delegated legislation. Such provision is pertinent to ensure transparency and accountability and more importantly to give clarity to the Authority for administering it’s wide powers prudently on this matter.

Section 41.4

Need to review this section closely and rephrase.

13.1.25. Section 43.6

This section may be reviewed in light of section 4 of the Civil Liability Act of Bhutan 2023.

13.1.26. Section 53.1

This section may be reviewed in light of section 13(l) of the Water Act of Bhutan 2011 which applies to all issues related to water resources in Bhutan.

13.1.27. Section 56

It is advisable that specific offences are named as such (possibly as a title to the section) followed by description of the specific offence followed by the penalty for that particular offence. The drafting of the offences can be guided by the provisions in the PCB.

13.1.28. Part 9 (Offences)

It is advisable that specific offences are named as such (possibly as a title to the section) followed by description of the specific offence followed by the penalty for that particular offence. The drafting of the offences can be guided by the provisions in the PCB.

13.1.29. Section 70

There is a likelihood that this provision may render the licencing regime/requirement of this Act redundant and hence such broad powers may be reviewed based on the intent of the section.

13.1.30. General Comments

1. The numbering in this act needs to be reworked since the titles under a chapter is provided with the number and some provisions have no reference to any number. The numbering style may be in conformity with the clause 6.2.2, Legislative Drafting

Manual 2016.[9]

13.2. Analysis of the Act’s consistency with the Constitution of the Kingdom of Bhutan 2008;

The following provision(s) may be inconsistent with the Constitution:

13.2.1.Section 4.1

The current provision is inconsistent because all Acts shall come into force on the date of receiving the Assent of the Druk Gyalpo mandated by section 1 Article 13 of the Constitution.

13.2.2. Section 6.2(vii)

The reference to the “Royal Government” under the definition of “Government” must be replaced by “Royal Government of Bhutan” based on the reference to Government in the Fourth Schedule of the Constitution.

13.2.3.Section 8.5

The unilateral power of the Minister to revoke any appointment (of authority members) purely on how the performance of the function and duties appear to the Minister is in contravention to the principles of due process of law enshrined in section 1, Article 7 of the Constitution.

13.2.4.Section 12.1

The use of “his” in this section may be changed to “his or her” since the current provision using “his functions” may be viewed as contravening section 15, Article 7 of the Constitution.

13.2.5.Section 13.1(i)

The use of “his” in this section may be changed to “his or her” since the current provision using “his performance” may be viewed as contravening section 15, Article 7 of the Constitution.

13.2.6.Section 15.1

The use of “he” in this section (two instances) may be changed to “he or she” since the current provision using “he thinks” and “he may” could be viewed as contravening section 15, Article 7 of the Constitution.

13.2.7.Section 35.3

The use of “his” in this section may be changed to “his or her” since the current provision using “his functions” may be viewed as contravening section 15, Article 7 of the Constitution.

13.2.8.Section 43.7

This section may be reviewed in light of section 2, Article 21 of the Constitution that vests all judicial authority in the Royal Courts of Justice.

13.2.9.Section 49.2

The use of “his” in this section may be changed to “his or her” since the current provision using “his recommendations” may be viewed as contravening section 15, Article 7 of the Constitution.

13.2.10. Section 52

There is a need to review this section in light of section 19, Article 7 of the Constitution that guarantees protection from unlawful interference with his/her privacy. Further, this provision may also be reviewed based on the provisions of the Land Act of Bhutan 2007.

13.2.11. Section 53.4

This section may be an impediment to the affected party that may want to a legal recourse and hence this section must be reviewed in light of section 2, Article 21 of the Constitution that vests all judicial authority in the Royal Courts of Justice.

13.2.12. Section 82

The use of “his” and a “he” in this section may be changed to “his or her” and “he or she” since the current provision using “his own motion” and “he may” could be viewed as contravening section 15, Article 7 of the Constitution.

13.3. Analysis of the Act’s consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

The inconsistency of the Seeds Act with the CSRA and the civil service transformation are as follows:

13.3.1. Section 2.2

The definition of “Board” under section 2.2 must be aligned to section 13 of the CSRA since the CSRA has repealed all “Boards in all the laws and the functions of the Board is to be carried out by concerned ministries.

14. Food Act of Bhutan 2005

The Food Act of Bhutan 2005 aims to protect human health and regulate and facilitate the import, export and trade of food in Bhutan.

14.1. Analysis of inconsistencies among the Acts

The inconsistencies of the Food Act of Bhutan 2005 (“Food Act”) with the existing laws of Bhutan are as hereunder:

14.1.1. Section 2

This section gives total power over other Acts that are in force which is not an advisable approach and may lead to more ambiguities in administering different schemes under different laws. On the contrary, it is best practice of drafting to specifically mention the provision of any Act or section of another Act, that conflicts with the latest Act being proposed.

It is recommended to amend the section as “This Act shall supersede section (name the specific provision) of Act/Regulation/administrative instrument (name of the specific act, regulation, or the administrative instrument).”

14.1.2.Section 4(a)

The use of term “public officer” in this section needs to be defined clearly and guidance on who may be called a public officer can be sourced from section 176 (ff) and (kk) off the Anti-Corruption Act of Bhutan 2011.

14.1.3.Section 6

It may be prudent to specify the specific duties to be performed under the Act in the delegated legislation by creating a provision in this Act that authorizes the Minister to make delegated legislation rather than outlining the process of making one.

14.1.4.Section 7

It may be advisable to create systems and processes for licencing of laboratory tests to be undertaken by non-government entities within the parameters approved by the Minister. Such feat can be achieved through creation of a provision to come out with delegated legislations under this Act that authorizes the Minister to make delegated legislation.

14.1.5.Section 18(g)(ii)

In this section, “the Preparation of” may be deleted since the current provision gives the impression that one of the mandates of the commission is only to review and approve the “preparation” whereas the intent of the provision is for the commission to have the power to review and approve the ‘standards, rules and regulations, orders, and notices along with the amendments thereto’.

14.1.6.Sections 40 and 41

These sections need to be reviewed in light of chapter 29-31 of the CCPC.

14.1.7.Sections 72 and 73

The reference to “Bhutan Civil Services Rules and Regulations 2002” is no longer relevant due to the change in this specific Regulation and hence it may be advisable to make a general reference as “the applicable Rules or Regulations pertaining to Civil Servants at that point in time”.

14.1.8.Sections 74, 75, 76, and 77

The provisions in these sections are specific offences whose liabilities are all provided in section 79. It is advisable that specific offences are named as such (possibly as a title to the section) followed by description of the specific offence which is partly already covered under the subsections. The drafting of the provisions for these sections can be based on the sections in the PCB. To the extent possible, it may be worthy to explore the inclusion of offences and penalties in the PCB.

14.1.9.Sections 79

Every specific penalty stipulated under this section may be more appropriately placed after ever offence. The drafting of the provisions for these penalties can be based on the sections in the

PCB. To the extent possible, it may be worthy to explore the inclusion of offences and penalties in the PCB.

14.1.10. Section 81

In this section, the provision on “sign the notice in acknowledgment of guilt” may not be appropriate since the alleged person has the option to pay or not to pay and such an acknowledgment will be of use to no one since the burden of proof will generally fall on the state (prosecutor or alleged of an offence) as required under section 96.2 of the CCPC.

14.1.11. Section 82

In this section, the provision as it stands risk the chance of being viewed as double jeopardy which is prohibited under section 206 of the CCPC in light of how the section is framed especially “charged and convicted by a court.....shall be liable”. Therefore, it is advisable to stipulate the penalties immediately after the description of an offence as administered in through the PCB.

14.2. Analysis of the Act’s consistency with the Constitution of the Kingdom of Bhutan 2008;

The following provision(s) may be inconsistent with the Constitution:

14.2.1.Section 2

This section assumes the supremacy of this Act over other Acts that are in force, and most of the Acts in the past comprised of such a clause which is an outdated approach. Any Act or section of another Act, that conflicts with this Act or is intended to be repealed must be specifically mentioned.

It is recommended to amend the section as “This Act shall supersede the provisions of any other Acts, regulations or administrative instruments relating to the regulation of food which are inconsistent with this Act.”

14.3. Analysis of the Act’s consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

The inconsistency of the Food Act with the CSRA and the civil service transformation are as follows:

14.3.1.Section 3

“The Minister responsible for agriculture shall be the primary authority for the administration of this Act.”

This section needs to be amended in light of section 26 of the CSRA that has restructured the erstwhile Bhutan Agriculture and Food Regulatory Authority and placed it under the Ministry of Health. Therefore, this section may be amended as “The Minister shall be the primary authority for the administration of this Act”, and alternately, the definition of Minister may be amended to accommodate this amendment proposal.

14.3.2.Section 9

In this section, references to Bhutan Agriculture and Food Regulatory Authority may be amended to Bhutan Food and Drug Authority pursuant to section 26 and 27 of CSRA.

14.3.3.Section 10(a)

“the Minister responsible for agriculture, who shall serve as Chair;”

This section needs to be amended in light of section 26, CSRA that has restructured the erstwhile Bhutan Agriculture and Food Regulatory Authority and placed it under the Ministry of Health. Therefore, this section may be amended as “The Minister shall be the primary authority for the administration of this Act”, and alternately, the definition of Minister may be amended to accommodate this amendment proposal.

14.3.4.Sections 10(b)(i), 18(f), 20, 21, 22(b), 33, 45(b), 48, 66, 69, 70, 81, 83, 84

In these sections, references to BAFRA must be amended to Bhutan Food and Drug Authority or BFDA pursuant to section 26 and 27 of CSRA.

14.3.5.Sections 10(b) (ii & iii)

In this section, references to “Ministry of Agriculture” may be amended to “Ministry of Agriculture and Livestock” pursuant to section 8(7) of CSRA.

14.3.6.Chapter IV (Chapter heading)

The Heading of chapter IV must be amended from Bhutan Agriculture and Food Regulatory Authority (BAFRA) to Bhutan Food and Drug Authority (BFDA) pursuant to section 26 and 27 of CSRA.

14.3.7.Section 20

The section heading for this section must amended from BAFRA to BFDA pursuant to section 26 and 27 of CSRA.

14.3.8.Section 22(a)

“the Secretary of the Ministry responsible for agriculture, who shall serve as Chair;”

This section needs to be amended in light of section 26, CSRA that has restructured the erstwhile Bhutan Agriculture and Food Regulatory Authority and placed it under the Ministry of Health. Therefore, this section may be amended as “The Secretary of the Ministry shall serve as the Chair”, and alternately, the definition of Ministry may be amended to accommodate this amendment proposal.

14.3.9.Section 22(c and d)

In these sections, references to “Ministry of Agriculture” may be amended to “Ministry of Agriculture and Livestock” pursuant to section 8(7) of CSRA.

14.3.10. Section 91(viii)

This section must be amended from BAFRA to BFDA and defined as Bhutan Food and Drug Authority pursuant to section 26 and 27 of CSRA.

14.3.11. Section 91(xxvii)

This section needs to be amended in light of section 26 of the CSRA that has restructured the erstwhile Bhutan Agriculture and Food Regulatory Authority and placed it under the Ministry of Health. Therefore, this section may be amended as “Minister” means the Minister for Health”.

15. Disaster Management Act of Bhutan 2013

The Disaster Management Act of Bhutan 2013 brings together Bhutan’s commitment to shield its people, heritage, and natural landscapes from the ravages of disasters by charting a path towards resilience, blending tradition with modern governance to foster safety and security for all. This Act aims to bring government agencies, private sector, and communities together by working together to build stronger institutions, empowering Bhutan with the tools to anticipate crises, respond swiftly, and rebuild sustainably.

15.1. Analysis of inconsistencies among the Acts

The inconsistencies of the Disaster Management Act of Bhutan 2013 (“Disaster Management Act”) with the existing laws of Bhutan are as hereunder:

15.1.1. Section 2

This section gives total power over other Acts that are in force which is not an advisable approach and may lead to more ambiguities in administering different schemes under different laws. On the contrary, it is best practice of drafting to specifically mention the provision of any Act or section of another Act, that conflicts with the latest Act being proposed.

It is recommended to amend the section as “This Act shall supersede section (name the specific provision) of Act/Regulation/directive/circular (name of the specific act, regulation, directive, or circular).”

15.1.2. Section 45

It may be advisable to open this right to all the people and not confine it only to the Chairperson or a person authorized by the Chairperson so that everyone is able to avoid imminent risk of death or injury to a person during the times of emergency.

15.1.3. Sections 124-130

The provisions in these sections are specific offences along with liabilities for that particular offence. It is advisable the offences are segregated from the liabilities to the offence within the same section. Should this be undertaken then the liability provision will be a separate provision to that of the offence wherein the liability provision follows the offence provision. The drafting of

the separate provisions (i.e the offence, and the liability for that offence) can be guided by the provisions in the PCB. To the extent possible, it may be worthy to explore the referencing of offences and penalties to the PCB rather than duplicating the same in this Act.

15.2. Analysis of the Act’s consistency with the Constitution of the Kingdom of Bhutan 2008;

The following provision(s) may be inconsistent with the Constitution:

15.2.1.Section 131

This section provides ambiguous and broad powers to the National Disaster Management Authority to impose reasonable penalty to an offence that is not covered this Act. Such broad powers may undermine section 1, Article 10 of the Constitution.

15.3. Analysis of the Act’s consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

The inconsistency of the Food Act with the CSRA and the civil service transformation are as follows:

15.3.1.Sections 8(b) and 58

In these sections, references to “Ministry of Home and Cultural Affairs” may be amended to “Ministry of Home Affairs” pursuant to section 8(1) of CSRA.

15.3.2.Section 8(f)

In this section, references to “National Environment Commission” may be amended to “Department of Environment and Climate Change” pursuant to section 17 of CSRA.

15.3.3.Sections 8(i), 12(c), 31(g, j, and k), 52, 58, 59, 60, 60(r), 61, 64(j), 70, 74, 84, 85 (including in the section heading), 86, 87, 105, 114, 115, 116, 135, 136, 140, and 144(8)

In these sections, references to “Department of Disaster Management” may be amended to “Department of Local Governance and Disaster Management” pursuant to section 16 of CSRA.

16. Plant Quarantine Act of Bhutan 1993

The Plant Quarantine Act of Bhutan 1993 strives to guard Bhutan’s lush landscapes and fertile farmlands to shield Bhutan’s Agriculture sector and the pristine ecosystem by protecting the borders against invasive plant pests while bringing those local pests within control. The Act aims to control the flow of plants and plant products across borders, ensuring prevalence of trade without compromising biosecurity. This Act also paves the way for international cooperation to curb pest spread in international commerce.

16.1. Analysis of inconsistencies among the Acts

The inconsistencies of the Plant Quarantine Act of Bhutan 1993 (“Plant Quarantine Act”) with the existing laws of Bhutan are as hereunder:

16.1.1. Section 6

In this section, the provision ‘The Royal Government or its delegate, may make regulations, order or rules’ is in contravention to section 5(1)(k) of the same act which provides “power to the Royal Government to delegate authority, but not the power to delegate”.

16.1.2. Section 8 (Penalties)

The offences under this Act may be clearly identified and described in specific sections which can be followed by the provision on liability for that particular offence. Further, there is a need for making the provisions of offences and penalties consistent with the PCB.

16.1.3. General Comments

1. The numbering in this act needs to be reworked since the titles under a chapter is provided with the number and the subsequent contents under it do not have reference to numbers (particularly for sections 1, 2, 3, 4, 6, 7, and 8). The numbering style may be in conformity with the clause 6.2.2, Legislative Drafting Manual

2016.[10]

16.2. Analysis of the Act’s consistency with the Constitution of the Kingdom of Bhutan 2008;

Our analysis did not find any inconsistencies between the Plant Quarantine Act and the Constitution.

16.3. Analysis of the Act’s consistency with the Civil Service Reform Act 2022; and Bhutan Civil Service Transformation

The inconsistency of the Plant Quarantine Act with the CSRA and the civil service transformation are as follows:

16.3.1. Section 4 (Royal Government)

The definition of “Royal Government” under this section must take cognizance of section 8(7) of the CSRA whereby the “Ministry of Agriculture” must be replaced with Ministry of Agriculture and Livestock”.

V. Conclusion

Bhutan stands at a crossroads where its environmental legacy and developmental aspirations must converge into a cohesive vision. The harmonization of its environmental laws is not merely a legal exercise but a reaffirmation of Bhutan’s commitment to GNH and ecological resilience. This report underscores the necessity of updating archaic terminologies, abolishing unconstitutional provisions, and embedding climate considerations into the legal fabric.

The path forward demands collaboration: policymakers must prioritize legislative reforms, civil servants require training on updated protocols, and communities need awareness to uphold their role as environmental trustees. The RSPN and the working Committee will play pivotal roles in overseeing this transition, ensuring that Dzongkha and English texts are harmonized and stakeholder inputs are integrated.

As Bhutan strides toward a future where economic progress and environmental integrity coexist, this endeavour at legal harmonization serves as both a shield and a catalyst, a shield to protect its natural heritage and a catalyst to inspire global action. By anchoring its laws in constitutional wisdom and global best practices, Bhutan can continue to lead as a beacon of sustainability, proving that even a small nation can champion the planet's cause with unwavering resolve.

[1] Constitution of the Kingdom of Bhutan 2008 (Bhutan), Article 5, Environment.

[2] The Terms of Reference of the Assignment in its Annexure-I (List of Environmental or Climate Laws of Bhutan) stipulates two additional laws (or rather Bills) namely the Livestock Bill 2024 and the Mines and Minerals Bill 2020. The Consultants could not get the copies of the two Bills and this was also not provided by the procuring entity. The two bills were dropped from the review process in close consultation and approval from the working team of the Office of the Attorney General that was the technical lead and instructing partner for the assignment. The Livestock Act of Bhutan 2001 has Dzongkhag version soft copy (PDF or other versions) and only the hard copy version is available.

[3] The three acts that do not have Dzongkha versions (both official and unofficial) are the Electricity Act of Bhutan 2001, Food Act of Bhutan 2005, and Plant Quarantine Act of Bhutan 1993.

[4] Constitution of the Kingdom of Bhutan 2008, Article 5 (2).

[5] Article 1 (13) of the Constitution states that there shall be separation of the Executive, the Legislature and the Judiciary and no encroachment of each other's powers is permissible except to the extent provided for by this Constitution.

Article 21 (2) of the Constitution states that the judicial authority of Bhutan shall be vested in the Royal Courts of Justice comprising the Supreme Court, the High Court, the Dzongkhag Court, the Dungkhag Court and such other Courts and Tribunals as may be established from time to time by the Druk Gyalpo on the recommendation of the National Judicial Commission.

[6] Clause 1.3.1- Subordinate legislation is a legislative instrument made under the parent Act by a Minister or any other person or any other body under a power delegated by Parliament and therefore, it is also the law of land as any other Acts.

[7] Section 14, Civil Service Reform Act of Bhutan 2022.

[8] Section 10.1, Electricity Act of Bhutan 2001.

[9] Access at <https://parliament.bt/uploads/topics/16926069696507.pdf>

[10] Access at <https://parliament.bt/uploads/topics/16926069696507.pdf>