



# राष्ट्रिय मानव अधिकार आयोग

National Human Rights Commission, Nepal

केन्द्रिय कार्यालय Central Office

हरिहर भवन, पुलचोक, ललितपुर, HariharBhawan, Pulchowk, Lalitpur, Nepal



## Press Note

July 31, 2019

### **NHRC suggestions on the bill related to protection of environment**

The bill made to integrate and amend on the laws related to protection of environment 2019 which is under discussion in the Agriculture, Cooperative and Natural Resources Committee under the Federal Parliament, NHRC Nepal submits its suggestion discussing with the stakeholders and the environmental experts for section wise review to the Parliamentary Committee as per the mandate provided by Article 249 (2) (f).

The detailed description of the suggestions sent to the Parliamentary Committee is enclosed herewith.

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Bed Bhattarai

Secretary/Spokesperson



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## **The Section wise suggestion of NHRC Nepal on the bill to integrate and amend on the laws related to protection of environment - 2019**

**Preamble:** Article 16 (1) of the Constitution of Nepal provides that every person shall have the right to live with dignity and Article 30 provides every citizen the right to live in a clean and healthy environment, similarly the Framework Principles on human rights and environment prepared by the UN Special Rapporteur on the Environment to comply with the principle no 1 prescribed by the aforementioned framework, after to cope with the challenge, it would be better to add **as well as the protection of every citizen's right to live in a safe, clean and healthy environment.**

**Section 2:** In the sub section (v) to define the 'environmental impact assessment' as prescribed by framework's principle 2 as per the report of the Special Rapporteur on Environment under UN Environment programs, and after '**making an effect or not**', it would be better to add '**and related to such effect on environment that may affect for the enjoyment of human rights**'.

After sub section (z) adding sub section (Za), The Constitution of Nepal and the preamble of the bill provisioned the polluters pay the compensation but the law does not define the "**Polluter**", it would be better to add the definition of "**polluter**".

**Section 3:** Chapter 6 related to the penalty and compensation section provides the provision of black listing but this is not provisioned in the previous chapters adding sub section in the section 3 it would be better to add '**the proposer who requires approval of the brief environmental study report, initial environmental report, environmental impact assessment report, if such proposer without the approval of such reports has operated or cause to be operated any programs or projects or construction related works, such person or institution may be blacklisted**'.

**Section 4:** In sub section 1, to comply with the principles 8 & 14 of the Framework Principles on human rights and environment by the UN Special Rapporteur on the Environment the proposer in the environmental study report after the adverse effect that may be seen in the environment while implementing such proposal, it would be better to add '**as well as the implementation of the proposal disproportionate impact on the rights of the vulnerable groups analyzing the comprehensively the measures that can be pursued to reduce this**'.

**Section 7:** For the section 5, to comply with the principles 15 of the Framework Principles on human rights and environment by the UN Special Rapporteur on the Environment, after not seen, it would be better to add '**and while implementing the proposal if adverse impact is not seen to the rights of the indigenous people living in that concerned community**'.

**Section 13:** In the Constitution of Nepal, it has been specified that the **schedule 5, S. N. 14** Central level large electricity, irrigation and other projects, 20 National transportation policies,



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management of railways and national highways, 26. Mines excavation 27. National and international environment management, national parks, wildlife reserves and wetlands, national forest policies, carbon services 29. Land use policies, human settlement development policies, tourism policies, environment adaptation are mentioned as the **federal level**, **schedule 6** S. N. 7 State level electricity, irrigation and water supply services, navigation, 12. State highways, 17. Exploration and management of mines, 19. Use of forests and waters and management of environment within the State, 20. Agriculture and livestock development, factories, industrialization, trade, business, transportation are mentioned as the **Province level** and Schedule 8 S. N. 7. Local level development plans and projects, 10. Local market management, environment protection and bio-diversity 11. Local roads, rural roads, agro-roads, irrigation, 19. Water supply, small hydropower projects, alternative energy, 20. Disaster management 21. Protection of watersheds, wildlife, mines and minerals are mentioned as the Local Level Power, in this condition, **it would be better to provision the non-approval of the environmental study report mentioned in this section or if the project being implemented goes against the approved report, the right to prevent the work of the project should be in the three levels: Local level, province government and the federal government as per the nature of the project.**

**Section 15:** instead of the phrase used in the sub section 7 'assessment of the standards as specified in time and again', it would be better to use the term '**periodic assessment**' as the regular assessment protects the environment which in fact contributes for the human rights protection.

**Section 16:** In Sub section 2 provisions the Government of Nepal can import the things that may not have notably adverse effect on human health and environment but it would be better to revise it as **cannot import the waste that may have notably adverse effect on human health.**

**Section 19:** In the sub section 1, to collect the samples for the act like study, examine, testing and analysis of the emission of the pollution and waste from any industry, factory, device and means of transportation like...instruments, it would be better to provision the concerned owner has to **compulsorily allow the permission to collect the samples from such instruments** instead of as per the necessity. Similarly, the phrase '**as per the necessity**' in the proposed bill should be omitted.

**Section 20:** in the provision of the sub section 1 the pollution control certificate can be awarded .... erasing the term **as prescribed**, after this, it would be better to add '**in case in every testing if found to be followed the specified standards.**

**Section 21:** the provision of any officer can be appointed as an environmental supervisor, from this provision, the condition of environment cannot in fact be effectively administered, in this section, in accordance with the verdict given by the Supreme Court of Nepal (Ne.Kaa.Pa 2062, Issue 5, DN 7538) on December 21, 2004 in writ no 2898 of 2003, instead of any of the officer it



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would be better to improve it as **‘a person whose minimum qualification is either bachelor degree in Environmental Science or Management of Environment or Environmental Engineering will be appointed as a supervisor.**

In this section adding one sub section it would be better to complement the followings:

**Subsection....** As there is the provision of Medical Council for health professionals, Bar Council for the legal professionals to determine the qualification and to provide registration certificate to the newcomer environmental technicians separate agency should be managed.

**Section 22** as the Article 16 (1) of the Constitution of Nepal provides that every person shall have the right to live with dignity and the Section 2 (f) of the NHRC Act defines human rights as "Human Rights" means rights related to life, liberty, equality and dignity of a person, at sub section 3 of this section after the word proposer, it would be better to add **‘it shall be the duty of the supervisor to treat with respect to the concerned agency or person during supervision’.**

**Section 24** the prioritizing class in the process of formulating phase of **National Adaptation Plan (NAP)** as provisioned in the sub section 2, after the senior citizens, it would be better to add **‘the particular community which the state should specially protect if such community resides in that specific area’.**

**Section 25** as provisioned in the sub section 1 of this section, the emission of greenhouse gases is not the subject to discretionary power so that instead of **‘can do’** it is better to amend it as **‘shall do’.**

**Section 30** in the context of recently phased out Forth NHRAP’s commitment to connect development with human rights, the endorse of the UN Declaration of the right to development 1986, ratification of the ILO Convention no 169 by Nepal, sub section 7 of this section instead of the provision **‘the local community shall have participation for the management of the maintained area as environment protection or specified area’**, **it would be better to amend it as ‘it shall be managed in collaboration and participation of the local community’.**

**Section 32** while giving priority to the ex officio member that **the National Council for the Management of Environment Protection and Climate Change** formed in accordance with this section is seen to be less representation of the expert on environment subject, but, the preamble of the Constitution of Nepal mentions that to build an egalitarian society founded on the proportional inclusive and participatory principles in order to ensure economic equality, prosperity and social justice, and the Article 42 (1) provides that the socially backward people as specified in this article shall have the right to participate in the State bodies on the basis of inclusive principle. It would be better to **manage the respectable presence of the subject experts in the National Council even by adding the number of members as state has pursued the proportional inclusive and participatory principles.**



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**Section 33** as stated in the sub section 1, holding the council meeting once in a year, it may not be realized the activeness of such a agency and it may affect for the protection of human rights through promoting and protecting the right to environment, instead of the one year provision, it would be better to amend it as '**mandatorily in every six months**'.

**Section 34** adding sub section 1, it would be better to add the following provision that supports to implement the human rights-based approach to development as pursued by the state:

**(1) The Council may pursue the human rights-based approach while carrying out its power and functions.**

**Section 35** the penalty as specified in the sub section (1), (3), and (5) the maximum limitation is prescribed but the initial limitation is not specified, it may provide the discretionary power to the decision-making authority, it would better **to specify the initial limitation too.**

**Adding sub section 9 after 8, it would be better to add the following provision:**

**(9) Nothing in sub-sections shall be deemed to prevent the environmental pollution due to lack of pursuing the measures including connection of adequate equipment by any of the industry or factories, any of the person dies, this act shall not restrict to punish in such incident as per the existing law.**

**Section 36** the provision of the complaint mechanisms in case of non-approval of brief environmental study report, initial environmental report, environmental impact assessment report, it would be better to provision to submit the complaints in the Local Judicial Committee in case of the local level projects, in the District Courts in case of province or federal level projects and the National Human Rights Commission on the human rights violation related with the any level of the governments.

**Section 36** the implementation status of the of compensation related provisions of Nepalese Law is byzantine, though the decision to provide the compensation made but there are a lot of examples that the victims have to wait for years to realize getting justice, from this experience of hindrances seen time and again in the justice system as well as the victims' timely enjoyment of the right to get justice, therefore, it would be better to add the following matter in 5a after the sub section 5.

(5a) The compensation as per this act shall be provided to the victims within 3 months. The concerned personnel who does not provide the compensation within the limitation will be taken departmental action.

**Section 38** the right to environment a constitutional right as mentioned in section 13, in sub section 1 after the Government of Nepal, it would be better to add '**the provincial and local government shall implement the environmental protection plan formulating it**'.



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In the sub section 3, adding **ensuring participation, contribution and enjoyment by the local government**, after the word exercise it would be better to implement the provision of right to development.

**Section 39** The Constitution of Nepal Article 30 provides every citizen the right to live in a clean and healthy environment. In the writ full bench .No. 35 (2049 B.S.) the Supreme Court of Nepal on October 31, 1995 providing directive orders mentioned that human life shall be threatened in the polluted environment and every individual has right to be free from such environment, the relation between ecology and human life is directly associated and clean and healthy environment is the wholistic wealth of human beings, therefore, the right to life also includes the right to clean and healthy environment. Similarly the Constitution of Nepal Article 249 (1) provides the responsibility to respect, protect and promote human rights and ensure effective enforcement thereof to the National Human Rights Commission, NHRC Act 2012 Section 4 (1) sub section (a) provides the power to conduct or to cause to conduct inspections and monitoring of prisons, other agencies of the Government of Nepal, public institutions or private institutions or any other place for the protection of human rights, and to provide necessary suggestions or directives to the agency concerned with regard to the improvement to be made in such agency, institution or place for the protection of human rights, in this condition, the following matter should be added by putting additional (2a) after the Sub section 2 of this section:

**(2a) The National Human Rights Commission shall recommend to the Federal, Provincial and Local governments as per the necessity on the effect upon the human life in the absence of clean environment.**

The additional suggestions for the incorporation in the Bill.

1. As the words 'can do' used in the various sections and sub sections of Chapter 4 could not be functioned effectively to address the issues of climate change, it would be better to use the term 'do' instead of the aforementioned words.
2. The Government of Nepal shall pursue the human rights-based approach to development in the projects/programs either operated by the government or concluded or cause to be concluded by the contractors.
3. For those industries, factories or the means of transportation which do not meet the pollution standards the specified penalty shall be imposed.
4. The issue of banning to burn the plastic products which has the adverse impact on the environment.



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5. The issue of collaboration among the National Council for the Environment Protection and the Management of Climate Change as well as the National Council for the Disaster Risk Reduction and Management.
6. The issue of waste management classifying the waste at source and collection.
7. The issue of fitting of pollution testing equipment compulsorily on the basis of the nature of the industry.
8. The issue of formation of separate service related to the environment.
9. The institutional development of the environmental area in the local, provincial and the federal level which is not seen with clarity, so it would be better to incorporate it.
10. The clear mandate and delegation of functional power to the governmental agency related to working in the environment sector should be better to mention in the Act