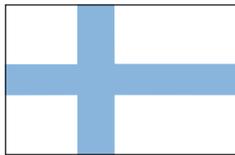


# A Guide to Afghanistan's 2007 Environment Law



*The UNEP Capacity Building and Institutional Development Programme for Environmental Management in Afghanistan is funded by the European Commission, the Government of Finland and the Global Environment Facility.*



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Design and Layout: Rachel Dolores*

# Afghanistan's Environment Law

In January 2007, the final version of the Environment Law came into force. The Law, which has been approved by the National Assembly, is based on international standards which recognize the current state of Afghanistan's environment while laying a framework for the progressive improvement of governance, leading ultimately to effective environmental management. It is now binding on both the government and the people of Afghanistan.

The purpose of this brochure is to give the Afghan people, and other interested persons, a basic overview as to why and how the Law was developed, and the implications of the Law for the ordinary person and the government. This brochure should therefore be read in conjunction with the Law itself (see Official Gazette No. 912, dated 25 January 2007).

# Why does Afghanistan need the Environment Law?

For many people the term “environment” refers only to flora and fauna, such as trees, animals, birds and insects. It is in fact a much broader concept than this. The environment refers to almost everything around us, as well as the interactions and processes that link these different elements. It includes tangible environmental resources (such as water, land, minerals, forests, rangeland, crops, wildlife and air), as well as the problems and issues resulting from the inadequate management of these resources (such as disease from polluted water, respiratory problems from air pollution, displaced populations as a result of drought, and loss of livelihoods and income as a result of degradation of land and the resources on it).

Afghanistan is a predominantly agrarian-dependent country of farmers and herders. Approximately 80% of the population relies directly on the country’s environmental resources to meet its daily needs. However, this resource base has been seriously degraded and damaged and is no longer adequately meeting the basic survival needs of many people, let alone their development needs.

The sad reality is that, in its current condition, Afghanistan’s environment is negatively impacting on generations of livelihoods; is adversely affecting the health of the Afghan people; is entrenching the poverty cycle in which many Afghans are caught; and is constraining Afghanistan’s post-conflict reconstruction and development.

If the current environmental problems in Afghanistan are not addressed, the following impacts could be expected:

- Unequal distribution of water resources may lead to severe water scarcity in some regions – which could threaten livelihoods, create environmental refugees, compound adverse humanitarian conditions and increase regional tensions;
- Continued deforestation combined with livestock grazing and water scarcity could lead to increased soil erosion, desertification and reduced fertility and ecosystem services. It could also lead to floods, mudslides and rapid water drainage during the wet season;
- Land degradation and resource scarcity could lead to the creation of environmental refugees;
- Existing chemical contamination of some air, soil and water resources would continue to threaten human health and undermine workforce stability and economic productivity.



*A girl scavenges for metal, plastic and food in a huge pile of waste in a construction area where a foundation for a new building has been dug, Kabul, Afghanistan.*

With this in mind, it was clear that an appropriate law to govern environmental management issues was an immediate need for Afghanistan's post-conflict Government. For this reason, the newly-established National Environmental Protection Agency (NEPA) with the support of the United Nations Environment Programme (UNEP) regarded the development and promulgation of the Environment Law as a necessary and urgent priority.

## What is the purpose of the Environment Law?

The Environmental Law creates a regulatory framework for the sustainable use and management of Afghanistan's natural resource base, and provides for the conservation and rehabilitation of the environment towards achieving specified social, economic, reconstruction and ecological goals.

Sustainable development is one of the key objectives of modern international law and policy. It is commonly defined as development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs. What this means in practice, for example, is that communities using local water, forest, rangeland and wildlife resources should not over-harvest them, to ensure that their children, and grandchildren, will also have access to such resources.

# How does the Environment Law affect the Afghan people?

The Law grants the people of Afghanistan the following rights:

- To use natural resources in accordance with sustainable customary practices;
- To establish and participate in environmental non-governmental organizations (NGOs);
- To have access to information held by the government about the environment;
- To participate in environmental meetings and demonstrations, and participate in environmental decision-making processes that affect local communities;
- To lobby the government regarding environmental issues;
- To voice their concerns regarding the environmental impacts of infrastructure and development projects;
- To refuse to undertake environmentally hazardous work, or work that threatens human health without the appropriate safeguards in place.

At the same time, the Afghan people have a legal duty:

- To comply with the provisions of the Environment Law;
- To use environmental resources in a sustainable manner;
- To avoid causing pollution or harm to the environment;
- To obtain a permit or license before undertaking activities regulated under the Law (see below for a list of these activities).

# What obligations are imposed on the Government under the Law?

The Law also imposes substantial obligations on the Government of Afghanistan, in order to encourage the relevant authorities to promote and implement the Environment Law. These include:

- To apply the fundamental principles of environmental management listed in the Law when making any decisions or exercising any power under the Law;
- To involve the public in relevant environment-related decision-making;
- To develop policies, laws and regulatory instruments which seek to conserve and restore the environmental resource base of the country;

- To coordinate government and other stakeholder activities relevant to environmental management;
- To raise public awareness of environmental issues;
- To implement the international environmental conventions of which Afghanistan is a member;
- To monitor environmental indicators and collect and make available environmental information;
- To prepare regular State of the Environment (SoE) and National Environmental Action Plan (NEAP) reports; and
- To enforce the Environmental Law.

## Which government institutions are responsible for environmental management?

The integrated nature of environmental concepts necessitates a coordinated multi-institutional system of governance, involving numerous different stakeholders at the national, provincial and local levels of government, as well as local communities.

While the National Environmental Protection Agency (NEPA) is the lead government authority, other national institutions also play an important role. These include: the Ministry of Agriculture, Irrigation and Livestock, the Ministry of Water and Energy, the Ministry of Mines, the Ministry of Rural Rehabilitation and Development, the Ministry of Urban Development and Housing, the Ministry of Public Health, the Ministry of Transport, the Ministry of Education, the Ministry of Foreign Affairs, and the Ministry of Public Works. Other national institutions are also key partners, such as universities and the Afghanistan Independent Human Rights Commission.

NEPA, at both the central and provincial levels, is responsible for overarching environmental issues of national relevance, including development of national policy, regulatory aspects, coordination between line ministries, collection and management of environmental data and information, development of environmental standards, monitoring of environmental indicators, coordination of licensing of sector-specific activities, development of environmental training, education and awareness-raising.

Line ministries are responsible for the management of sectoral resources. For example, the Ministry of Agriculture, Irrigation and Livestock is responsible for managing rangelands and forests, while the Ministry of Energy and Water takes responsibility for management of water resources, and so forth.

The Government of Afghanistan has recognised that in an agrarian, natural resource-dependent, developing country like Afghanistan, it would be more appropriate and effective to manage resources at a community-level, rather than implement centralised resource management. The Environment Law therefore clearly states the environmental functions and powers that are vested in the subnational authorities – namely, the Provincial, District and Village Councils established under the Constitution.

## Is the Law an obstacle to the reconstruction and development of Afghanistan?

The Law articulates the use of environmental impact assessment (EIA). This is a system of procedures used to evaluate the likely environmental and social impacts – both positive and negative – of proposed projects, plans, policies or activities where there is a possible significant adverse effect on the environment arising as a result of their implementation.

For example, the construction of a dam might result in the following: The destruction of homes and resettlement of 500 households, the loss in agricultural lands and therefore livelihoods of 200 households, the desiccation of wetlands and seasonal waters downstream from the dam, the extinction of a type of endangered frog species, loss of irrigated water supply for 100 farmers, and so on. These social, economic and environmental impacts need to be identified in the design phase of the project and taken into account in the project planning and implementation in order to minimise the impacts.

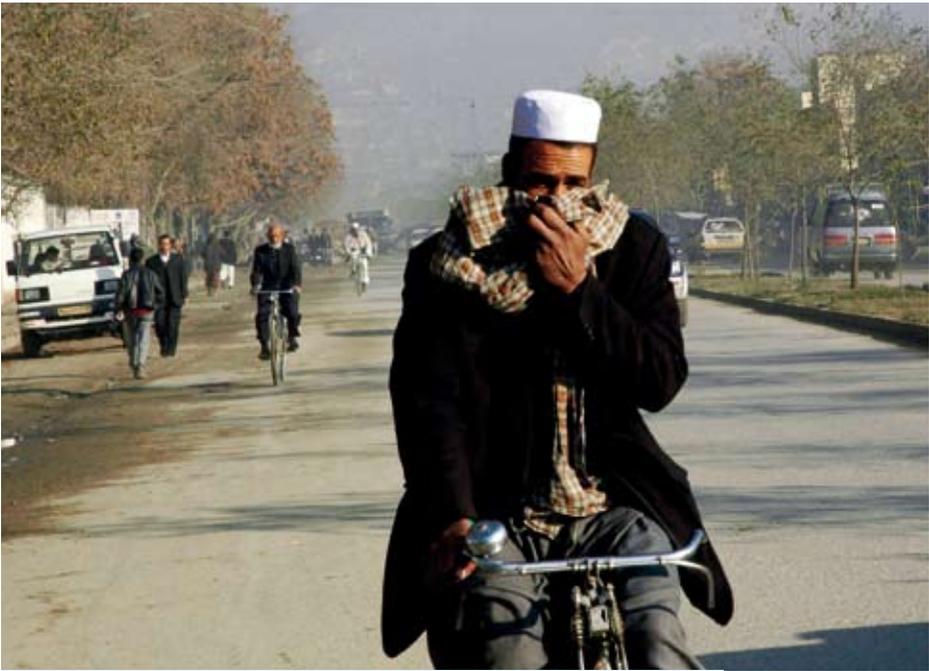
Some argue that EIA creates an obstacle to development. However, when properly utilised, EIA results in the mitigation of environmental harm at the project inception phase (and consequent economic, social, financial and environmental costs, which can be vast) and is therefore an important development planning tool – particularly for a country entering a phase of post-conflict reconstruction.

The Law creates the framework for an EIA permitting system. The details of this framework are set out in the EIA Regulations and the National EIA Policy, which should be read in conjunction with this section of the Law.

## What about pollution control?

Integrated pollution control is a holistic and integrated system and process of management with the following aims:

1. Pollution prevention and minimisation at the source of the pollution (e.g. in the factory);



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*A cyclist tries to avoid inhaling Kabul's air. The poor air quality, resulting from vehicle emissions, dust and smoke from burning wood and other fuels for cooking and heating, is having significant negative impacts on human and respiratory health in the city.*

2. Managing the impact of pollution and waste on the receiving environment (e.g. the Kabul River); and
3. Remediation of environmental damage caused by the pollution (e.g. improving the water quality of Kabul River).

The legislation provides the regulatory framework for pollution prevention and control and waste management through the identification of prohibited activities, which now need a licence before they can be undertaken. The Law also gives an outline of the licensing process. NEPA is currently developing environmental standards (especially air and water quality), which in due course will be incorporated into pollution and waste management regulations issued under the Environment Law.

At this early stage of Afghanistan's development, a licence is required for larger-scale polluting activities (such as the operation of a manufacturing or processing factory) but not for small-scale activities (such as operating a car washing facility). However, all persons remain under a general obligation to avoid polluting the environment, and a specific obligation to not discard waste irresponsibly, including littering.

## How is the management of natural resources addressed under the Law?

The management of natural resources is generally a function of the line ministries – especially the Ministry of Agriculture, Irrigation and Livestock (responsible for rangeland, forests, upper catchments, agricultural lands, and protected areas), the Ministry of Energy and Water (responsible for water resources) and the Ministry of Mines (responsible for underground resources, such as gas). However, NEPA retains an overall coordination and policy development role.

The exception is the management of certain aspects of biological diversity, including protected areas management and species protection (for example, the regulation of hunting and the listing of endangered species of fauna and flora). These are mandates shared by the National Environmental Protection Agency and the Ministry of Agriculture, Irrigation and Livestock. The former performs the overall regulatory and policy-making function; the latter undertakes the field-level management.

## What about water management?

The Water Law, which addresses institutional and management issues and regulates uses and users of Afghanistan's water resources, is currently in the legislative process and will become law once approved by the National Assembly. Nevertheless, for purposes of completeness and to encourage an integrated regulatory approach, a short chapter on water



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*A man works on a reservoir of water, part of a complex irrigation system in Loghar Province.*

resource conservation and management (which will complement the Water Law) is included in the Environment Law. The articles set out the broad environmental parameters of surface and groundwater resource management.

## How will the Afghan people learn more about environmental issues?

One of NEPA's key functions under the Law is the development and implementation of plans for environmental training, environmental education and environmental awareness-raising in coordination with relevant institutions.

## What activities require permission from the National Environmental Protection Agency before they can be undertaken?

As a policy and regulatory institution, NEPA is responsible for issuing permits or licences for certain regulated activities that have an adverse impact on the quality of environmental resources. The following activities require a permit or licence:

- Undertaking an activity or implementing a project, plan or policy that is likely to have a significant adverse environmental impact;
- Discharging a polluting substance into the environment which is likely to cause a significant adverse impact on the environment or human health;
- Constructing or operating a waste management storage or treatment facility;
- Storing or disposing of hazardous waste;
- Hunting or otherwise exploiting a protected or endangered species;
- Exporting protected or endangered species; and
- Accessing the genetic resources of Afghanistan's biological diversity.

## How will the Law be enforced?

The first stage of enforcement is performed by NEPA, which is empowered to appoint environmental inspectors under the Law. These inspectors are legally responsible for issuing compliance and enforcement orders, and generally performing the functions assigned to them by NEPA.

In the event of offenders failing to comply with the directions of NEPA, the matter will be handled by Afghanistan's law enforcement authorities (Ministry of Interior, Afghan National Police, Attorney General's Office and court system), in accordance with relevant laws and procedures.

Minor offences such as littering in the street, may result in the payment of a fine instead of prosecution.

## How does the Environment Law interact with other laws that relate to the environment?

The Environment Law is the overarching framework into which all sector specific environmental and natural resource legislation must fit. In more simple terms, the Environment Law should be regarded as the head of the family of environmental laws, regulations and procedures that deal with specific aspects of environment (such as forests, rangeland, water, agriculture, wildlife, mining, protected areas, environmental impact assessment, pollution control, waste management and so on).

While those sector laws and regulations are all standalone and independent pieces of legislation, they must nonetheless respect the provisions of and not contradict the Environment Law, particularly its fundamental principles of environmental management. They should also, as brothers and sisters in the environment regulatory family, not contradict each other. It is also important to remember that, when considered together as one cohesive family, the entire body of environmental laws is much stronger than one member of that family on its own.

## Who was consulted in the development of the Environment Law and what was the process?

During the development of the Law, the important national stakeholders were invited to participate in the consultation process and to provide comments at the various stages of drafting. All comments were incorporated into the final technical draft, which was developed by the National Environmental Protection Agency with support from its international partners, especially UNEP.

The draft was then passed to the Ministry of Justice, after which it received the approval of the Council of Ministers. It came into force in December 2005, upon being signed into law by the President. During the course of 2006, the Lower and Upper Houses of the National Assembly, which was only established after the Law was enacted, reviewed

and amended the Law. The final version of the Law was approved and came into force in January 2007 (Official Gazette No. 912, dated 25 January 2007).

## What other laws and regulations are currently being developed relating to environmental management?

The Ministry of Agriculture, Irrigation and Livestock is currently developing the Forest Law and the Rangeland Law, both of which will become law once approved by the National Assembly. The Ministry is also drafting hunting and wildlife regulations, which will be issued under the Environment Law.

The Ministry of Energy of Water has developed the Water Law, which is currently in the legislative pipeline.

The Minerals Law, implemented by the Ministry of Mines, is now in force.

NEPA has issued, or is in the process of developing, sets of regulations under the Environment Law addressing the following sectoral areas: environmental impact assessment; integrated pollution control; protected areas management; ozone depleting substances; and compliance and enforcement.

For further information about the Environment Law or related matters, please contact:

**Zabihullah Afroze**

Head of Division of Enforcement and  
Implementation  
National Environmental Protection Agency  
Email: zabihabib@yahoo.com  
Telephone: 0799 392 049

**Abdul Qadeer Karyab**

Environmental Law Programme Officer  
United Nations Environment Programme  
Email: qadeer.karyab@unep.ch  
Telephone: 0799 382 571



## Further information

Further technical information may be obtained from the National Environment Protection Agency website at: <http://www.nepa.gov.af/>

