

RESOLUTIONS (TRANSLATION) OF THE 5TH SESSION OF THE NATIONAL COUNCIL OF BHUTAN

(27th Day of the 4th Month of the Iron Male Tiger Year corresponding to 9th June 2010)

A Opening Ceremony

The 5th Session of the National Council of Bhutan commenced on the 27th Day of the 4th Month of the Iron Male Tiger Year with the offering of *Marchang* presided over by the Hon'ble Chairperson.

B Hon'ble Chairperson's Address

The Hon'ble Chairperson welcomed the Hon'ble Members, media and all the people watching television and listening to the radio to the opening ceremony of the 5th Session of the National Council. He reminded that Bhutan had remained a sovereign independent country since time immemorial due to the blessings of our forefathers and the Monastic Body, in particular, the wise leadership and guidance of our monarchs.

He said that the National Council on its part had, through its legislative and review functions, deliberated with unwavering loyalty and dedication and adopted 16 Bills since the first session. These were: 1) The Constitution of Bhutan; 2) The National Council Act of Bhutan 2008; 3) The National Assembly Act of Bhutan 2008; 4) The Election Act of Bhutan 2008; 5) The National Referendum Act of Bhutan 2008; 6) The Public Election Fund Act of Bhutan 2008; 7) The Parliamentary Entitlements Act of Bhutan 2008; 8) The Royal Bhutan Police Act 2009; 9) The Prison Act of Bhutan 2009; 10) The Local Government Act of Bhutan 2009; and 11) The Waste Prevention & Management Act of Bhutan 2009.

During the 5th Session, Parliament had adopted the Tobacco Control Bill of Bhutan 2009, the Royal Monetary Authority Bill of Bhutan 2009, and the Entitlement and Service Condition Bill for the Holders of Constitutional Offices, Commissioners and Members 2009. He said that since the two Houses could not reach a consensus on the principle and a few provisions of the Bhutan Standards Bill 2009, re-deliberation on the Bill would be done during the Joint Sitting in July 2010 once the Joint Committee had carried out a thorough review on it.

Similarly, he said that eight International Agreements, Treaties and Conventions had been ratified. Three Acts, namely, the Marriage Act of Bhutan, the Livestock Act of Bhutan and the Cooperatives Act of Bhutan had also been reviewed and amended. However, Parliament had not been able to take a final decision on the amendment to the *Zhabto-Lemi* Act. Further, he said that 23 policy related issues had been discussed and resolutions passed. He expressed hope that the agencies concerned would welcome and accordingly implement the resolutions.

In the 5th Session, he said that the agenda comprised 17 issues, of which 10 were legislative and 7 policy related besides question time and other businesses. These were the direct result of the discussions the Hon'ble Members had with the people during their constituency visits as well as the extensive work carried out by the different Committees.

The Hon'ble Chairperson also touched upon the main activities carried out by the different Committees:

1. The House Committee, besides its normal duties, drafted the Rules of Procedure on Committee Proceedings and voting in the House. It also held fruitful meetings with the House Committee of the National Assembly.
2. The Legislative Committee carried out thorough review of the Penal Code of Bhutan and the Civil & Criminal Procedure Code of Bhutan for amendment. All proposals were based on the outcome of consultative meetings with the stakeholders and legislative research. Amendments to the Penal Code of Bhutan and the Civil & Criminal Procedure Code of Bhutan were proposed with the objective of aligning the two Codes with the provisions of the Constitution of Bhutan, the Convention on the Right of Child and the Convention on Elimination of all Forms of Discrimination Against Women. This would also make it easier for the Judiciary to interpret during implementation of the Codes.
3. The Social & Cultural Affairs Committee reviewed the Tenancy Act, the Employment Act, the Inheritance Act and the Adoption Bill of Bhutan. It also discussed on the protocol with regard to *tendrel* ceremonies.

4. The Good Governance Committee reviewed the proposed amendments to the Anti-Corruption Act and the Civil Service Bill, which were ready for tabling during the 5th Session.
5. The Economic Affairs Committee reviewed the Economic Development Policy and the Foreign Direct Investment Policy of the Royal Government. It also discussed the Child Care & Protection Bill of Bhutan, which was going to be tabled during the current session.
6. The Natural Resources & Environment Committee discussed on *Tsamdro* and *Sokshing* which were related to the Land Act. The Committee also carried out review on the implementation of the various Acts related to environment.

The Hon'ble Chairperson thanked the Royal Government led by the Hon'ble Prime Minister, Cabinet Ministers, departments, agencies and other institutions for providing unstinted support to the Hon'ble Members of the National Council and its Committees in carrying out their legislative and review functions. He expressed his special gratitude to the various ministries, departments and agencies for giving briefing to the National Council on the sectoral policies, plans and programs.

Further, he conveyed his appreciations to the Royal Government for the significant achievements made in the socio-economic development within two and a half years of democracy, which were the result of the Government's meticulous plans and policies. He also congratulated the Government on the successful conduct of the 16th Summit of the South Asian Association for Regional Cooperation (SAARC) a month ago.

In concluding, the Hon'ble Chairperson expressed his appreciation to the Secretariat for its hard work and unfailing services in fulfilling the mandates of the National Council despite the lack of adequate and experienced professionals. He hoped that the Secretariat will continue to serve the Tsa-Wa-Sum with unwavering loyalty and dedication. With blessings of the *Tsa-Sum Damchen Jamtsho*, the guidance of Their Majesties the *Druk Gyalpos*, and the wisdom of the Hon'ble Members, he prayed that the deliberations of the 5th Session may be fruitful.

C Adoption of the Agenda

The Hon'ble Chairperson then presented the agenda for the 5th Session of the National Council which included under legislative issues the new Bills, namely, the Adoption Bill of Bhutan 2010, the Child Care & Protection Bill of Bhutan 2010, and the Civil Service Bill of Bhutan 2010. Amendment to existing laws included the Anti-Corruption Act, the Penal Code of Bhutan and the Civil & Criminal Procedure Code of Bhutan. Motions for introduction of the Right to Information Bill, the Alcohol Control Bill and the Entitlement & Service Condition Bill for the Holders of Local Government Offices were included. Procedure for the passing of Annual Budget and the Budget & Appropriation Bill 2010-2011 were also on the agenda.

On policy related issues, the agenda included the review of Economic Development Policy, the National Housing Development Policy 2002, reinstatement of *Sokshing* Rights, relocation of Public Offices and Foreign Direct Investment Projects, tax exemption on Educational Expenses and budget lapses due to non-implementation of planned activities.

Deliberating on the agenda, the Chairperson of the Social & Cultural Affairs Committee to whom the Adoption Bill 2010 had been referred reported that the Bill could not be reviewed properly as the Committee had several other important tasks in hand. Moreover, the Bill had been received in the National Council only a month ago. He proposed that while the Bill may be introduced in the current session, deliberations on it be deferred to the next session. He also felt that there had been a procedural lapse since any Bill for deliberation in the National Council had to be submitted three months prior to the session. The Hon'ble Member from Haa Dzongkhag also proposed for withdrawal of the agenda item on the relocation of Public Offices and Foreign Direct Investment Projects as this had already been discussed in the past sessions.

The Deputy Chairperson, on the other hand, proposed inclusion of adoption of voting procedure drafted by the House Committee since there had been inconveniences in the past in the absence of a proper procedure while passing Bills. Similarly, Hon'ble Kuenlay Tshering said that a Joint Committee had drafted a Legislative Procedure for the Joint Sitting of Parliament based on the four different points that His Majesty had decreed to avoid deadlock between the two Houses, and submitted that these be discussed and adopted in the 5th Session without further delay.

On these, the National Council resolved as follows:

1. The Adoption Bill of Bhutan 2010 shall be introduced in the fifth session but deliberated upon during the sixth session. As an important Bill in the country, it needed to be discussed in consonance with the international conventions. Therefore, the Social & Cultural Affairs Committee was directed to review it in consultation with the relevant agencies.
2. Relocation of Public Offices and Foreign Direct Investment Projects shall be removed from the agenda.
3. Voting procedure for passing of Bills in the National Council shall be added to the agenda.
4. On the Joint Committee's draft procedure based on the 4 points that His Majesty had decreed in order to resolve disagreements between the two Houses on a disputed Bill, the Chairperson of the National Council shall consult the Hon'ble Speaker of the National Assembly for possible discussion and adoption during the 5th Session of Parliament, itself.

D Legislative Issues (New Bills)

1 The Adoption Bill of Bhutan 2010

1.1 Introduction of the Bill by Hon'ble Minister for Education

The Hon'ble Minister for Education submitted that the Adoption Bill 2010 had been drafted in accordance with Article 9, Sections (17) and (18) of the Constitution, and in consultation with the relevant agencies and experts, based on the policies and principles of democracy to make it consistent with important international conventions, and had been submitted to Parliament through the Cabinet.

Although there was a culture of adoption both within and outside the country, the Hon'ble Minister said that there was lack of a clear system. The Bill thus included why adoption of a child was necessary, under what circumstances the parents gave a child for adoption, and the rights a child was entitled to after the adoption. Even if we did not have an adoption system at present, he said that the National Commission for Women & Children shall upon adoption of the Bill enforce it and submit annual reports to the government on the status

of child adoption in other countries. Therefore, the Bill had been submitted to Parliament for endorsement which would not only bring benefit to the nation, but also internationally.

However, the Hon'ble Member from Trongsa Dzongkhag submitted that adoption of children both within and outside the country should be deferred till such time the Bill was adopted. Responding to this, the Hon'ble Minister of Education said that the National Commission for Women & Children had about six to eight pending applications awaiting adoption of the Bill.

(27th Day of the 4th Month of the Iron Male Tiger Year corresponding to Wednesday, 9th June 2010)

2 The Child Care & Protection Bill of Bhutan 2010

2.1 Introduction of the Bill by Hon'ble Minister for Education

The Hon'ble Minister for Education said that the Child Care & Protection Bill of Bhutan 2010 had been drafted in accordance with Article 9, Section 17 of the Constitution of Bhutan and in keeping with the international conventions. As commanded by His Majesty the King, the citizens of Bhutan were its assets; and more so the youth, who were the future leaders. Therefore, the Bill had been drafted with the objective of providing our youth with the government and parental care in their development. While the government provided physical support, it had not been able to give professional care until now. The Bill was aimed at addressing the systemic flaws, identifying children who needed support and providing them equal opportunities.

The Hon'ble Member from Pema Gatsel Dzongkhag submitted that the Economic Affairs Committee had thoroughly examined the Bill to facilitate deliberations during the session. The Committee had held consultative meetings with relevant agencies such as the National Commission for Women & Children, RENEW, Royal Bhutan Police and Bhutan Narcotics Control Agency. He expected similar support as and when necessary during the course of the deliberations.

The Hon'ble Member from Lhuentse Dzongkhag observed that numerous institutions and buildings needed to be constructed once the Bill was adopted entailing a cost of Nu. 170 million. He expressed doubts on whether the government could afford such high expenditure. The Hon'ble Member from Thimphu Dzongkhag felt that the Bill appeared to provide support only when a

child was in conflict with the law, and asked what preventive measures there were. However, the Hon'ble Member from Haa Dzongkhag said that as long as the government had strong policies and systems in place, such laws were not necessary.

On this, the Hon'ble Minister said that the very reason why the Bill was submitted as a draft was for Parliament to examine its shortcomings and ensure that the Act once adopted was adequate and professionally sound. He opined that if all citizens were inherently well-behaved, the need to enact laws should be limited, especially in the country of Gross National Happiness. However, enactment of laws was necessary because the conduct did not match the expectations.

(28th Day of the 4th Month of the Iron Male Tiger Year corresponding to Thursday, 10th June 2010)

2.2 General comments on the Bill

Hon'ble Kuenlay Tshering submitted that whatever laws were made, the needs of the country should be considered bearing in mind both the immediate and long term benefits. Once a Bill had been drafted by a Commission or Ministry concerned, it was important that a relevant Committee reviewed it thoroughly through consultative meetings and research, after which it needed to be deliberated in the House.

The Hon'ble Member from Pema Gatshel Dzongkhag reported that as directed by the House, the Economic Affairs Committee had conducted consultative meetings on the Child Care & Protection Bill of Bhutan 2010 with the relevant agencies. However, he expressed his hesitation in deliberating on the Bill since a thorough review could not be carried out due to late receipt in the National Council.

Most of the Hon'ble Members felt that the Bill appeared more like a civil and criminal procedure providing for penalties and degree of offences. It did not incorporate adequate provisions on actual child care and protection. They said the Bill was flawed from the main principle itself and that it was important while adopting the Bill to ensure that it was made convenient to implement and enforce it.

2.3 Amendment and Changes to the Bill

After the introduction by Hon'ble Minister for Education, Chairperson of National Commission for Women and Children, the National Council thoroughly deliberated on the Child Care & Protection Bill 2010 from 10th to 15th June and on 12th July and adopted the following amendments:

The title of the Bill was amended as “The Child Care and Protection Bill ~~of the Kingdom~~ of Bhutan 20.....”

The Preamble of the Bill was amended in the Dzongkha version.

The Sub-title for Section I was amended in the Dzongkha version.

Section 1 under Chapter I was amended as follows:

This Act shall:

- (a) Be called the Child Care and Protection Act **of Bhutan** 200/;
- (b) Come into force in theDay of the. ...Month of the. ...Year of the Bhutanese Calendar, corresponding to theDay of....Month, 200/; and
- (c) Extend to the whole of the Kingdom of Bhutan.

The sub-title before Section 3 under Chapter II was amended in the Dzongkha version and the section amended as “In actions concerning children under this Act, whether undertaken by government, non-government or private social welfare institutions, courts of law, administrative authorities, **family members or individuals**, the best interest of the child shall be the primary consideration.”

Section 11(a) under Chapter II was amended in the Dzongkha version.

Section 16 under Chapter II was amended as “A person below the age of 18 years shall be treated as a child ~~and it shall be~~ evidenced by an official record maintained by the Government, birth certificate or any other document proving the age of the child.”

The sub-titles under Chapter III were arranged in the following sequence:

1. Role of central and local government
2. Role of education institution
3. Role of the mass media
4. Participation of community

5. Participation of family

Section 25 under Chapter III was amended as “~~The government shall endeavor to provide assistance to the~~ community **shall, with assistance from the government,** to establish special facilities to provide adequate shelter for children who have no home to live in or not able to live at home.”

Section 27 under Chapter III was amended as “The government shall **provide funding for** ~~endeavour to take~~ **development** programs to provide families with the opportunity to learn about parental roles and obligations with regard to child development and child care, ~~promote~~**ing** positive parent-child relationships, ~~sensitize~~**ing** parents to the problems of children, ~~and encourage~~**ing** their involvement and promote community based activities.” The section was moved under the Role of central and local government.

A new Section was added under Participation of family in Chapter III to read as “**Families and individuals shall, with the best interest of their children in mind, participate in programs and measures under this Act.**”

Section 28 under Chapter III was moved after section 21 under Chapter II with the sub-title “**Separation from Parents**”.

Section 29 under Chapter III was amended as “The central and local government shall disseminate and create awareness on the rights **and responsibilities** of the child and relevant child law.”

Sub-title before Section 31 under Chapter III was amended as “Role of Education ~~system~~ **institution**”.

Sections 31 and 32 under Chapter III was merged and amended as follows:

Educational institutions shall care for and protect the child through, among others, the following measures:

- (a) **Work with families and communities to promote understanding about children;**
- (b) **Enhance the academic and social image of children;**
- (c) **Rehabilitate children in difficult circumstances and children in conflict with law;**
- (d) **Provide continuing education to children who have dropped out of schools, children in difficult circumstances and children in conflict with the law; and**

(e) Equip children with information and skills to deal with personal safety.

Section 38 under Chapter IV was amended as “~~His Majesty the Druk Gyalpo~~ **The Druk Gyalpo**, on the recommendation of the National Judicial Commission, may establish a Child Justice Court for exercising the powers and discharging the duties conferred by this Act.”

Section 40 under Chapter IV was amended as “~~Notwithstanding any provision of this Act,~~ **Till such time** where there is no separate Child Justice Court, the regular Court shall exercise the powers and discharge the duties as prescribed under this Act.”

Section 51 (a) under Chapter IV was amended in the Dzongkha version.

Section 56 under Chapter IV was amended as “The Child Welfare Committee shall consist of a chairperson and such number of members as determined by the government from relevant agencies and the community of whom ~~one shall be a judge and~~ one shall be a woman having knowledge on child rights and the laws relating to children.”

Section 59 (b) under Chapter V was amended as “Has a parent or guardian who is unfit or incapacitated to **take care of or** exercise control over the child;”, sub-section (c) was amended as “Is found to associate with any person who leads an immoral, drunken or depraved life; ~~or~~”, sub-section (d) was amended as “Is being or likely to be abused or exploited for immoral or illegal purposes; **or**” and a new sub-section **(e)** had been added which reads “**Is a frequent victim at the hands of individuals, families or the community.**”

Section 60 under Chapter V was amended as “If any person is of the opinion that a child is apparently a child in difficult circumstances as mentioned in Section 59, such person shall inform the **concerned** police or child welfare officer.”

Section 61 under Chapter V was amended as “~~Wherever~~ **Whenever** the information has been given to the police, the police shall inform the child welfare officer expediently.”

Section 63 under Chapter V was amended as “A child in difficult circumstances taken into the care of the police under this Act shall be transferred to the child

welfare officer within 24 hours after being taken into the care of the police excluding the time necessary for the journey from the place ~~and government holidays.~~”

Section 67 under Chapter V was be amended as “Where a child is taken into the care of **a** child welfare officer, the officer shall ~~as soon as possible~~ inform the parent or legal guardian of the child **within twenty four hours.**”

Section 70 (a) under Chapter V was amended in the Dzongkha version.

Section 72 under Chapter VI was amended in the Dzongkha version.

Section 80 under Chapter VI was amended as “The police shall **assess** ~~have the discretion to decide~~ whether a child is in conflict with law or not and subsequent proceedings shall take place only after the preliminary issue has been decided in the affirmative.”

Section 99 under Chapter VII was amended as “The police official or any investigating officer shall not question or interview a child if the child at the time of inquiry, assessment and investigation is:

- (a) Without ones parent or guardian or legal representative;
- (b) Unable to appreciate the significance of questions and answers made at the time of inquiry; or
- (c) Under the influence of alcohol, drugs, illness, ailment or condition that negates the capacity to comprehend the process.

This section shall apply to any child offender or child witness.”

Section 100 under Chapter VII was deleted.

Section 105 under Chapter VIII was amended as “No child shall be subjected to arrest or detention, except in accordance with this Act ~~and other laws in force.~~”

Section 113 (d) & (e) under Chapter VIII were amended in the Dzongkha version.

Section 114 under Chapter VIII was amended in the Dzongkha version.

Section 121 under Chapter VIII was amended as “If the offence committed by a child is of petty misdemeanor and if the Court deems fit, it may make an order

discharging the child subject to the condition that the child enter a bond, with ~~or without~~ **an adult as surety**, sureties for not committing further offence and being of good behavior during such period not exceeding one year from the date of the order as may be specified therein.”

Section 162 under Chapter X was amended in the Dzongkha version.

Section 172 under Chapter X was amended in the Dzongkha version.

Section 173 under Chapter X was amended in the Dzongkha version.

Section 184(b) under Chapter XI was amended as “**The presence of** the child’s parents, guardian or legal representative; and”

The sub-title of Section 213 under Chapter XIV was amended in the Dzongkha version and the section amended as “A person shall be guilty of the offence of assault of a child, if the person purposely, knowingly assaults the child. The offence of assault of a child shall be a petty **misdemeanor violation**.”

Section 214 under Chapter XIV was amended as “A person shall be guilty of the offence of cruelty to a child, if a person having the actual charge or control over the child, willfully treats the child or causes or procures the child to be treated in any manner likely to cause such child unnecessary mental or physical suffering. The offence of cruelty to a child shall be a ~~petty~~ misdemeanor.”

Section 215 under Chapter XIV was amended as “A person shall be liable for the offence of harsh and degrading correction or punishment, if the person subjects a child to harsh or degrading correction or punishment measures at home, in schools or in any other institutions. **Any corrective measure shall be culturally appropriate and in accordance with rules framed for the discipline of children.** The offence of harsh and degrading correction or punishment shall be a **violation** ~~petty misdemeanor~~.”

The sub-title for Section 216 under Chapter XIV was amended in the Dzongkha version and the section amended as “A person shall be guilty of the offence of battering a child, if a person purposely uses physical force or causes the child to be subjected to a physical force. The offence of battering a child shall be a ~~petty~~ misdemeanor or a **felony of the fourth degree** ~~misdemeanor~~, if aggravated circumstances are present.”

The sub-title for Section 218 under Chapter XIV was amended in the Dzongkha version and the section amended as “A person shall be guilty of the offence of serving alcoholic beverages to a child, if a person serves, gives or cause to serve or give any alcoholic beverages to a child. The offence of serving alcoholic beverages to a child shall be a ~~petty~~ misdemeanor.”

Section 219 under Chapter XIV was amended as “A person shall be guilty of the offence providing narcotic drug or psychotropic substance to a child, if a person encourages or forces any child to use any narcotic drug or psychotropic substance, except upon the order of a duly authorized government medical officer. The offence of providing narcotic drug or psychotropic substance to a child shall be a **felony of the fourth degree** ~~misdemeanor~~.”

Section 222 under Chapter XIV was amended as “A person shall be guilty of the offence of sale of a child, if a person ~~transfers~~ **sells** a child for remuneration or any other consideration. The offence of sale of child shall be felony of the third degree.”

Section 234 under Chapter XV was amended as “The child in conflict with law considered for early release must have served at least **three fourth** ~~half~~ the term of sentence.”

The sub-title of Section 238 under Chapter XVI and the section itself were amended in the Dzongkha version.

Section 243(j) under Chapter XVII was amended as ““Parents” means ~~biological~~ **the** father and mother of a child, ~~regardless of whether they are married or not~~.”

An invocation and a prayer clause each were added in the Dzongkha version of the Bill.

(27th Day of the 4th Month of the Iron Male Tiger Year corresponding to Wednesday, 9th June 2010)

3 The Civil Service Bill of Bhutan 2009

3.1 Introduction by Hon'ble Minister for Labour & Human Resources

The Hon'ble Minister for Labour & Human Resources introduced the Civil Service Bill of Bhutan under five headings. Firstly, in the background and objective, he said that the Royal Civil Service Commission had been established by a Royal Charter in 1982 but had no Act to provide long term direction for its working convenience. Therefore, the Bill had been drafted for the purpose in accordance with Article 26 of the Constitution.

Secondly, he said that the Royal Civil Service Commission had started drafting the Civil Service Bill since 2003. It was tabled before the erstwhile National Assembly for enactment during its 87th session but could not be passed. Upon establishment of democracy, it was deliberated in both the Houses as an Urgent Bill during the 3rd Session of Parliament. Since the two Houses could not agree on 6 issues, the Bill was again deliberated in the joint sitting. During the voting that ensued, 55 of the total members had voted against the Bill, 5 had voted for it and 7 had abstained from voting which led to the death of the Bill. The Royal Civil Service Commission had reviewed and made further improvements on the Bill and re-submitted it to Parliament. Accordingly, the National Assembly had again deliberated on the Bill during the fourth session and transmitted it to the National Council with amendments.

Thirdly, the Hon'ble Minister reminded that the two Houses had in principle agreed to include the employees of the three branches of the Royal Government, the Constitutional Offices, Ministries, Departments and Autonomous Agencies under the Civil Service Act. Although the autonomy with regard to human resource management and organizational structures provided under the Anti-Corruption Act 2006, the Royal Audit Authority Act 2006, the Judicial Services Act 2007 and the Election Commission Act 2008 would be repealed, he said that the separation of the three branches of the Government and the independence of the Constitutional Offices would be maintained and respected. It had also been agreed that the Royal Civil Service Commission should incorporate in the Bill provisions for recruitment, appointment, training, transfer and promotion of employees by the three branches of the Royal Government and the Constitutional offices.

Fourthly, he submitted that the National Council needed to focus its deliberations on Sections 33 (a) & (b), 61, 64, 68, 73, 80 and 88.

Fifthly, though the Royal Civil Service Commission had been established according to Article 26 of the Constitution of Bhutan, he said that an Act was necessary for the civil servants to perform their responsibilities in a transparent, competent and professional manner. For a country to develop, economic development was important, and to ensure economic development, human resource was crucial. In order to develop an appropriate human resource management system, an Act had become absolutely necessary. Therefore, he hoped that the Bill would be adopted during the fifth session without having to table it to a Joint Sitting of Parliament.

On this, Hon'ble Karma Damcho Nidup and Hon'ble Tashi Wangmo said that since the Bill had already been discussed once and had lapsed due to disagreement between the two Houses, it should be treated as a new Bill and discussed section by section. Further, Hon'ble Member from Haa Dzongkhag expressed doubt whether all employees of the three branches of the Government would be considered as civil servants; and if so, whether the Royal Civil Service Commission's policy of zero growth in the civil service would be applicable.

In response, the Hon'ble Minister for Labour & Human Resources agreed that the Civil Service Bill should be discussed as a new Bill since the earlier one had already lapsed. He also clarified that the employees of the three branches of the Government would fall under the jurisdiction of the Royal Civil Service Commission, and accordingly had to abide by the principle of zero growth in the civil service.

(4th Day 5th Month of the Iron Male Tiger Year corresponding to Wednesday, June 16, 2010)

3.2 Report on the Bill by the Good Governance Committee

Hon'ble Justin Gurung, Chairperson of the Good Governance Committee reminded that the Civil Service Bill 2009 had been thoroughly deliberated in both the Houses as an Urgent Bill during the 3rd Session of Parliament. Following disagreements on a few issues and on command of His Majesty the King, the Bill was then deliberated in a Joint Sitting of Parliament. However,

the two Houses could still not agree on the principle and other related issues which ultimately led to the death of the Bill.

Later, the Royal Civil Service Commission had thoroughly reviewed the Bill and re-submitted to Parliament. The National Assembly had deliberated on the Bill in the 4th Session and transmitted to the National Council with eight amendments. He said that since the Bill was important for the civil servants, the Good Governance Committee in preparation for the deliberations had conducted consultative meetings with relevant institutions and agencies, especially the Constitutional Offices. Opinion from the general public had also been gathered through internet before the Bill was submitted to the House. Considering its importance in the country, he expressed his hopes that the House would adopt the Bill after careful examination.

Supplementing the Committee Chairman, the Hon'ble Member from Gasa Dzongkhag reported that the Good Governance Committee had amended about four chapters of the Bill based on its principles, appointment of civil servants and independence of the Constitutional Offices due to the importance of the Bill in the country.

While deliberating on the principles of the Bill under Sections 2 and 5, the Hon'ble Member from Haa Dzongkhag and Hon'ble Kuenlay Tshering insisted on the separation of the three branches of the Government and the independence of the Constitutional Offices in accordance with the provisions of the Constitution of Bhutan. They submitted that the Judiciary along with the Constitutional Offices like the Anti-Corruption Commission, the Royal Audit Authority and the Election Commission of Bhutan were indispensable in the country. They argued that their authority and effectiveness would be greatly undermined if they had no independence over their own finance and human resources.

The Good Governance Committee further submitted that the employees of the three branches of the Government and the Constitutional Offices were kept under the Royal Civil Service Commission since there were only three civil service and employment related Acts such as the Labour & Employment Act 2007, the Judicial Services Act 2007 and the Civil Service Bill of Bhutan 2009, which was currently being deliberated. If the employees of the Constitutional Offices were not included as civil servants, they would not be covered under any of these Acts. Moreover, it was aimed at facilitating easy transfer of civil servants between ministries, departments and institutions.

Although the employees were kept under the Royal Civil Service Commission, several provisions had been added to guarantee authority and independence over human resource management for convenience of the respective institutions.

However, after prolonged deliberations on the principle of the Bill, the National Council resolved to retain Section 2 on Repeal and delete Section 5 on Extent and Scope of the Act to keep the employees of the Judiciary and the Constitutional Offices separate from the jurisdiction of the Royal Civil Service Commission.

3.3 Amendments and Changes on the Bill

After the introduction of the Civil Service Bill of Bhutan 2009 by Hon'ble Minister for Labour on 9th June 2010, the House thoroughly deliberated on the principle and individual sections of the Bill from 16th to 18th June 2010 and adopted the following amendments:

The Preamble of the Bill was amended as “**Whereas**, the Constitution requires the Commission, as the central personnel agency of the ~~Royal~~ Government and in the interest of promoting merit, productivity and equity, to ensure that uniform rules and regulations prevail throughout the civil service on recruitment, appointment, staffing, training, transfers and promotion;

Parliament of the Kingdom of Bhutan ~~do~~ hereby enacts the Civil Service Act at its ~~Fourth~~ **Fifth** Session of the First Parliament as follows:”

Section 1 (a) under Chapter I was amended as “be called the CIVIL SERVICE ACT OF BHUTAN, **2010** ~~2009~~; and”

Section 2 under Chapter I was amended as “Any ~~provision in other laws~~, rules and regulations pertaining to civil servants, so far as they are inconsistent with this Act, are hereby repealed.”

Section 3 under Chapter I was amended as “This Act shall apply to **the Royal Civil Service Commission and** all civil servants of the Kingdom of Bhutan.”

Sections 4 and 5 under Chapter I was deleted from the Bill.

In Section 6 under Chapter I, sub-sections (c), (e) and (f) were deleted from the Bill and sub-section (a) amended as “establish an independent and apolitical Royal Civil Service Commission **responsible** to manage the Civil Service of the Kingdom **of Bhutan.**”

Sub-title before section 7 under Chapter II was amended as “Establishment **and Composition**”

Section 8 under Chapter II was moved after section 13.

Section 10 under Chapter II which read as “The Commission shall be independent in the exercise of its powers and duties under this Act and shall exercise such powers and duties without fear, favour or prejudice in the interest of ensuring effective and efficient administration of the Civil Service” was moved to replace section 8 above.

Section 11 under Chapter II was amended as “A person ~~To~~ to be eligible to hold ~~Office~~ **as a Chairperson** and a Member from the Commission, ~~a person~~ shall.”, sub-section (d) amended as “not have been terminated from **Government or** Public Service;” sub-section (g) amended as “have rendered a minimum of 25 years of service in case of the Chairperson and 20 years for other members ~~with a clean record either in Government the Civil Service or Public Service Sector;~~” and a new sub-section **(j)** added which read as “**have proven leadership qualities.**”

Section 13 under Chapter II was amended as “Upon assuming ~~Office~~ office, the Chairperson and members of the Commission shall take an Oath or Affirmation and Secrecy in the form and manner prescribed ~~by law.~~ **in Third Schedule of the Constitution of Kingdom of Bhutan.**”

Section 15 under Chapter II was amended as “The salary, tenure, discipline and other conditions of service of the Chairperson and other members shall be as prescribed by **the Entitlement and Service Conditions Act for the Holders, Members and Commissioners of the Constitutional Offices of Bhutan 2010.** ~~law, provided their salary and benefits are not varied to their disadvantage after appointment.~~”

Sub-sections (b), (c), (d) & (e) of Section 16 under Chapter II were amended in the Dzongkha version.

Section 22 under Chapter II was amended as “The Chairperson and members of the Commission shall;” and sub-sections added as follows:

- (a) ~~ensure that their~~ conduct themselves **in a manner that** is consistent with the dignity, reputation and integrity of the Commission. ~~and the sovereignty, security, unity and integrity of the country.~~
- (b) uphold the sovereignty, security, unity and integrity of the Country.
- (c) ~~The Chairperson and members of the Commission shall~~ not hold any post in a public or private company or a non-governmental organization or such other organization whether it carries remuneration or is honorary, other than as may be required in their official capacity as the Chairperson or as a Member from the Commission. *(section 23 of the draft)*
- (d) ~~The Chairperson and members of the Commission shall ensure that no~~ **refrain from and prevent** any conflict of interest **in discharge of their** ~~arises or appears to arise, between their public~~ **official** duties and **responsibilities.** ~~their private interests, pecuniary or otherwise.~~ *(section 24 of the draft)*
- (e) ~~The Chairperson and members of the Commission shall~~ not make any unauthorized commitment or promise that purports to bind the Commission or the Royal Government. *(section 25 of the draft)*
- (f) ~~The Chairperson and the members of the Commission shall~~ maintain confidentiality in cases where, decisions, documents and deliberations should not be disclosed in the public interest. *(section 26 of the draft)*
- (g) ~~The Commission shall~~ uphold the Civil Service Values and Conduct set out in this Act. *(section 27 of the draft)*
- (h) ~~The Commission may~~ prescribe additional values and code of conduct. *(section 28 of the draft)*

Section 32 under Chapter II was moved *before section 30.*

The title before section 33 under Chapter II was amended as “~~Powers and Functions~~ **of the Commission**”

Section 33 under Chapter II was amended as “The **Royal Civil Service Commission as the central personnel agency of the Government** shall;” and the following sub-sections added:

- (a) **administer and enforce all statutory provisions of this Act;** *(sub-section (b) & section 38 of the draft)* ~~Provide and ensure effective leadership in the civil service.~~

- (b) **prescribe, amend and enforce rules and regulations for carrying into effect the provisions of this Act;** *(sub-section (j) & section 37 of the draft)*
- (c) **promulgate policies, standards and guidelines for the Civil Service and adopt plans and programs in consultation with the agencies to promote efficient and effective personnel administration in the government;** *(section 34(a) of the draft)*
- (d) appoint, promote and transfer civil servants except as specified otherwise in this Act; *(to retain as in the draft and reject NA's amendment to delete)*
- (e) **formulate, administer and evaluate programs pertaining to the development and retention of qualified and competent work force in the civil service;** *(sub-section (f) of the draft)*
- (f) ~~endeavour to~~ promote and maintain the highest level of prestige, morale and well-being of the civil service; *(retain as in the bill)*
- (g) **conduct periodic HR auditing across all agencies;** *(sub-section (k) & section 40 of the draft)*
- (h) **conduct special investigation on HR actions where necessary.**
- (i) ensure establishment of a human resource committee/council in each agency with standard functions and responsibilities to ensure proper personnel administration and human resource development, and monitor their functions; *(retain as in the draft)*
- (j) **prescribe, enforce and review code of conduct for the civil servants;** *(sub-section (e) of the draft)*
- (k) **manage Civil Service selection examinations;**
- (l) **review**, plan, coordinate, facilitate and monitor general civil service training and development programmes; *(sub-section (g) of the draft)*
- (m) maintain up-to-date personnel information on all civil servants as prescribed in the BCSR; *(sub-section (l) of the draft)*
- (n) exercise general disciplinary control over civil servants **through the enforcement of all rules, regulations and relevant laws.** *(sub-section (m) of the draft)*
- (o) provide administrative and legal support to civil servants in respect of decisions taken in good faith or **intent intended** pursuant to official duties; and *(sub-section (n) of the draft)*
- (p) ~~The Commission~~ shall, as per the decision of the Lhengye Zhungtshog create, abolish, upgrade or alter organizational structures in ministries and autonomous agencies, including names in consultation with ~~line~~ Agencies. ~~Likewise, the Legislature~~

~~and Constitutional bodies carry out such organizational changes in consultation with the RCSC. (section 35 of the draft)~~

- (q) perform any other functions to affect its mandates. *(sub-section (o) of the draft)*

A new sub-title after section 33 under Chapter II was added to read as **“Powers of the Commission”**.

A new Section after section 33 under Chapter II was added as follows:

The Commission:

- (a) may require free access to all information and records of agencies that relate to HR management and to inspect and inquire into and call for any information arising from those accounts and records;**
- (b) may revoke any HR actions taken by implementing agencies if found in contravention to this Act and BCSR.**
- (c) may call upon any entity or official in government to assist the Commission in the preparation and conduct of Civil Service selection examinations including security, use of buildings and facilities.**
- (d) shall require ~~aAll Agencies~~ and civil servants and agencies ~~to shall~~ provide the Commission with such facilities, assistance, information and access to their respective Offices as the Commission may require for the performance of its duties. *(section 41 of the draft)*
- (e) may delegate its **functions** ~~powers~~ in writing and subject to such conditions to be prescribed in the rules and regulations, to a person, agency, authority or entity including its secretariat from time to time as appropriate *(section 39 of the draft)*
- (f) ~~The Commission,~~ in consultation with the agencies, shall: *(section 34 of the draft)*
 - (i) determine staffing pattern and strength of an agency;
 - (ii) create, abolish or classify positions;
 - (iii) enhance capacity through Human Resource Development Programmes; and
 - (iv) carry out organizational development reviews at regular intervals.

Section 36 under Chapter II was deleted from the Bill.

Section 37 under Chapter II was amended as “The Commission shall make rules and regulations, called the Bhutan Civil Service Rules and Regulations

(~~or the~~ BCSR), for effective administration of the Civil Service in consultation with agencies,” and moved under Chapter XI.

Section 47 under Chapter III was amended as “A civil servant shall always be loyal to the *Tsa-wa-sum*, observe *Driglam Namzha* and conduct his functions with the highest degree of ~~morale~~, integrity, professionalism and accountability.”

Section 49 under Chapter III was amended as “A civil servant shall **not**: ~~abide by the code of conduct and ethics as prescribed by the BCSR~~” and the following sub-sections added:

- a) be eligible to be a candidate for any election conducted under the electoral laws of the Kingdom or hold any paid or unpaid post in any political party; (*section 50 of the draft*)
- b) canvass for the political party or any candidate in an election conducted under the electoral laws of the Kingdom; (*section 50 of the draft*)
- c) engage in any corrupt activities;**
- d) be a Member from, belong to or take part in a society, assembly or association, except as may be permitted under the rules and regulations; (*section 51 of the draft*)
- e) instigate, involve or participate in a strike, demonstration, marches or other similar activities; (*section 52 of the draft*)
- f) engage in proselytization; (*Section 55(h) of the draft*)
- g) engage in sexual harassment; and (*section 55 (j) of the draft*)
- h) act against the interest of Tsa-Wa-Sum. (*section 55 (k)*)

A new Section after section 49 was added to read as “**A civil servant shall abide by any additional code of conduct and ethics as maybe prescribed by the BCSR.**”

A new sub-title after the above new section was added to read as “**Breaches of Code of Conduct**”.

A new Section after the above new sub-title was added to read as “**A Civil servant who is found to have breached the Code of Conduct shall be subject to the following sanctions;**” along with the following sub-sections:

- a) Termination**
- b) Compulsory retirement;**
- c) suspension;**

- d) withholding of promotion;
- e) demotion;
- f) re-assignment of duties;
- g) reduction in salary;
- i) deductions from salary, by way of fine; and
- j) a reprimand.

The extent and degree of sanctions shall be as prescribed in the BCSR.

Section 53 under Chapter III was amended as “Literary, dramatic, musical or artistic works produced by civil servants in the course of their official duties shall be subject to copyright protection of the ~~Royal~~ Government in accordance with the provisions of the Copyright Act of the Kingdom of Bhutan.”

A new sub-title was added after section 54 under Chapter III to read as **“Prohibition on patronage and favoritism”**.

A new section was added after section 54 under Chapter III to read as, **“A person exercising powers under this Act or the regulations in relation to the human resource management and development of civil servants shall do so without patronage or favoritism. A person contravening this Section shall be guilty of abuse of authority.”**

Sub-sections (h), (j) & (k) of Section 55 under Chapter IV were moved under Code of Conduct.

Sub-section (0) of Section 55 under Chapter IV was amended as “appear before Disciplinary Committee or Administrative Tribunal or Court **or any other lawful entities** as and when summoned;”

Sub-section (d) of Section 56 under Chapter IV was deleted from the Bill.

The amendments made by the National Assembly on Sections 61 and 64 under Chapter V were rejected and the sections retained as in the draft.

A new Section was added after section 65 under Chapter VI to read as **“A civil servant shall be entitled for leave and other benefits as prescribed in the BCSR.”**

Section 66 under Chapter VII was amended as “The Commission, as the central personnel agency of the ~~Royal~~ Government, shall prescribe rules and

procedures for career and professional development of civil servants through continuing education and training to develop capacity and maintain competency and professionalism in the Civil Service, as specified in the BCSR.”

The new sub-title under Section 68 under Chapter VII added by the National Assembly was endorsed.

Section 69 under Chapter VII was amended as, “The Commission **may** ~~shall~~ identify one or more ~~of the existing~~ Colleges/Institutes in the Kingdom for conducting pre-service and in-service trainings of civil servants.”

Section 70 under Chapter VII was deleted from the Bill since it was covered under Functions.

The new sub-title for Section 73 under Chapter VII added by the National Assembly was endorsed.

Section 78 under Chapter VIII was amended as “~~To the extent possible,~~ transfers shall not result in the loss of professionals by an agency and appointment of such civil servants to positions where their specialized knowledge and skills are rendered irrelevant.”

The amendments made by the National Assembly in Section 80 under Chapter VIII was rejected and amended as “Notwithstanding section 79, the **Lhengye Zhungtshog** ~~Cabinet~~ shall determine and approve the inter-ministry and inter-dzongkhag transfer of secretaries and dzongdags in the same positions in consultation with the Commission.”

A new Section was added after section 84 under Chapter IX to read as “**The appellate authority shall be vested in the Ministries, Royal Civil Service Commission, and the Administrative Tribunal. Constitution of the appellate authorities and process for appeal shall be as prescribed in the BCSR.**”

The amendment made by the National Assembly in Section 88 under Chapter X was endorsed.

A new sub-title was added before section 90 under Chapter X to read as “**Agency Severance**”.

Section 91 under Chapter X was amended as “A civil servant shall be terminated from service if he or she is convicted by the court of law for a criminal offence of misdemeanor and above for offences related to **discharge of** official functions.”

Section 92 under Chapter X was amended as “A civil servant shall be compulsorily retired from service with post service benefit if he or she is convicted by the court of law for a criminal offence of misdemeanor and above for offences not related to **discharge of** official functions.”

Section 93 under Chapter XI was amended as “The Commission may institute a scheme for recognizing and rewarding excellent performance or outstanding contributions. The recognition may be in the form of civil service awards, honours, promotion and financial reward as may be prescribed ~~by the Commission.~~ **in the BCSR.**”

Section 94 under Chapter XI was amended as “An Agency shall maintain a safe and healthy working environment including health, safety and welfare of its civil servants as prescribed by ~~rule and law.~~ **prevailing laws and by-laws.**”

Section 97 under Chapter XI was amended as “The Commission shall protect a civil servant ~~or an agency~~ from false allegation or defamation leveled by any person or party while discharging his/her duties and responsibilities in accordance with rules and regulations.”

Section 99 under Chapter XI was deleted from the Bill since it was covered under the new section after section 84.

Sub-sections under Section 102 under Chapter XII were amended as follows:

Sub-section 102.1 was amended as “**Agency** means Legislature, ~~Judiciary,~~ Ministry, ~~Constitutional Office,~~ Autonomous Agency, Dzongkhag, Gewog, Thromde or a statutory body of the ~~Royal~~ Government.”

Sub-section 102.3 was amended as “**Appellate Authority** means the Administrative Tribunal for appeal cases from the **Royal Civil Service Commission** RCSC, the **Royal Civil Service Commission** RCSC for appeal cases from Ministries and Agencies, and the Ministry for appeal cases from Departments and Dzongkhags.”

Since the terms under sub-sections 102.4, 102.16, 102.20, 102.21, 102.22, 102.23 & 102.24 were not found in the Bill, these were deleted.

Sub-section 102.7 was amended as “**Civil Servant** means a person registered with the Commission and employed in the services of ~~the Judiciary~~, the Legislature, the Executive, ~~Constitutional Offices~~ and Autonomous Agencies of the ~~Royal~~ Government, unless otherwise specified.”

Sub-section 102.9 was amended as “**Code of Conduct** means the code of conduct ~~and values~~ set out in this Act and the BCSR.”

Sub-section 102.14 was amended as “**Criminal Offence** means any ~~serious~~ offence as defined by the Bhutan Penal Code.”

Sub-section 102.29 was amended as “**Organization** means an entity **within** ~~outside~~ the jurisdiction of the Commission, whether fully or partially funded by the Government.”

Sub-section 102.33 was amended as “**HR Personnel Auditing** means assessment of the implementation of all HR actions by the Agencies as per the provisions of the Constitution, the Civil Service Act, the BCSR and the other relevant rules with the view to ensure fairness and objectivity in the Civil Service.”

Sub-section 102.36 was deleted from the Bill.

“**She**” or “**her**” was added wherever there is “he” or “his/him” throughout the Bill, and the spellings be corrected.

(17th Day of the 5th Month of the Iron Male Tiger Year corresponding to Monday, 28th June 2010)

E Legislative Issues (Amendment of Acts)

1 The Anti-Corruption Amendment Bill 2010

1.1 Introduction of the Bill

The Chairperson of the Good Governance Committee, Hon’ble Member from Tsirang Dzongkhag submitted that in accordance with the resolution of the National Council to review the Anti-Corruption Act 2006 during its 4th Session,

the Good Governance Committee had conducted review meetings with stakeholders prior to submission of the Bill to the House. He reported that the Act of 2006 with 11 chapters and 138 sections had been revised to 10 chapters and 169 sections with amendments, changes and additions.

1.2 Amendments and Changes on the Bill

The Anti-Corruption Amendment Bill 2010 was thoroughly deliberated in the National Council from 28th to 30th July 2010 and on 13th July 2010. Following amendments and changes were made:

The title of Section 1 under Chapter I was amended as “Short Title, ~~and Commencement~~ **and Extent**”, sub-section (a) amended as “~~may~~ **shall** be called the Anti-Corruption Act **of Bhutan** 2010; ~~and~~” and a new sub-section (c) added to read as “**extend to the whole of the Kingdom of Bhutan.**”

Section 2 under Chapter I was amended as “~~Principle~~ **Principal** ~~objects~~ **objectives** of this Act”.

Section 2 (1) (a) under Chapter I was amended as follows by moving sub-section (ii) as sub-section (i), sub-section (iii) as sub-section (ii), and sub-section (i) as sub-section (iii):

The principal ~~objects~~ **objectives** of this Act are:

- (a) to promote the integrity and accountability of administration, whether public or private, by establishing an independent and accountable Commission to:
 - (i) prevent corruption involving or affecting authorities and officials, whether public or private; ~~and~~
 - (ii) educate authorities and officials, whether public or private, and members of the public about corruption and its evil effects on administration, whether public or private and on the community; and
 - (iii) investigate corruption involving or affecting authorities and officials, whether public or private; **and**

Section 4 under Chapter I was moved to the end of Chapter X.

Section 4(d) (iv) under Chapter I was amended as “a company in which that person or his/**her** nominee, is a director or is in charge or in control of its

business or affairs, or in which that person, alone or together with his/**her** nominee, holds the a controlling interest, or shares ~~amounting to more than thirty percent~~ of the total share capital; or”

Two new sub-sections were added to Section 4 (bb) under Chapter I to read as “**(x) Armed Forces**” and “**(xi) Constitutional offices**”.

A new Section **4 (dde)** was added after section 4 (dd) under Chapter I to read as “**“Public resources” includes public fund, property, human resource, authority, information, time, natural resource and other resource mobilized through domestic and external source.**”

A new Section **4 (ffg)** was added after section 4 (ff) under Chapter I to read as “**“Responsible person” shall, for the purpose of this Act, mean a person who has no record of corruption.**”

Section 4(gg) under Chapter I was deleted.

Title of Chapter II was amended in the Dzongkha version.

Section 5(1) under Chapter II was amended as “There shall ~~continue to be~~ an independent authority to be known as the Anti-corruption Commission which is established under ~~section (1) of article (27) of~~ the Constitution.”

Section 7 (1) under Chapter II was amended as “ ~~The State shall, as provided for in section (13) of article (14) of the Constitution, make adequate financial provisions for the independent administration of the Commission which shall be approved by Parliament as a part of annual national budget. The Anti-Corruption Commission shall have full authority over all aspect of its financial management,~~” and sub-section (2) as “~~If the decision of Parliament on the national budget is delayed, the Ministry of Finance shall provide the Commission with an interim fund, which shall be, at least, equivalent to previous year’s budget. Parliament shall approve the budget of the Anti-Corruption Commission which shall be charged on the Consolidated Fund of Bhutan. In the case, Parliament fails to allocate budget for the Commission on time, the Ministry of Finance shall provide the Commission with interim funds at least equal to the previous year’s budget.~~”

Section 8 (1) under Chapter II was amended as “The Commission shall determine its organizational structure **in consultation with the Royal Civil Service Commission** and administer it independently,” and sub-section (2) as “The Commission shall have independence and powers to regulate appointments, management and dismissal of its staffs other than a Member in accordance with the **Civil Service Act** ~~Anti-corruption Commission Staff Service Rules.~~

Section 12 (3) (d) under Chapter II was amended as “has a minimum work experience *in government and public services* of ~~20~~ **25** years in respect of a candidate for the Chairperson and ~~15~~ **20** years in respect of a candidate for a Member;”

Section 14 (1) under Chapter II was amended as “The Chairperson shall, before assuming office, take an oath or affirmation of office, as provided for in ~~section (6) of article (31) of the Constitution.~~”

Section 15 (2) under Chapter II was deleted.

The title before Section 16 under Chapter II was amended in the Dzongkha version.

Section 16 under Chapter II was amended as “The salary, allowances, benefits and other service conditions of Members shall be as prescribed by the Entitlements and Service Conditions Act of the Holders, Members and Commissioners of the Constitutional Offices, provided that their salary and benefits shall not be varied to their disadvantage after their appointment. ~~The Commission shall develop a code of conduct for its Members and its staff which shall be considered as a part of their employment terms and conditions.~~”

Section 17 (1) was amended as “The Commission shall ~~develop a~~ **abide by the following** code of conduct: ~~for its Members and its staff which shall be considered as a part of their employment terms and conditions,~~” and following sub-sections added:

- (a) **The Chairperson and members of the Commission shall ensure that their conduct is, both in appearance and in practice, in compliance with this code.**
- (b) **The Chairperson and members of the Commission shall maintain the highest standard of ethics, integrity and professionalism in discharging their duty.**

- (c) The Chairperson and members of the Commission shall not only abide by the provision of this Act but also ensure that all public servants working under the Commission comply with the Code of Conduct and Ethics prescribed by the Commission.**
- (d) The Chairperson and members of the Commission shall individually and collectively ensure and maintain the integrity of the Commission.**
- (e) The Chairperson and members of the Commission shall ensure that their conduct is consistent with the dignity, reputation and integrity of the Commission and the sovereignty, security, unity and integrity of the country.**
- (f) The Chairperson of the Commission shall have a duty to account for and be held accountable for the policy, decision and action of the Commission.**
- (g) The Chairperson and members of the Commission shall maintain confidentiality in cases where decision, document and deliberation should not be disclosed in the public interest.**
- (h) The Chairperson and members of the Commission shall not be influenced in any manner whatsoever by any person or body of persons in the discharge of their official duty.**
- (i) The Chairperson and members of the Commission shall take decision solely based on the public interest.**
- (j) The decision and action of the Chairperson and members of the Commission shall be transparent and they shall give reason for their decision.**
- (k) The Chairperson and members of the Commission shall:**
 - (i) Refrain from indulging in habit and behaviour that affects the performance of official duties or tarnish the image of the Commission or the country;**
 - (ii) Not conduct directly or indirectly, in abuse of their office or power, any act prejudicial to the rights of any other person knowing that such act is unlawful or contrary to any government policy;**
 - (iii) Not maintain or operate a bank account in any country outside Bhutan;**
 - (iv) Not provide information, which is detrimental to the prestige, integrity and sovereignty of the country; and**
 - (v) Not accept any gift, present or benefit.**

- (l) **The Chairperson and members of the Commission shall ensure that no conflict arises or appears to arise, between their public duty and private interests, pecuniary or otherwise.**
- (m) **A conflict of interest may exist when the Chairperson or a Member from the Commission is influenced or appears to be influenced by private interest. Private interest may include not only his pecuniary or vested interest but also that of his spouse or dependant or other person.**
- (n) **any other code of conduct as the Commission may prescribe.**

Section 19 (1) under Chapter II was amended as “~~The A members may resign from their office by giving one month’s prior notice~~ **submitting his/her resignation** to the Druk Gyalpo **one month before resignation.**”

Section 21(1) under Chapter II was amended as follows:

Members of the Commission shall be removed from their office only on the grounds of:

- (a) ~~incapacity to perform their official functions whether arising from infirmity of body or mind;~~ **Physical, mental, or other incapacity of a permanent nature;**
- (b) ~~incompetence to perform their official functions;~~ **Any violation of this Act;**
- (c) ~~serious misconduct.~~ **Conviction under any other law.**
- (d) **incompetence to perform their official functions; or**
- (e) **violation of code of conduct.**

Section 21(3) under Chapter II was amended as “~~The senior most Justice of the Supreme Court~~ **Chairperson** shall hear the disciplinary proceedings if formal charges against the Members are filed for incompetence to perform their official functions or **violation of code of conduct** ~~serious misconduct.~~”

Section 21(4) under Chapter II was amended as “**The incapacity to perform their official functions whether arising from infirmity** ~~Infirmity~~ of body or mind of a Member shall be determined by a head of Medical Department who shall obtain ~~the an~~ **the** advice of a relevant medical specialist.”

Section 21(5) under Chapter II was amended as “~~The Druk Gyalpo may shall,~~ based on the recommendations under subsections (3) and (4) of this section, remove a Member from his/her office.”

Section 23 under Chapter II was deleted.

Section 24(2) under Chapter II was amended in the Dzongkha version.

Section 25(1) under Chapter II was amended as “The Chairperson is a holder of constitutional office as provided for in ~~paragraph (f) of section (2) of article (31)~~ of the Constitution of the Kingdom.”

Section 26(h) under Chapter II was amended as “revoke work order, appointment, license, lease or contractual transaction that is obtained by corrupt means **once corruption is established;**”

Sub-sections (2), (3) & (4) of section 28 under Chapter II were deleted.

Section 28(5)(f) under Chapter II was amended as “~~regulate~~ **administer** appointments, management and dismissal of staff of the Commission; and”

Sub-title for section 29 under Chapter II was amended as “Oath or affirmation of office **of Staff of the Commission**”.

Section 30 under Chapter II was amended as “The appointment, terms and conditions of service of staffs of the Commission shall be **in accordance with the Civil Service Act** ~~determined by the Anti-corruption Commission Staff Service Rules.~~”

Section 32 under Chapter II was deleted from the Bill since it was covered under the Penal Code.

Section 35 (4) under Chapter II was amended as “~~A person guilty of an offence under this section shall be a misdemeanor, on conviction, be liable to imprisonment for a term not less than one year to more than three years.~~”

Section 39 under Chapter III was amended as “The Commission shall take measures to prevent corruption in the private sector by directing them to develop standards and procedures, including a code of conduct for correct, honorable and proper conduct of business and for promotion of good commercial practice **and in the contractual relations of business with the government.**”

Section 43(a) under Chapter III was amended as “inform ~~a person~~ **the public** on the Anti-corruption Act and other anti-corruption related laws, and ensure free access to such information by **the public** ~~person~~,”

Section 44(4) under Chapter III was amended as “A ~~person~~ guilty of an offence under this section shall **be a misdemeanor**, ~~on conviction, be liable to imprisonment for a term not less than one year to not more than three years.~~”

Section 45(3) under Chapter IV was amended as “A ~~person~~ guilty of an offence under this section shall **be a felony of the third degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.~~”

Section 46(3) under Chapter IV was amended as “A ~~public servant~~ guilty of an offence under this section shall **be a felony of the third degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.~~”

Section 47(4) under Chapter IV was amended as “A ~~person~~ guilty of an offence under this section shall **be a felony of the third degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.~~”

Section 48(3) under Chapter IV was amended as “A ~~foreign public servant~~ ~~guilty~~ of an offence under this section shall **be a felony of the third degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.~~”

Section 49(2) under Chapter IV was amended as “A ~~public servant~~ guilty of an offence under this section shall **be a felony of the fourth degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than three years to not more than five years.~~”

Section 50(2) under Chapter IV was amended as “The ~~person~~ guilty of an offence under this section shall **be a felony of the fourth degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than three years to not more than five years.~~”

Section 51 (2) under Chapter IV was amended as “A ~~person~~ guilty of an offence under this section shall **be a felony of the fourth degree or value based**

sentencing, whichever is higher, ~~on conviction, be liable to imprisonment for a term not less than three years to not more than five years.~~” and sub-section (4) amended as “A person guilty of an offence under this section shall **be a felony of the fourth degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than three years to not more than five years.~~”

Section 52(2) under Chapter IV was amended as “A person guilty of an offence under this section shall **be a felony of the fourth degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than three years to not more than five years.~~”

Section 53(2) under Chapter IV was amended as “A person guilty of an offence under this section shall **be a felony of the fourth degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than three years to not more than five years.~~”

Section 54(1) under Chapter IV was amended as “A public servant who knowingly abuses functions or position by performing an act **amounting to favoritism, nepotism or patronage, etc**, in violation of laws, in the discharge of his or her functions, to obtain ~~undue~~ advantage for himself or herself or for another person shall be guilty of an offence.”

Section 54(2) under Chapter IV was amended as “A person guilty of an offence under this section shall **be a felony of the fourth degree**, ~~on conviction, be liable to imprisonment for a term not less than three years to not more than five years.~~”

Section 55(2) under Chapter IV was amended as “A person guilty of an offence under this section shall **be a felony of the fourth degree**, ~~on conviction, be liable to imprisonment for a term not less than three years to not more than five years.~~”

Section 56(2) under Chapter IV was amended as “A person guilty of an offence under this section shall **be a felony of the third degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.~~”

Section 57(2) under Chapter IV was amended as “~~A person guilty of an offence under this section shall~~ **be a felony of the third degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.~~”

Section 58(2) under Chapter IV was amended as “~~A person guilty of an offence under this section shall~~ **be a felony of the fourth degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than three years to not more than five years.~~”

Section 59(2) under Chapter IV was amended as “~~A person guilty of an offence under this section shall~~ **be a felony of the third degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.~~”

Section 60(2) under Chapter IV was amended as “~~A person guilty of an offence under this section shall~~ **be a felony of the third degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.~~”

Section 61(2) under Chapter IV was amended as “~~A person guilty of an offence under this section shall~~ **be a felony of the third degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.~~”

Section 62(2) under Chapter IV was amended as “~~A person guilty of an offence under this section shall~~ **be a felony of the third degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.~~”

Section 63(3) under Chapter IV was amended as “~~A person guilty of an offence under this section shall~~ **be a felony of the third degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.~~”

Section 64(2) under Chapter IV was amended as “~~A person guilty of an offence under this section shall~~ **be a misdemeanor**, ~~on conviction, be liable to imprisonment for a term not less than one year to not more than three years.~~”

Section 65(2) under Chapter IV was amended as “~~A person guilty of an offence under this section shall~~ **be a misdemeanor** ~~, on conviction, be liable to imprisonment for a term not less than one year to not more than three years.~~”

Section 66(2) under Chapter IV was amended as “~~A person guilty of an offence under this section shall~~ **be a misdemeanor** ~~, on conviction, be liable to imprisonment for a term not less than one year to not more than three years.~~”

Section 67(2) under Chapter IV was amended as “~~A person guilty of an offence under this section shall~~ **be a misdemeanor** ~~, on conviction, be liable to imprisonment for a term not less than one year to not more than three years.~~”

Section 68(2) under Chapter IV was amended as “~~A person guilty of an offence under this section shall~~ **be a felony of the third degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.~~”

Section 69(2) under Chapter IV was amended as “~~A person guilty of an offence under this section shall~~ **be a felony of the third degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.~~”

Section 70(2) under Chapter IV was amended as “~~A person guilty of an offence under this section shall~~ **be a felony of the third degree or value based sentencing, whichever is higher**, ~~on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.~~”

Section 72(3) under Chapter IV was amended as “~~A person guilty of an offence under this section shall~~ **be a misdemeanor** ~~, on conviction, be liable to imprisonment for a term not less than one year to not more than three years.~~”

A new Section was added after Section 72 under Chapter IV as follows:

Abuse of Privileged Information

- (1) **A public servant who uses the privileged information and knowledge that he/she possesses as a result of his/her office to provide an advantage to another person or entity, or to accrue a benefit for himself/herself shall be guilty of an offence.**
- (2) **An offence under this section shall be a misdemeanor.**

Section 73(7) under Chapter V was amended as “~~A person guilty of an offence under this section shall be a petty misdemeanor, on conviction, be liable to imprisonment for a term not less than one month to not more than one year.~~”

Section 75(2) under Chapter V was amended as “Where the Commission declines to conduct an investigation or proceed further with any investigation into any complaint, the Commission may inform the complainant, ~~as far as practicable,~~ of its decision and the reason for it.”

Section 76(2) under Chapter V was amended as “~~A person guilty of an offence under this section shall be a petty misdemeanor, on conviction, be liable to imprisonment for a term not less than one month to not more than one year.~~”

A new sub-Section **(g)** was added under section 81 (1) under Chapter VI to read as, “**use any other special investigation techniques,**” and a new sub-section **(3)** after 81 (2) to read as “**The Commission shall obtain Court order for the purpose of clauses (d) and (e) of this subsection (1). However, Chairperson may authorize the Commission to use any special investigation technique without an order from a Court if there is an imminent danger of evidence being destroyed, provided that the judicial authorization shall be obtained within twenty-four hours.**”

Two new sub-sections were added under Section 85 of Chapter VI as follows:

- (4) The Commission shall produce before a Court of law a person who is arrested or detained under this section within twenty-four hours of his/her arrest or detention or as soon as practicable thereafter exclusive of the time necessary for the journey from the place of arrest and holidays unless sooner released on bail.**
- (5) If it appears to the judge before whom a person is brought under this section that any condition upon which the person was released or otherwise admitted to bail has been or is likely to be broken, he may:**
 - (a) remand that person in custody; or**
 - (b) admit that person to bail on the same or on such other conditions as he thinks fit.**

Section 86 under Chapter VI was amended as “~~Bail and bond~~ **Conditional Release**” and moved before Section 85.

Section 89 (6) under Chapter VI was amended as “~~A person guilty of an offence under **this section** subsection (7) shall be a **misdemeanor** liable, on conviction, to imprisonment for a term ranging from not less than one year to not more than three years.~~”

Section 101 (4) under Chapter VI was amended as “A person who is guilty of an offence under this section shall, on conviction, be liable to a fine not exceeding two times the amount which was paid out in contravention of the Commission’s order ~~or to imprisonment for a term not less than one month to not more than one year.~~”

Section 102 (5) under Chapter VI was amended as “A person guilty of an offence under this section shall, on conviction, be liable to a fine not exceeding twice the value of the property in respect of which the Commission’s order had been contravened, ~~or to imprisonment for a term not less than one month to not more than one year,~~” and sub-section (7) as “A person guilty of an offence under this section shall, on conviction, be liable to a fine not exceeding twice the value of the property in respect of which the Commission’s order had been contravened, ~~or to imprisonment for a term not less than one month to not more than one year.~~”

Section 104 (4) under Chapter VI was amended as “A Court of competent jurisdiction may, on application under this section by the Commission, extend the **retention** ~~detention~~ period as may be reasonably required, if the Court is satisfied that the investigation could not be completed before the expiration of one hundred and eight days.”

Section 108 (2) under Chapter VI was amended as “~~A person guilty of an offence under this section shall be a **petty misdemeanor**, on conviction, be liable to imprisonment for a term not less than one month to not more than one year.~~”

Section 111 (6) under Chapter VII was amended as “~~A person guilty of an offence under this section shall be a **petty misdemeanor**, on conviction, be liable to imprisonment for a term not less than one month to not more than one year~~”, sub-section (7) as “In addition to any penalty imposed under subsection (5) **(6)** of this section, the Court may order a person convicted of an offence under this subsection to pay appropriate damages or compensatory damages for any of the grounds mentioned in subsection (6), as may be appropriate,” and sub-section (9) as “~~A person guilty of an offence under this~~

section shall **be a petty misdemeanor**, ~~on conviction, be liable to imprisonment for a term not less than one month to not more than one year~~".

Section 114 (5) under Chapter VI was amended as "A ~~person guilty of an offence under this section shall~~ **be a petty misdemeanor**, ~~on conviction, be liable to imprisonment for a term not less than one month to not more than one year.~~"

The sub-sections under Section 116 of Chapter VIII were amended as follows:

- (1) **Where in any proceedings against any person for an offence under sections...of this Act, it is proved that the accused promised, offered or given any advantage, it shall be presumed, unless the contrary is proved, that the advantage was corruptly promised, offered or given for any of the purposes set out in those sections.**
- (2) **Where in any proceedings against any person for an offence under sections 46, 48, 52, 53, 57, 60, 62, ... of this Act, it is proved that the accused corruptly solicited or accepted any advantage, it shall be presumed, unless the contrary is proved, that the advantage was corruptly solicited or accepted for any of the purposes set out in those sections.**
- (3) **Where in any proceedings against any person for an offence under sections... of this Act, it is proved that such person has solicited or accepted any advantage, such person shall be presumed to have done so as a motive or reward for any of the purposes set out in those sections, unless the contrary is proved.**

Section 117(2) under Chapter VIII was amended as follows:

An accused person shall, for the purposes of this section, be presumed to be or to have been in possession of pecuniary resources or property, or to have obtained an accretion thereto, where such resources or property are or were held, or such accretion was obtained, by any other person whom, having regard to his relationship to the accused or to any other circumstances, there is reason to believe:

- (a) **is or was holding such resources or property;**
- (b) **obtained such accretion in trust for or otherwise on behalf of the accused; or**
- (c) **as a gift from the accused.**

Section 127 under Chapter VIII was deleted.

Section 149(2) under Chapter IX was amended as “~~A person guilty of an offence under this section shall be liable to imprisonment for a term not less than one month to not more than one year.~~ **be a petty misdemeanor**, on conviction, be liable to imprisonment for a term not less than one month to not more than one year.”

Section 154 under Chapter X was deleted.

Section 164 under Chapter X was amended as “The Commission shall, as provided for in ~~section (4) of article (27)~~ of the Constitution, submit an annual report on its policies and performances to the *Druk Gyalpo*, the Prime Minister and Parliament.”

Section 168 under Chapter X was amended as “~~In any instance of difference in meaning between the Dzongkha text and the English text of this Act, each text shall be regarded as equally authoritative and courts shall reconcile the two texts.~~ **In any instance of a difference in meaning between the Dzongkha and the English texts of this Act, Dzongkha text shall be regarded as the authoritative text.**”

Two new sub-sections were added after Schedule I (12) to read as “**13. Chairpersons of *Dzongkhag Tshogdes*; and**” and “**14. Chairpersons of *Thromde Tshogdes*.**”

(26th Day of the 5th Month of the Iron Male Tiger Year corresponding to Thursday, 8th June 2010)

2 The Penal Code of Bhutan 2004

2.1 Background on the need for Amendments

The Chairperson of the Legislative Committee, Hon’ble Kuenlay Tshering submitted that the Penal Code of Bhutan had been drafted by the Bhutanese legal experts in accordance with international laws in general and the provisions of the Thrimzhung Chhenmo of 1959 in particular, and adopted by the National Assembly during its 82nd Session in 2004. However, he said that to make it consistent with the Constitution of the Bhutan which was adopted in 2008 and other laws such as the Anti-Corruption Act, and also to solve problems related to offences regarding rape in keeping with changing times, it was necessary to amend the Code.

Moreover, he said that most of the resolutions of the Annual Judicial Conference had stressed on the need to review the Code. The National Council in its previous sessions had similarly resolved to review it. Accordingly, the Legislative Committee had not only reviewed the Code thoroughly, but had also conducted consultative meetings with the Royal Bhutan Police, the Bhutan Narcotic Control Agency, the Ministry of Health and Private Legal Firms. He, therefore, proposed that the Bill be discussed in the House.

2.2 Amendments and Changes on the Code

The National Council then thoroughly deliberated on the Penal Code of Bhutan 2004 on 08/07/2010 and 12/07/2010. Following amendments were made:

Section 3 (d) under Chapter II was amended as “A crime shall be a violation, if it is so designated in this Penal Code or other laws and provides that the convicted defendant shall not be imprisoned but shall be fined the daily minimum ~~national~~ wage rate up to a maximum of ninety days.”

Section 7(a) under Chapter III was amended as “In case of a felony of the first degree comprising of murder, treason, ~~or~~ terrorism **or gang rape of a child below 13 years.**”

Section 14 under Chapter III was amended as “A defendant convicted of a violation shall be fined the daily minimum ~~national~~ wage rate for a maximum of ninety days.”

Section 18 under Chapter III was amended as “The offence graded as value based under this Code shall be:

- (a) A felony of the third degree, if the value or the amounts involved in the crime exceed the total amount of the daily minimum ~~national~~ wage rate at the time of the crime for a period of thirty years or more;
- (b) A felony of the fourth degree, if the item of the crime is not of a type described in Section 18(a) and the value or the amounts involved in the crime exceed the total amount of the daily minimum ~~national~~ wage rate at the time of the crime for a period less than thirty years and for period of fifteen years or more;
- (c) A misdemeanor, if the item of the crime is not of a type described in Section 18 (a) & (b) above and the value or the amounts involved in the crime exceed the total amount of the daily minimum ~~national~~ wage rate at the time of the crime for a period less than fifteen years and for a period of seven years or more; or

- (d) A petty misdemeanor, if the item of the crime is not of a type described in Section 18(a) (b) and (c) above and the value or the amounts are less than the total amount of the daily minimum ~~national~~ wage ~~rate~~ at the time of the crime for a period less than seven years.”

Section 39 under Chapter III and its sub-sections were amended as follows:

If the Court determines that compensatory damages are appropriate, then a defendant convicted of a crime shall pay appropriate compensatory damages at the rate of the daily minimum ~~national~~ wage ~~rate~~ at the time of the crime for:

- a) ~~Maximum of~~ Ten years to the surviving spouse or next of kin of the victim and the cost for forty-nine days for seven people towards the expenses incurred in the funeral rites of the deceased victim, when the crime has resulted in the death of the victim;
- b) ~~Maximum of~~ Ten years, if the crime causes permanent **total** disability to the victim;
- c) ~~Maximum of~~ Seven years, if the crime causes **permanent** partial disability to the victim;
- d) ~~Maximum of~~ Five years, if the crime **causes temporary total disability** ~~endangers the victim's life or causes serious bodily injury~~ to the victim;
- (d1) Three years, if the crime causes temporary partial disability to the victim;**
- (e) The daily wage lost to the victim, when the crime has resulted in temporary loss of wage.

The title of Chapter IX was amended as “~~Juvenile Delinquency~~ **Child in Conflict with Law** and Mental Disability”.

The sub-title before Section 114 under Chapter IX was amended as “~~Juvenile~~ **Child in conflict with law**”.

Section 114 under Chapter IX was amended as “If the defendant is a child of ~~ten~~ **thirteen** years and below, he/**she** shall not be held liable for any offence committed by him/**her**. **However, the Court may order the child to be sent to a remand home.**”

Section 115 under Chapter IX was amended as “If the defendant is a child of above ~~ten~~ **thirteen** years, the Court ~~may~~ **shall** sentence the ~~juvenile~~ **child in conflict with law** to a minimum of half of the sentence prescribed for the offence.”

Section 116 under Chapter IX was amended as “If a ~~Juvenile~~ **child in conflict with law** is found guilty of an offence for which imprisonment is prescribed, the Court may in lieu of imprisonment consider the availability of other appropriate facilities and correctional institutions.”

Section 117 under Chapter IX was amended as “If a ~~Juvenile~~ **child in conflict with law** is found guilty of an offence for which damages are appropriate, the Court may order the parents or legal guardian of the **child in conflict with law** ~~Juvenile~~ to pay the damages.”

Section 154 under Chapter XI was amended as “A defendant shall be guilty of the offence of trafficking a person if the defendant **recruits**, transports, ~~sells or buys~~ **harbours or receives a person through the use of threat or force or deception** within, into or outside of Bhutan for ~~any~~ **the purpose of exploitation.**”

Section 177 under Chapter XIV was amended as “A defendant shall be guilty of the offence of rape, if the defendant has ~~sexual intercourse with another~~ **commits any act of sexual penetration whatever its nature against any other** person:

- (b) Compels the other person to submit to sexual **penetration** ~~intereourse~~ by force, or by threat of imminent death, bodily injury or serious bodily injury or the commission of a felony to that person or a third person;
- (c) Substantially impairs the other person’s ability to appraise or control the conduct by administering drugs, intoxicants, or other substances without consent for the purpose of preventing the person’s resistance to the sexual **penetration** ~~intereourse~~, or
- (d) Renders the other person unconscious for the purpose of committing sexual **penetration** ~~intereourse~~.”

Sections 181 under Chapter XIV was amended as “A defendant shall be guilty of the offence of statutory rape, if the defendant engages in ~~sexual intereourse~~ **any act of sexual penetration whatever its nature** with a child below **thirteen** ~~twelve~~ years, or an incompetent person, either with or without knowledge of the other person being a child or incompetent person.”

Section 182 under Chapter XIV was amended as “The offence of statutory rape shall be a felony of the **first** ~~second~~ degree.”

Section 183 under Chapter XIV was amended as “Rape of a Child above **thirteen** ~~twelve~~ years of age. A defendant shall be guilty of the offence of rape of a child above the age of **thirteen** ~~twelve~~ years if the defendant **commits any act of sexual penetration against** ~~has sexual intercourse with~~ a child between the ages of **thirteen** ~~twelve~~ to eighteen years. **However, consensual sex between children above the age of sixteen years shall not be deemed to be rape.**”

Section 184 under Chapter XIV was amended as “Grading of Rape of a Child above the age of **thirteen** ~~twelve~~ years. The offence of rape of a child above the age of **thirteen** ~~twelve~~ years shall be a felony of the ~~third~~ **second** degree.”

Section 191 under Chapter XIV was amended as “Gang rape of a child below **thirteen** ~~twelve~~ years of age. A defendant shall be guilty of the gang rape of a child below the age of **thirteen** ~~twelve~~ years, when two or more persons engage in **any act of sexual penetration whatever its nature** ~~a sexual intercourse~~ with a child below the age of **thirteen** ~~twelve~~ years.”

Section 192 under Chapter XIV was amended as “Grading of Gang rape of a child below **thirteen** ~~twelve~~ years of age. The offence of gang rape of a child below **thirteen** ~~twelve~~ years of age shall be a felony of the first degree, **which shall be punishable with life imprisonment.**”

Sections 193 under Chapter XIV was amended as “A defendant shall be guilty of the offence of gang rape of a child above the age of **thirteen** ~~twelve~~ years, when two or more persons engages in **any act of sexual penetration whatever its nature** ~~raping or indulging into a sexual intercourse~~ with a child between the age of **thirteen** ~~twelve~~ and eighteen years.”

Section 194 under Chapter XIV was amended as “The offence of gang rape of a child above **thirteen** ~~twelve~~ years of age shall be a felony of the ~~first~~ **second** degree.”

Section 197 under Chapter XIV was amended as “A defendant shall be guilty of the offence of custodial rape, if the defendant who has custody of a person, or being a legal guardian takes advantage of one’s official position and engages in sexual **penetration** ~~intercourse~~ with such person.”

Section 199 under Chapter XIV was amended as “A defendant shall be guilty of marital rape, if the defendant engages in sexual **penetration** ~~intereourse~~ with one's own spouse without consent or against the will of the other spouse.”

Section 206 under Chapter XIV was amended as “The offence of sexual harassment shall be a petty misdemeanor **and a misdemeanor if it involves non-verbal harassment.**”

Section 207 under Chapter XIV was amended as “A defendant shall be guilty of the offence of incest, if the defendant engages in sexual **penetration** ~~intereourse~~ or any other sexual conduct with a person to whom the defendant is related by consanguinity or affinity in such a way that they cannot legally marry except otherwise provided in other laws.”

Section 211 under Chapter XIV was amended as “A defendant shall be guilty of the offence of bestiality, if the defendant engages in sexual **penetration** ~~intereourse~~ or other sexual contact with an animal.”

A new Section **214 (A)** was added after section 214 under Chapter XIV to read as “**Unauthorized Disclosure of Identity. A defendant shall be guilty of the offence of unauthorized disclosure of identity if the defendant discloses the identity of a rape victim in the media without the consent of the victim,**” and a new section **214 (B)** to read as “**Grading of Unauthorized Disclosure of Identity. The offence of unauthorized disclosure of identity shall be a misdemeanor.**”

Section 226 (a) under Chapter XV was amended as “A **felony of the fourth degree** ~~misdemeanor~~; or”

Section 247 under Chapter XVIII was amended as “A defendant shall be guilty of the offence of armed robbery, if in the course of committing ~~the a~~ robbery, **the defendant is armed with a deadly weapon** ~~there exists three or more persons.~~”

Section 260 under Chapter XVIII was amended as “In this Penal Code, the term “service” shall include labour, professional services, transportation services, telecommunication/**information technology** services, including cable television, gas, electricity, water, ~~or other public service~~, accommodations in a hotel, and restaurant service, **or any other such services.**”

Section 278 under Chapter XIX was amended as “The offence of money laundering shall be a value-based sentencing **or a felony of the third degree, whichever is higher.**”

Chapter 20 was deleted since Embezzlement and Bribery were covered under Anti-Corruption Act.

Section 307 under Chapter XXI was amended as “A defendant shall be guilty of the offence of counterfeiting, if the defendant knowingly manufactures, distributes, or sells counterfeit ~~medicinal~~ products, false currency, coin or bank notes.

Section 319 under Chapter XXII was amended as “The offence of defamation shall be:

- (a) A felony of the fourth degree and pay compensation for a minimum of one month and a maximum of three years to the aggrieved party calculated in accordance with the daily minimum ~~national~~ wage rate, if the defamation includes murder, armed robbery, terrorism or treason; or
- (b) A petty misdemeanor and pay compensation to the aggrieved party for a minimum of one month and maximum of three years calculated in accordance with the daily minimum ~~national~~ wage rate, if the defamation includes any matter other than murder, armed robbery, terrorism or treason.”

Section 321 under Chapter XXII was amended as “The offence of libel shall be:

- (a) A felony of the fourth degree and pay compensation for a minimum of one month and a maximum of three years to the aggrieved party calculated in accordance with the daily minimum ~~national~~ wage rate, if the libel includes murder, armed robbery, terrorism or treason; or
- (b) A petty misdemeanor and pay compensation to the aggrieved party for a minimum of one month and maximum of three years calculated in accordance with the daily minimum ~~national~~ wage rate, if the libel includes any matter other than murder, armed robbery, terrorism or treason.”

Section 327 (b) under Chapter XXIII was amended as “~~Engages~~ **Collaborates** with the known enemy of Bhutan;”

Section 372 under Chapter XXV was amended as “The offence of cantankerous litigation shall be a ~~petty~~ misdemeanor.”

Section 376(b) under Chapter XXVI was amended as “A felony of the fourth degree, if the person used for prostitution is a child of above **thirteen** ~~12~~ years ~~and below 18 years~~; or” and sub-section (c) as “A felony of the third degree, if the person used for prostitution is a child of **thirteen** ~~12~~ years and below.”

Section 378(b) under Chapter XXVI was amended as “A felony of the fourth degree, if the person used for prostitution is a child of above **thirteen** ~~12~~ years ~~and below 18 years~~; or” and sub-section (c) as “A felony of the third degree, if the person used for prostitution is a child of **thirteen** ~~12~~ years and below.”

Section 380(b) under Chapter XXVI was amended as “Second degree, if the person is a child of above **thirteen** ~~12~~ years ~~and below 18 years~~; or” and sub-section (c) as “First degree, if the person is a child of **thirteen** ~~12~~ years and below.”

Section 385 under Chapter XXVII was amended as “Use of ~~tobacco or other~~ health hazard substances. A defendant shall be guilty of the offence of use of ~~tobacco or other~~ health hazard substances, if the defendant uses ~~tobacco or other~~ health hazard substances **other than tobacco, narcotic drugs or psychotropic substances** in the prohibited places.”

Section 386 under Chapter XXVII was amended as “Grading of use of ~~tobacco or other~~ health hazard substances. The offence of use of ~~tobacco or other~~ health hazard substances shall be a violation.”

Section 387 under Chapter XXVII was amended as “Illegal sale of ~~tobacco or other~~ health hazard substances. A defendant shall be guilty of the offence of illegal sale of ~~tobacco or other~~ health hazard substances, if the defendant illegally sells any ~~tobacco or other~~ health hazard substances **other than tobacco, narcotic drugs or psychotropic substances.**”

Section 388 under Chapter XXVII was amended as “Grading of illegal sale of ~~tobacco or other~~ health hazard substances. The offence of illegal sale of ~~tobacco or other~~ health hazard substances shall be a violation.”

Section 410 under Chapter XXVII was amended as “A defendant shall be guilty of the offence of criminal nuisance, if the defendant knowingly or recklessly creates or maintains a condition including spreading of dangerous diseases

that ~~injures~~ **causes injury** or endangers the safety or health of **an individual or the public.**”

Section 411 under Chapter XXVII was separated into two sub-sections and amended as “The offence of criminal nuisance shall be:

- (a) a misdemeanor;
- (b) **felony of fourth degree, if the dangerous disease has high likelihood of causing death;**”

Section 416 under Chapter XXVIII was amended as “A defendant shall be guilty of the offence of illegal arrest, if the defendant being a police officer, **law enforcement personnel** or other authorized government official arrests and detains a person without probable cause.”

A new Section **463 (A)** was added after section 463 under Chapter XXIX to read as “**Proselytization - A defendant shall be guilty of the offence of proselytization if the defendant uses coercion or other forms of inducement to cause the conversion of a person from one religion or faith to another,**” and a new section **463 (B)** as “**Grading of Proselytization - The offence of proselytization shall be a misdemeanor.**”

Section 471 under Chapter XXX was amended as “The offence of the unauthorized opening of mail or parcel shall be a **misdemeanor** ~~felony of the fourth degree.~~”

Section 487 under Chapter XXXII was amended as “The offence of display of a weapon shall be a ~~felony of the fourth degree~~ **misdemeanor.**”

Section 491 under Chapter XXXIII was amended as “The offence of the risking of the protected species shall be a ~~misdemeanor~~ **felony of the fourth degree.**”

A new sub-section (c1) was added after sub-section 496(c) under Chapter XXXIII to read as “**Cannabis and its derivatives**”.

Section 497 under Chapter XXXIII was amended as “The offence of illegal cultivation, production, or manufacturing of controlled substances shall be a felony of the ~~fourth~~ **second** degree.”

Section 501(a) under Chapter XXXIII was amended as “A ~~petty~~ misdemeanor, **if the controlled substance is injectable;** or” and sub-section (b) as “A **petty**

misdemeanor, if the ~~amount possessed is of a quantity such that the Court is of the opinion that the defendant intended to sell~~ **controlled substance is other than injectable.**”

Section 506 under Chapter XXXIII was amended as “A defendant shall be guilty of the offence of illegal sale or use of harmful chemical substance, if the defendant except for household purpose unlawfully sells, imports, exports or uses any harmful chemical substances including **solvents and** pesticides without any license or authorization.”

Section 507 under Chapter XXXIII was separated into two sub-sections and amended as “The offence of the illegal sale and use of harmful substances shall be:

- a) A misdemeanor **if found selling; or**
- b) **Petty misdemeanor if found using.**”

(27th Day of the 5th Month of the Iron Male Tiger Year corresponding to Friday, 9th June 2010)

3 Background on the Amendments to the Civil & Criminal Procedure Code of Bhutan 2001

The Chairperson of the Legislative Committee, Hon’ble Kuenlay Tshering submitted that the Civil & Criminal Procedure Code of Bhutan had been drafted by the Bhutanese legal experts in accordance with the provisions of the Thrimzhung Chhenmo of 1959, the procedure codes of the International Court of Justice and the principles of Human Rights after extensive research. The Code had been adopted by the National Assembly in 2001.

He said that the main objective of amending the Code was to ensure consistency of laws with the adoption of the Constitution of Bhutan in 2008. The resolutions of the National Judicial Conference had also pointed out many problems with the Procedure Code. Moreover, the various Committees of the National Council had expressed divergent views on it.

Accordingly, consultative meetings had been held with the Royal Bhutan Police, the Bhutan Narcotic Control Agency, the Office of the Attorney General, Health Experts, RENEW and private law firms. The Chairperson of the National Council had also written to the Local Government leaders inviting views and

comments on the Code. Therefore, he proposed that the Procedure Code may be discussed in the House and amended in keeping with the need of changing times while retaining the basic old principles.

3.1 Amendments and Changes to the Civil & Criminal Procedure Code of Bhutan

The National Council then thoroughly deliberated on the Civil & Criminal Procedure Code of Bhutan 2001 on 09/07/2010 and 12/07/2010. Following amendments and changes were made:

Section 4 (d) under Chapter I was amended as “protecting the privacy of a juvenile **child in conflict with law;**”

Section 9 (d) under Chapter II was amended as “have ~~such number of~~ **four** Drangpons **appointed by** ~~as His Majesty the Druk Gyalpo~~ **by warrant under His Hand and Seal** ~~may appoint upon the recommendation of~~ **in consultation with** the National Judicial Commission.”

Section 10 under Chapter II was amended as “have **eight** ~~such number of~~ *Drangpons* **appointed by** ~~as His Majesty the~~ **Druk Gyalpo King by warrant under His hand and Seal** ~~shall appoint upon~~ **on** the recommendation of the National Judicial Commission;”

Section 13 and its sub-sections under Chapter II were amended as follows:
~~His Majesty the King shall appoint legally qualified, experienced and competent persons of high integrity as~~ **The Druk Gyalpo shall, by warrant under His Hand and Seal, appoint:**

- (a) Chief Justice of Bhutan, **in consultation with the National Judicial Commission;**
- (b) Drangpons of the Supreme Court, ~~upon the recommendation of~~ **in consultation with** the National Judicial Commission;
- (c) Chief Justice and Drangpons of the High Court, upon the recommendation of the National Judicial Commission; and
- ~~(d) Drangpons of the Dzongkhag Courts, upon the recommendation of the National Judicial.~~

Section 13.1 under Chapter II was amended as “The Chief Justice of Bhutan shall appoint ~~legally qualified, experienced and competent persons of high~~

~~integrity as Drangpons of the **Dzongkhag and Dungkhag** Courts, upon the recommendation of the Royal Judicial Service Council.”~~

Section 14 under Chapter II was amended as “~~His majesty the King~~ **The Druk Gyalpo** shall appoint ~~qualified, experienced and competent persons of high integrity as~~ members of the National Judicial Commission **by warrant under His Hand and Seal. The National Judicial Commission shall comprise:**

- (a) The Chief Justice of Bhutan as Chairperson;**
- (b) The senior most Drangpon of the Supreme Court;**
- (c) The Chairperson of the Legislative Committee of the National Assembly; and**
- (d) The Attorney General.**

Section 14.1 under Chapter II was repealed since it was already covered under 14 (a).

Section 15 under Chapter II was amended as follows:

~~Every Drangpon shall:~~

- ~~(a) — enjoy security of tenure, *quamdiu se bene gesserint*; and~~
- ~~(b) — be censured, suspended or removed from office only by an order of His Majesty the *Druk Gyalpo* upon the recommendation of the National Judicial Commission for proven misbehavior or incapacity.~~

The independence of the Drangpons of the Supreme Court and the High Court shall be guaranteed, provided that a Drangpon may be censured or suspended by a command of the Druk Gyalpo on the recommendation of the Commission for proven misbehaviour, which, in the opinion of the Commission, does not deserve impeachment.

Section 29 under Chapter IV was amended as “The Royal Courts of Justice shall apply International Conventions, Covenants, Treaties and Protocols that are duly acceded **to** by the Royal Government of Bhutan and ratified by the ~~National Assembly~~ **Parliament** of Bhutan.”

Section 42 (b) under Chapter VI was amended as “daily allowance at the prevailing rate prescribed by the **Daily** Minimum Wage ~~Rate~~.”

Section 42.1 under Chapter VI was amended as “If the Court summoned the witness *sua sponte*, after considering it necessary, expedient or otherwise in the interest of justice to do so, the Government shall pay reasonable travelling

fare and daily allowance at the prevailing rate prescribed by the **Daily Minimum Wage Rate.**”

A new Section 96 A was added after section 96 under Chapter XII to read as **“The judgment of the Court shall be made accessible in the public domain which shall include libraries.”**

Section 97 under Chapter XIII was amended as “It shall be the discretion of the Appellate Court based on the outcome of a case to determine an appropriate assignment of costs and other expenses related to the suit.”

Section 98 under Chapter XIII was amended as “The Court may order a defaulting party to pay costs to the attending party calculated at the rate prescribed under the **Daily Minimum Wage Rate.**”

Section 99.6(c) under Chapter XIV was amended as “agricultural land to the extent of minimum acre ceiling prescribed by the **prevailing Land Act of Bhutan, 1980;**”

Section 101.3 under Chapter XV was repealed from the Procedure Code since this was provided for under *Jabmi Tshogdey* in the *Jabmi Act*.

Section 107.1 under Chapter XVI was amended as “Finding of civil contempt shall result in fine/imprisonment **or civil confinement in lieu of imprisonment** until the civil order has been complied with.”

Sections 112 and 114 under Chapter XVII were repealed.

Section 148.1 under Chapter XXII was amended as “Such person shall be, in the case of a **child in conflict with law** ~~juvenile~~, be represented by the parents/family member/guardian/*Jabmi*.”

Section 150 under Chapter XXIII was amended as “At any stage of the proceedings, it shall be open to the parties to take the help of **members of the concerned Local Government** ~~a Chimi, Gup, Chipon, Mang mi or Barmi~~ as mediators for mutual settlement of a civil case in accordance with the requirements of this Code.”

Section 153.1 under Chapter XXIV was amended as “The party may be liable for such costs as the Court may award calculated in accordance with the **Daily Minimum Wage Rate.**”

Section 171 under Chapter XXIX was amended as “A search shall be made in the presence of ~~Chimi/Gup/Chipon/ Member from Dzongkhag and Geog Yargye Tshokchung~~ **one or more members of the concerned Local Government.**”

Section 178 under Chapter XXXI was amended as “A vehicle/aircraft/vessel/**train**/conveyance may be searched where reasonable cause exists or upon the arrest of the driver/pilot/passenger.”

Section 178.1 under Chapter XXXI was amended as “If the vehicle/aircraft/vessel/**train**/conveyance itself is being subjected to a valid warranted search, closed containers found in the vehicle/aircraft/vessel/**train**/conveyance may be searched without a warrant.”

Section 186 under Chapter XXXIV was amended as “The Court may order an accused to be remanded to police/judicial custody, if there exist reasonable cause that he/she has perpetrated a crime, **within the limits prescribed by this Code.**”

A new Section **186.1** was added after section 186 under Chapter XXXIV to read as “**The Court may, depending on the nature of the crime, order the accused to be released on bail or placed under house arrest, in lieu of detention.**”

Section 191.1 under Chapter XXXVIII was amended as “The Court, prior to the preliminary hearing, may **from time to time** authorize the detention of the accused for ~~an additional period not exceeding~~ **a reasonable duration calculated from the date of issuance of the first detention order which in the whole shall not exceed.**”

A new Section **191.2** was added after section 191 under Chapter XXXVIII to read as “**A person detained prior to conviction under this Code shall have the rights of access to and advice from a *Jabmi* and of access to family members.**”

Section 194 under Chapter XXXVIII was amended as “Persons accused of the same offence or any offence that can be reasonably construed to have been

committed during the same criminal transaction may be charged and presented together in the Preliminary Hearing except **child in conflict with law juvenile.**”

Section 195.1 under Chapter XXXIX was amended as “In the case of **child in conflict with law juvenile**, his/her parents/Member from family/legal guardian/*Jabmi* may make a plea of guilty or *Nolo Contendere* only in the best interest of the **child in conflict with law juvenile.**”

Section 197.3 under Chapter XL was amended as “Before confirming a plea bargain, the prosecution shall determine whether the defendant is mentally competent and is a **child in conflict with law juvenile**, and if so is represented by parent/member from a family/legal guardian/*Jabmi*, and understands:”

A new Section 199.8 A was added after Section 199.8 under Chapter XLI to read as “**Non-Bailable Offence.**”

The Court shall not grant bail to a person who has been charged with:

- (a) an offence against the security and sovereignty of the country; and**
- (b) an offence of or above felony of the second degree.”**

Section 205 under Chapter XLII was amended as “The prosecution may **move** ~~motion~~ the Courts for new trials based on newly discovered evidence or on other grounds.

Section 208(a) under Chapter XLIII was repealed.

A new Section **212 (A)** was added after section 212 under Chapter XLIII to read as “**An acquitted person or a person subjected to illegal detention is entitled to be compensated by the relevant agencies for the loss of income caused by the criminal proceedings or illegal detention and to be reinstated at the former place of work.**”

The title for Chapter XLIV was amended as “~~Juvenile~~ **Child in Conflict with Law**”.

The sub-title before Section 213 under Chapter XLIV was amended as “~~Juvenile~~ **Child in Conflict with Law**”.

Section 213 under Chapter XLIV was amended as “A **Child in conflict with law Juvenile** arrested on a criminal charge shall:”

Section 213.1 under Chapter XLIV was amended as “In making the determination to allow a **Child in conflict with law Juvenile** to go home after advice/admonition or release the **Child in conflict with law Juvenile** on probation, the Court shall consider the:”

Section 213.1 (b) under Chapter XLIV was amended as “juvenile’s past criminal record **of the child in conflict with law;**”

Section 213.1 (d) under Chapter XLIV was amended as “juvenile’s age and physical/mental health condition **of the child in conflict with law;** and”

Section 213.2 under Chapter XLIV was amended as “A Court shall take into consideration the following factors in making orders concerning **child in conflict with law juvenile:-**”

Section 213.2 (a) under Chapter XLIV was amended as “age of the **child in conflict with law juvenile;**”

Section 213.2 (c) under Chapter XLIV was amended as “circumstances in which the **child in conflict with law juvenile** was living;”

Section 213.2 (e) under Chapter XLIV was amended as “other circumstances as are, in the opinion of the Court, required to be taken into consideration in the best interest and welfare of the **Child in conflict with law Juvenile.**”

Section 214 under Chapter XLIV was amended as “~~The original text of this Code is the text as passed by the National Assembly in Dzongkha. The Dzongkha text and the English translation are equally authoritative, except that, in any instance of a difference in meaning between the two texts, the Dzongkha text shall prevail.~~ **In any instance of a difference in meaning between the Dzongkha and the English texts of this Act, Dzongkha text shall be regarded as the authoritative text.**”

Section 215 (a) under Chapter XLIV was amended as “ **Dungkhag and Dzongkhag** Court shall be addressed as Judges in English; **and**”, sub-section (b) as “High Court **and Supreme Court** shall be addressed as Justices; ~~and~~”, and sub-section (c) was repealed.

A new Section **215.8 A** was added after section 215.8 under Chapter XLIV to read as **“Police” shall mean an authorized personnel of the Royal Bhutan Police. However, the procedures laid down in this Code relating to arrest, search and investigation by the Police shall also be extendable to other law enforcement and investigative agencies.”**

(17th Day of the 5th Month of the Iron Male Tiger Year corresponding to Monday, 28th June 2010)

F Legislative Issues (Tabling of New Bills to Parliament)

1 Motion to Table the Right to Information Bill to Parliament

The Deputy Chairperson submitted that while good governance, transparency and accountability were important aspects of democracy, Bhutan’s accountability factor had fallen below international standards. Since the Constitution of Bhutan guaranteed the right to information to every Bhutanese, he said that it was important to have an Act on this right.

The first report of the Honorable Prime Minister stated that the government was striving towards enhancing accountability. To this end, a Right to Information Bill had been drafted by the High Court and submitted to the Cabinet through Ministry of Information & Communication. The Constitution of Bhutan also recognized the right to information by a Bhutanese citizen to promote transparency and accountability of public leaders and officials, which were important features of democracy and good governance. Therefore, he submitted that the Bill be tabled in Parliament for deliberation and adoption. The submission was supported by the Honorable Members from Gasa, Dagana and Paro Dzongkhags.

On this, the National Council resolved to ask the Government and the relevant ministry to recognize the Right to Information Bill as a priority law and table it before the Parliament for adoption.

2 Motion to table a Bill on the Entitlement of Members of Local Government

The Hon’ble Member from Lhuentse Dzongkhag said that elections were crucial for a successful democracy. The Local Government Act had not only been adopted by Parliament, but had also been granted Royal Assent by His Majesty

the King based on which the elections to Local Governments were scheduled to be held soon. However, he felt that an Entitlement Act was necessary before the elections were held to attract interest from capable candidates to contest and ensure that the elections were fruitful.

Recognizing the importance of Local Governments, the Deputy Chairperson and the Hon'ble Member from Samdrupjongkhar Dzongkhag supported the above submission. In this regard, the Hon'ble Member from Haa Dzongkhag suggested that the Government fix an interim entitlement for them if the Act could not be passed before the upcoming Local Government elections. However, a few Members did not agree to the idea and questioned on what basis such an entitlement should be fixed, and whether a law would be necessary later if such an entitlement was already in place.

Since the local government elections were going to be held soon, the National Council resolved to recommend to the Government to draft an Entitlement Bill for the Members of Local Government at the earliest to attract interest from capable candidates to contest in the Local Government elections, and avoid inconveniences in future.

3 Motion to table an Alcohol Control Bill

The Hon'ble Member from Lhuentse Dzongkhag submitted that most of the shops in the country had bars and were found in big towns like Thimphu, Gelephu and Phuentsholing, making alcohol easily accessible. This resulted in alcohol related diseases and major societal problems. Therefore, there was a need to have an Act to control alcohol.

He said that up until now, the government had issued a total of 6,871 bar licenses of which a few had remained closed. There were 6,464 bars operating at present, which came to one bar for every 53 Bhutanese above the age of 18 years. The ratio would be higher if bars without licenses were included. This could be because of the existence of the two alcohol factories in Bumthang, one each in Chhukha, Samtse and Sarpang as well as the numerous households that brewed alcohol across various Gewogs under different Dzongkhags, and import of large quantity of alcohol from other countries.

He argued that consumption of alcohol beyond limit not only caused diseases to the consumer's body, but also caused social problems such as violence and divorce within the family. Treatment of alcohol related diseases entailed huge

expenditure, thus causing loss to the government. Similarly, empty bottles and tins strewn around carelessly posed adverse affects on the environment.

For these reasons, sale of local alcohol such as *Bangchang* and *Tongpa* in bars had been banned since 1983. Beginning 1990, Tuesday was declared a dry day, sale of alcohol to those below the age of 18 years was prohibited, bar license fees were increased, and most Gewogs adopted rules prohibiting the sale of alcohol. However, these policies and rules had not been followed by most people. Therefore, he asked the Government to draft a Bill and to table it before Parliament for enactment in order to control alcohol.

The Honorable Member added that despite having rules, policies and regulatory frameworks, control of alcohol could not be exercised due to the absence of an Act for legal back up. Therefore, instead of just one or two individuals, it was from the point of view of peace and harmony of the entire nation and thus fulfilling the objectives of Gross National Happiness that an Alcohol Control Bill was absolutely necessary.

Supporting the above, the Hon'ble Members from Gasa and Trongsa Dzongkhags said that alcohol was the root cause of all three sins. Alcohol alone was a big social problem. At the individual level, there was the risk to life of early death. Of the various alcohol control policies and programs adopted by the government, they expressed reservation on the effectiveness of the prohibition on sale of alcohol to those below 18 years of age since a minor could not be identified by physical appearance. They questioned whether identity cards should be carried while buying alcohol. Further, they emphasized the need to have a clear closing time for bars at night.

The Hon'ble Member from Thimphu Dzongkhag agreed that easy access to alcohol in our country was due to the large number of bars. However, she pointed out that most of the bar license holders were poor people. Therefore, she submitted that their livelihood and employment opportunities needed to be taken into consideration while putting a control on sale of alcohol.

Hon'ble Kuenlay Tshering, Honorable Karma Damcho Nidup and the Hon'ble Members from Wangduephodrang and Zhemgang Dzongkhags while expressing support on the above proposal said that they should wait for the regulatory framework that was currently being drafted by the Bhutan Narcotic Control Agency based on production, sale and control measures. Existing policies and

rules needed to be first enforced strictly. They felt that it would be prudent to consider drafting a Bill only if these measures failed.

After a prolonged deliberation, the National Council resolved that an ad hoc committee of seven members comprising two members each from the Social & Cultural Affairs Committee, the Economic Affairs Committee and the Legislative Committee along with the Hon'ble Member from Lhuentse Dzongkhag shall review and conduct consultations with relevant institutions and agencies on the need for an Alcohol Control Bill and be deliberated during the 6th Session.

(28th Day of the 4th Month of the Iron Male Tiger Year corresponding to Wednesday, 10th June 2010)

G Legislative Issues (Other Issues)

1 Voting Procedure for adoption of Bills and other Issues

The Deputy Chairperson reminded that the National Council in its Resolution No. J (5) of the 4th Session had resolved to establish a voting procedure of the House. Accordingly, the House Committee had drafted a procedure for adoption of Bills and other important issues, which was presented in a Plenary Meeting prior to its submission to the House. He submitted that the procedure be adopted as proposed hereunder:

1. As provided under the Constitution of Bhutan and the National Council Act of Bhutan 2008, a Bill shall require at least 13 “Yes” votes from the total number of votes to pass;
2. “Abstain” votes shall not be clubbed with either “Yes” or “No” votes;
3. “Abstain” vote shall only register the presence of a member to determine the quorum of the House;
4. If there is no consensus on a Section or Article of a Bill, it shall require at least 13 “Yes” votes to pass it. If it is not possible to obtain 13 “Yes” votes, a Committee consisting of members who voted in favour and against the Section or Article shall be formed to resolve differences. This will prevent the Bill from being blocked by those who supported the section when the House takes a vote on the Bill at the end of the deliberation; and

5. The Chairperson shall cast a deciding vote only in the following circumstances:

- a) If there are equal number of “Yes” and “No” votes, for example, 12 votes each. The Chairperson shall cast a deciding vote to either pass or reject the Bill.
- b) Although there may be a tie, for example with 10 “Yes” and 10 “No” votes or 11 “Yes” votes and 11 “No” votes, the Chairperson may cast a vote although it will not help in passing the Bill. But he/she can choose to cast his/her vote to register his/her position or opinion on the Bill.

The National Council, recognizing the importance of the voting procedure, adopted the above proposal without any amendment or change after a thorough deliberation.

(27th Day of the 5th Month and 2nd day of the 6th Month of the Iron Male Tiger Year corresponding to Friday, 9th July and Tuesday, 13th July 2010)

2 Report on the National Budget for Fiscal Year 2010-2011

2.1 Report by the Hon’ble Minister for Finance

The Hon’ble Minister for Finance said that two successful years had passed since the establishment of democratic government in the country, and expressed his hopes that the third year, too, would witness continued peace and prosperity in the country under the leadership of His Excellency the Prime Minister of Bhutan. He thanked the Government of India for the financial support of Nu. 277.3 million for hosting the highest international conference in the country, the 16th SAARC Summit at Thimphu in the last fiscal year. Moreover, he said that the establishment of the office of the SAARC Development Fund (SDF) in Thimphu was a fulfillment of His Majesty, the Fourth Druk Gyalpo’s aspirations.

He also recalled how the country had suffered huge loss to life and property last year due to the unprecedented natural disasters, as had never experienced before. He acknowledged the unstinted cooperation and support received from all agencies and individuals alike from both within and outside the country. The government had been prompt in providing immediate relief and security in terms of men and materials. Above all, His Majesty the King and the Fourth Druk Gyalpo had personally visited the affected areas and granted *Kidus*,

which had immensely relieved and helped in regaining sense of security in the people.

The Honorable Minister for Finance then made a detailed presentation on the Annual Budget Report for the Fiscal Year 2010-2011 which comprised the Annual Financial Statement for the Fiscal Year 2008-2009, Revised Budget Estimates for the Fiscal Year 2009-2010, Economic Performances during the past two years, Budget Estimates for the Fiscal Year 2010-2011, Tax Reforms and Incentives, Economic Outlook and Projections for the Fiscal Year 2010-2011 and Beyond, Report on the shares of Government in Government Owned Business Entities and Corporations, Report on the National Pension and Provident Fund and the Royal Monetary Authority, Development of Financial Institutions, and Report on Trust Funds.

2.2 Amendments and Changes to the Budget

The National Council deliberated on the National Budget for the Fiscal Year 2010-2011 on 9th and 13th July 2010. Following doubts, questions and amendments/changes were made for submission to the Ministry of Finance and other relevant agencies:

1. With regard to Nu. 168.00 million shown in Table 4.19 on page 78 of the National Budget for the Fiscal Year 2010-2011, the National Council, as in the past sessions, maintained that it was inappropriate on the part of the government to allocate fund for Constituency Development Grant (CDG). Since the matter had already been referred to His Majesty the King, the House resolved to remind the Honorable Minister for Finance to defer utilization of the fund until such time His Majesty issued a Royal Decree.

Table 4.19

Sl. #	Activity	Amount (Nu.)	Remarks
3	Constituency Development Grant	168.000	47 constituencies, with balance funds from the FY 2009-10

2. The National Council fully supported His Majesty's Relief Fund of Nu 20.00 million provided in Table 4.19 on page 78 of the National Budget for the Fiscal Year 2010-11, as it greatly benefitted the needy people during disasters caused by the four elements of nature. Accordingly, the National Council, during its 2nd and 3rd Sessions, had resolved that the Parliament

should establish His Majesty's Relief Fund in accordance with Article 14.12 of the Constitution of Bhutan. Since allocation was made in the National Budget, the House expressed doubt whether the fund had been actually established. If not, the National Council in keeping with its past resolutions resolved to remind the Honorable Minister for Finance that the Relief Fund needed to be established by Parliament.

Table 4.19

Sl. #	Activity	Amount (Nu.)	Remarks
5	His Majesty's Relief Fund	20.000	

3. According to Article 14.2 of the Constitution of the Bhutan, a Consolidated Fund must be established from which expenditure of the State shall be met. All public monies for the expenditure shall be drawn from the Consolidated Fund only through appropriations in accordance with the law. However, in the absence of a Consolidated Fund until now, all expenditure had been met from the Current Budget. The National Council felt the urgent need for Parliament to establish a Consolidated Fund. The House also expressed doubt as to what a Consolidated Fund truly meant. According to the Public Finance Act, Consolidated Fund Account is defined as the principal account of the Government on which the National Council resolved to seek further clarification from Ministry of Finance.
4. Chapter 5 of the National Budget for the Fiscal Year 2010-11 on Tax Reforms and Incentives stated that tax reforms had been finalized, which the government justified were in accordance with the Sales Tax, Customs and Excise Act 2000 and Section 21 of the Public Finance Act. However, according to Article 14 of the Constitution and Section 9 of the Public Finance Act 2007, any revision of taxes had to be done only by Parliament. Therefore, the House resolved to ask Ministry of Finance to clarify on this matter.
5. As Gross National Happiness was the main guiding philosophy of our country, the government had formulated all its development programs based on its four pillars. However, in the absence of an index for measurement, it was difficult to gauge how the development processes were fairing. Therefore, the National Council resolved to recommend to the government to come up with a development index for Gross National Happiness.

6. With the adoption of the Constitution of Bhutan in 2008, all Acts, Rules and Regulations in the country had to be made consistent with the Constitution. To this end, the National Council resolved that a relevant Committee shall review the Sales Tax, Customs & Excise Act and the Public Finance Act for amendment to avoid inconveniences caused while deliberating on issues related to Budget.

(11th and 12th Days of the 5th Month of the Iron Male Tiger Year corresponding to Tuesday and Wednesday, the 22nd and 23rd June and 1st day of the 6th Month corresponding to Monday, 12th July 2010)

H Policy Issues

1 Economic Development Policy (EDP) 2010

1.1 Review Report by the Economic Affairs Committee

The Chairperson of the Economic Affairs Committee, the Hon'ble Member from Mongar Dzongkhag expressed his gratitude and appreciation to the first democratically elected government for coming up with the Economic Development Policy (EDP) 2010. He said that the policy enabled the establishment of small scale industries and enterprises within a short period of time by producing licenses without the need to submit supporting documents. Medium scale industries and enterprises could now get environment clearance certificates within forty five days unlike in the past. Similarly, all required documents could be availed within a short period of time which greatly contributed towards rapid economic development.

The main objective of the National Council's review was to make the people of Bhutan aware of the policy as required under Articles 10 (2) and 11 (2) of the Constitution of Bhutan and Chapter 7 of the National Council Act of Bhutan 2008. Moreover, he said that the House could further deliberate on the recommendations proposed by the Economic Affairs Committee and incorporate additions/changes, if any, for submission to the government.

The Committee while reviewing the Policy Document had based its deliberations on the principles of Gross National Happiness, the aspirations, objectives, scope and measures, and had come up with recommendations on nine issues. The Committee had also been mindful of the fact that the

document entailed framing 13 policies, drafting 3 new Bills, and amending 8 existing Acts.

Of the nine issues recommended for review, the need to define the extent of purpose, opportunities and objectives of the Economic Development Policy had been considered as most important. The policy document appeared to limit the extent of purpose and opportunities to development of the private sector. While it covered the private enterprises such as finance, construction, tourism, health, education and information technology, rural enterprises had been left out. Since most of the Bhutanese people lived in rural areas, it needed to state clearly development plans and programs that would alleviate poverty. The rural communities would be equally benefited if the policy was extended to the rural enterprises.

The objectives of the policy were to make the country self-reliant, provide employment opportunities, achieve 9% economic growth and achieve medium level international standard by 2020. These needed to be precise, clear and achievable, and set within a fixed time frame. However, the Committee felt that Bhutan should instead focus on eradication of poverty and improvement of human development index ranking.

On the aims, objectives and strategies, the Committee felt these were not clearly defined. The document highlighted both the opportunities and constraints in the introductory chapter. However, the selection of strategies did not elaborate, for instance, how the aspects related to human resource constraints would be addressed. Therefore, the Committee recommended that efforts be made to foster education and market related skills development for enhancing labor productivity whether in the government, private or non-government organizations.

Commenting on fiscal incentives, monitoring of policies and Gross National Happiness, the Hon'ble Member from Lhuentse Dzongkhag pointed out that the policy document provided for huge fiscal incentives, and questioned if that would be productive. While the incentives were required not only for business enterprises but also to other entities, he said that the policy needed to be examined properly based on past experiences. According to the 9th Plan Review, incentives through tax exemption had benefitted only a few businesses and manufacturing industries. Therefore, on behalf of the Committee, he recommended that the government should firstly, examine the benefits of fiscal incentives granted till date for development of private sector and creation of

employment opportunities. Secondly, attach certain conditions such as assigning responsibility for economic development/diversification through fiscal incentives. Thirdly, outline clearly business ideas and financial support services for promotion of business enterprises in the rural areas.

No matter how well a policy may have been formulated, it was important to monitor implementation and examine how far its objectives had been achieved. Therefore, he said that monitoring of policy implementation had to be clearly stated. For the purpose, clear indicators and objectives needed to be developed. While setting indicators and objectives, time frame had to be clearly specified as 2013 and not 2020 since the present government would end its tenure in 2013.

Since the objectives in the policy were ambitious, he said that these needed to be set with clarity. According to the “Ease of Doing Business” survey conducted by the World Bank as one of the indicators of EDP, Bhutan had been ranked number 126 out of 183 countries. Clear targets to reach number 100 or 50 needed to be set by framing effective laws, policies and administrative procedures to create conducive regulatory environment.

Gross National Happiness, as the main development philosophy or guiding principle of the country had taken root in all its economic development policies. It was, therefore, important to consider how this might bring benefits in the long run, examine what a GNH state really meant and set clear visions for the EDP to achieve economic development.

Speaking on the policy measures, development of small and medium scale enterprises, role of civil society organizations, micro-finance, role of Druk Holdings & Investment, and cooperation with development partners, Hon’ble Tashi Wangyal said that firstly, the civil society organizations played an important role in the development of small and medium scale enterprises as shown from international experiences. As the main aims were for rural development, reduction of poverty and creation of employment opportunities, the benefits from participation of civil society organizations in economic development were immense. Secondly, micro-finance and loans for small businesses in rural areas were critical for achieving economic development. To this end, clear policies for inter-corporate borrowing and external loans needed to be framed. Thirdly, Druk Holdings & Investment (DHI) had been established to make investments by optimal usage of resources or raising funds and to lead, complement and spearhead the growth of a dynamic private sector.

Accordingly, the role of DHI under the Economic Development Policy had to be clearly mentioned. Fourthly, the government should work not only towards garnering external aid, support and loans, but also cooperate with development partners on new development initiatives to stimulate economic development through transfer of capital, skills and technology. Clear procedures needed to be set out in the EDP on how these initiatives were to be taken up.

Voicing concern, the Hon'ble Member from Samdrupjongkhar Dzongkhag said that firstly, if the government granted tax exemptions to offshore companies (OFCs) to enhance economic development, there was the risk of encouraging international corrupt practices. To ensure global responsibility, he submitted that the plan be either dropped or amended. Secondly, he said that the framework for private participation in infrastructure aspired to set and meet basic principles of good governance by establishing uniform procedures and ensuring fair and equal access for award of projects. However, this was clearly undermined by the exceptions on a case by case basis. To ensure transparency and good governance, this clause needed to be either revoked or amended. Thirdly, the EDP provided for waiver of tariff/royalty for incentives to foreign participants in meetings and conferences. As this was inappropriate and could be a source of revenue leakage, he submitted that it also be either revoked or amended.

1.2 Deliberation on the Review Report

Commenting on the recommendations made by the Economic Affairs Committee, the Hon'ble Member from Gasa Dzongkhag said that the sixth recommendation on fiscal incentives needed to be examined along with the Labour Act and employment related policies. On the 8th recommendation with regard to the World Bank survey, the EDP needed to focus on improving Bhutan's rank on "Ease of Doing Business" and relevant Acts to be properly examined while establishing new institutions. Similarly, he said that the 9th and 10th recommendations needed to be examined thoroughly.

Coming to the 6th recommendation, the Deputy Chairperson argued that the fiscal incentives provided to large scale enterprises should also be made available to small scale enterprises. Likewise, he submitted that other banks should provide micro-financing to small scale enterprises like the Bhutan Development Finance Corporation Limited.

The Hon'ble Member from Thimphu Dzongkhag submitted that while dealing with tax exemption and hikes, it would be good to look at India which had large trade and commerce, and adopted similar approaches. She also differed with the view of the Economic Affairs Committee that the EDP was focused on private sector development and not economic development. She argued that the trend world over was to achieve economic development through private sector development, which focused on eradication of poverty by creating employment opportunities. Therefore, EDP was not inconsistent. There was also no need for simplification of the principles of GNH as this would dilute the very concept of Gross National Happiness.

The Hon'ble Members from Trongsa and Haa Dzongkhags said that the review of policies and programs was to ensure that there was no disparity in the benefits that accrued from such policies. Therefore, they questioned the mandate of research centers in economic development and the usefulness of fiscal incentives to the rural people.

On this, the Hon'ble Member from Lhuentse Dzongkhag and Hon'ble Tashi Wangyal said that while fiscal incentives granted during the 9th Plan had been beneficial, continuity of such incentives needed to be seriously considered. The scope of economic development should also not be limited to just private sector development, but cover rural development broadly. They also agreed that defining GNH would dilute the very concept and questioned how this might benefit economic development.

The Hon'ble Members from Gasa and Zhemgang Dzongkhags and Hon'ble Karma Damcho Nidup cautioned that while reviewing the policy, the reasons why electricity tariff was raised had to be borne in mind. With limited number of business enterprises and industries in the country, it was important to examine how these might benefit the people. Reference also needed to be made to the Companies Act passed by Parliament. Similarly, Bhutan had since long wanted to join the World Trade Organization (WTO). Therefore, it was crucial to see how this proposal went along with the economic development policy under review.

Finally, the Hon'ble Member from Pemagatshel Dzongkhag presented a summary of the Committee's recommendations and the submissions made by the Honorable Members as follows:

The National Council,

1. *Being mindful* of its mandates as enshrined in the Constitution (Article 10.2 and Article 11.2) and in the National Council Act of the Kingdom of Bhutan 2008 (Sections 7 and 10) as a House of Review;
2. *Acknowledging* the importance of the Economic Development Policy 2010 (EDP) in fostering development and growth of the private sector and for the socio-economic well-being of the people; and
3. *Acknowledging* the impact of the EDP on the government's endeavor towards achieving the national development goals and objectives.

Hereby,

1. *Expresses* its appreciation to the government for publishing the EDP which has a very important role in laying a sound basis for a predictable interface between the government and the private sector;
2. *Conducts* a detailed review of the EDP with a view to providing critical comments on areas of concern such as overall intent of the document, the objectives outlined, and of strategies proposed; and
3. *Provides* the following twelve recommendations to the government for an inclusive and pro-poor growth to foster greater human welfare and happiness:

Recommendations

1. **Clarify the purpose of the EDP:** The overall purpose of the EDP document must be clearly stated - whether it is an apex policy document for the socio-economic development of the country or a private sector development policy. This incoherence between the Hon'ble Prime Minister's Foreword and the purposes laid out in the EDP document needs to be resolved to give clear direction for the document.
2. **Need greater focus on the Rural Economy:** The EDP document does not adequately address needs of the rural economy which impacts the lives of the majority of our people. The EDP, if an apex policy document, must specify and include the role of the private sector in

addressing rural development and in particular, poverty alleviation which is the most important development objective of the country.

3. **Set clear and meaningful goals:** For a country that champions Gross National Happiness, goals and objectives of a document such as the EDP must transcend aggregate statistical measures such as GDP and full-employment. It must also set and elaborate on qualitative goals such as the contribution of EDP implementation to human development, welfare and happiness.

The document must be rooted in current Bhutanese reality with meaningful goals and objectives. For example, certain goals and objectives of the EDP (such as becoming a middle income country and attaining full employment) have already been met even before the EDP was adopted. It would also be more realistic and useful to have short term goals that the government seeks to attain by 2013 (which is within the current election cycle) and not leave to a future date such as 2020.

4. **Establish Clear link between goals and strategies:** The EDP must strive to link strategies to the goals set in the document. Specific strategies should be designed to address each constraint. For instance, there is no specific strategy to address human resource constraints which is related to four of the ten constraints mentioned in the document.
5. **Review fiscal incentives:** Fiscal incentives may benefit some of the enterprises but involves a huge opportunity cost for the government in terms of revenues forgone. Therefore, it is important to review how effective fiscal incentives have been in promoting enterprises and economic development during the 9th Plan. Fiscal incentives should be targeted and linked to employment generation and creating forward and backward linkages in the economy.
6. **Monitor implementation:** The government must set a clear plan to monitor implementation of the EDP along with targets and indicators that are SMART (Specific, Measurable, Achievable, Relevant and Time Bound). This will enable meaningful policy execution, monitoring and accountability.
7. **Use Global indicators:** As a measure of improving the enabling environment for business, the EDP could focus on improving Bhutan's

rank on 'Ease of Doing Business' survey conducted by the World Bank. This is an important and objective survey that provides a comprehensive overview of the enabling environment for business.

8. **Consider alternative institutions and ideas:** The EDP must include roles for the Druk Holdings and Investment Limited (DHI) considering its mandate in spearheading corporate sector development and investments. Other institutions that must be recognized include Civil Society Organizations (CSO) as they have proven to be vital agents of change at the grassroots level, particularly, in rural areas. In addition, Bhutan's development partners also have various avenues that can support private sector development.
9. **Revoke the Plan to set up Offshore Financial Centers (OFCs):** The government should revoke its plan to set up OFCs in Bhutan as such institutions would be detrimental to the country. In view of Bhutan's global and ethical responsibility and its adherence to the principles of GNH, the plan to establish OFCs, which will invariably support tax evasion and money laundering by foreign individuals and corporations, would contradict these values. Therefore, this plan should be revoked.
10. **Revoke Clause 11 in Framework for Private Participation in Infrastructure (PPI):** The Framework for Private Participation in Infrastructure aspires to set and meet basic principles of good governance by seeking to ensure transparency in invitation, selection and award of projects, establishing uniform procedures and ensuring fair and equal access for award of projects.

However, this good intention is clearly undermined in both letter and spirit by Section 11, which provides exceptions on a case by case basis. Major criticism in the past has been attributed to such approaches which are deemed arbitrary in nature and question the very heart of good governance, which is transparency. Considering that such exceptions could deeply undermine transparency and fair processes, the National Council recommends that the government revoke this clause.

It may be mentioned that Bhutan's global ranking in the International Corruption Perception Survey conducted by Transparency International (TI) dropped from the 26th Position in 2006 to 45th in 2009.

11. **Plug the Revenue Loophole:** The government should consider following the internationally understood definition of MICE (as Meetings, Incentives, Conventions and Exhibitions). The “I” stands for “incentives” and not “international” as understood in the EDP policy. “Incentive” related to MICE refer to paid corporate holidays. The government should reconsider if tax incentives should be granted for such paid holidays.
12. **Micro Finance:** The EDP must recognize the role of rural finance institutions as access to finance in rural areas is one of the major constraints to economic activities. Hence, a clear policy on access to micro finance is essential if the EDP is to have any meaningful impact on rural economic development.
13. **Articulate a national vision of a GNH society:** One of the most important issues that this review has brought to the fore is the need to articulate a national vision for a GNH society. Such a shared vision will help to frame policies, assess implementation and review performance of not only the EDP, but also provide the basis for all other decisions and actions in both public and private sphere. The National Council recommends to the government to initiate discussions with all stakeholders to develop a vision for a GNH state so that socio-economic policies can be developed in line with such a national goal.

On this, the National Council resolved to submit the above 13 points to the Government as recommendations.

(12th to 14th Days of the 5th Month of the Iron Male Tiger Year corresponding to 23rd to 25th June 2010, and 1st Day of the 6th Month corresponding to Monday, 12th July 2010)

2 Foreign Direct Investment (FDI) Policy 2010

2.1 Review Report by the Economic Affairs Committee

The Chairperson of the Economic Affairs Committee, the Hon’ble Member from Mongar Dzongkhag said that the Foreign Direct Investment (FDI) Policy had been framed mainly to achieve the objectives of the Economic Development Policy through revision and simplification of the Policy of 2002 based on economic self-reliance and creation of employment opportunities.

In keeping with Articles 10 (2) & 11 (2) of the Constitution of Bhutan and Chapter 7 of the National Council Act, he said that the Economic Affairs Committee had reviewed the Foreign Direct Investment Policy 2010 and the impact of foreign land ownership, separately. While reviewing, it had been observed that the objectives of Foreign Direct Investment were the same as that of the Economic Development Policy. But these needed to be clearly defined. Similarly, the linkage between the objectives of Foreign Direct Investment and national development goals needed to be clearly stated.

The FDI policy allowed 100 percent foreign land ownership in selected “priority” areas related to the services sector which included education, health, 5 star hotels and resorts, infrastructure, IT parks, research and other development. The Hon’ble Member from Pemagatshel Dzongkhag expressed doubt as to how it might impact on the well-being of the country and the communities. He felt that the government should review the Policy of 2002 to examine how beneficial it had been without the 100% ownership, and accordingly set a limit.

Moreover, the Hon’ble Member said that the FDI policy set minimum project cost for priority areas in both manufacturing and services sector ranging from Nu. 5 million in Head Office Services to Nu. 200 million in health, education and infrastructure sectors, Nu. 20 million in agro and forestry based sectors, and Nu. 50 million in other priority manufacturing sectors. He enquired whether the price of land had also been clubbed in the project cost. If so, the two needed to be provided for, separately.

The policy also allowed FDI companies to borrow from financial institutions in the country which could adversely affect the small scale Bhutanese investors. Therefore, the government needed to review this as well.

Similarly, the Hon’ble Member from Lhuentse Dzongkhag said that while the purpose of the policy document was to provide transparency and predictability in government policies, the exception clause which gave the final authority to the government to permit FDI was problematic. In the broader interest of transparency and accountability, this clause needed to be revoked from the FDI Policy.

He said that the FDI policy had clearly defined negative list, the restrictive list and the priority list including stipulations on the minimum project cost and permissible equity holdings. However, Section 3.1 stated that the establishment of manufacturing and services shall be governed by project

specific agreements and sector specific policies, standards and procedures. Therefore, this clause should be taken out as it had been adequately covered under the policy. If this was included, procedure for all sectors needed to be specified, in the absence of which it would be difficult to achieve transparency.

Under Section 5.10, the policy stated that land for establishment of FDIs would be made available in accordance with the provisions of the Land Act 2007 and local partners allowed to capitalize land as their equity contribution. The Hon'ble Member from Samdrupjongkhar Dzongkhag said that if this was allowed, it was important to ensure that the local partner had at least 51% ownership, as was the practice in other countries. On Currency of Investment under Section 3.5, he said that it was vital to clarify if the bilateral arrangement was made between the foreign investor and local investors, or the home country of the foreign investor and the host country, Bhutan.

Further, Hon'ble Tashi Wangyal pointed out that Section 15 stated that *"the Royal Government may enact Foreign Investment Promotion Act based on this policy"*, which was in contravention to the provisions of the Constitution. If this section were to be saved, he said that it had to be amended as *"the Royal Government shall submit to Parliament a Foreign Investment Promotion Bill for enactment"*. He also recommended that the government seriously reconsider establishment of FDIs along the borders as stated in the policy as it would have severe ramifications on the sovereignty and security of the country.

Reflecting on the 4th, 5th, 6th and 8th recommendations of the Economic Affairs Committee, the Hon'ble Member from Gasa Dzongkhag said that if authority was not clearly defined in the policy, it would create disparity between the haves and have-nots resulting in extreme poverty. This aspect needed to be properly reviewed. Since corruption arose mainly due to incoherence between laws and policies, it was important to empower the media to act as a check and balance. Accordingly, he said that necessary laws had to be enacted at the earliest.

Acknowledging that the FDI Policy was an important policy in the country, the Hon'ble Member from Trashigang Dzongkhag said that that the Bhutanese people in general would be greatly benefitted if a thorough review was carried out through consultations with a few of the FDIs established in the country. Likewise, the Hon'ble Member from Thimphu Dzongkhag enquired whether a maximum ceiling for foreign investment had been set in the policy document like the minimum project cost and expressed concern over the country's

sovereign independence, if otherwise. The law also provided an FDI company to employ 5 Bhutanese nationals for every foreign recruit for whom she said the salaries and benefits should be made equal.

The Hon'ble Member from Mongar Dzongkhag said that since land was very important in our country, the Policy of 2002 had provided that land shall be given on lease to foreign investors by the government or private individuals. However, the Policy of 2010 stated that land shall not only be granted to a foreign investor in accordance with the Land Act 2007 but also be given full ownership over it. He pointed out that both the Land Act 2007 and Companies Act 2000 provided that land shall be allocated to an investor. This had been a major concern since land was the main basis on which national identity, peace, security and sovereignty hinged. Since these were in contradiction to the provisions of the Constitution, he submitted that the two Acts be reviewed.

On this, the Hon'ble Member from Lhuentse Dzongkhag said that the foreign land ownership and FDI policy provided for development of green and sustainable economy, promotion of socially responsible and ecologically sound industries, promotion of culturally and spiritually sensitive industries, investments in services that promoted Brand Bhutan, and creation of a knowledge society.

A survey of existing literature showed that there were many factors other than land ownership that determined FDI attractiveness like economic conditions, host country policies and multi-national enterprise strategies. Of the 20 or so factors, land ownership was number 16 and not much importance had been attached to it. In practice, too, land ownership had not been fully granted. For example, land for IT Park, Aman and Uma which were already established in the country had been leased out and not granted full ownership. If full ownership were to be granted, he submitted that more than 50% of the equity should be retained with the local Bhutanese partner in order to safeguard national identity and sovereignty.

Moreover, the Hon'ble Members from Samdrupjongkhar and Pemagatshel Dzongkhags and Hon'ble Tashi Wangyal said that if ownership of land was given to foreign investors, firstly, the country's control over border, security, sovereignty, peace and happiness would be undermined. Secondly, conflicts would arise due to local and foreign businesses developing strong nexus with the local social and political elite. Thirdly, this will create unhealthy nexus between large landowners and politicians leading to social and political

instability. Fourthly, foreign companies with ownership of prime property will displace local enterprises and constrain their growth. Fifthly, allowing FDI and removing the land ceiling for corporations would greatly reduce arable land leading to greater food insecurity. Sixthly, commercial farming promoted monoculture which had environmental consequences like the impact on genetic diversity. Seventhly, foreign landownership will lead to a flurry of land transactions which have a long term impact on poverty and increase intergenerational inequity as the present generation sells assets and consumes the returns. Eighthly, if large tracks of land were held by foreigners, this could lead to intolerance and xenophobia. Ninthly, it will cause inflation in land costs as well as other commodities and rents. Finally, in the long run, land concentration and foreign land ownership will impact national security and sovereignty. Therefore, they said that ownership of land should not be granted to foreign investors, but instead leased out as in the past.

In support of the above, the Hon'ble Members from Gasa, Zhemgang and Thimphu Dzongkhags, and Hon'ble Kuenlay Tshering said that even the provisions of the Constitution prohibited the sale of land to a non-Bhutanese as land was a true national treasure. Since the policy undermined peace and security of the country, they reiterated that foreign land ownership should not be granted. Accordingly, they recommended revision of the Land Act 2007 and Company Act 2000 and also fixing land ceiling of 25 acres for the business enterprises in line with the general Bhutanese citizens. If holding crossed the ceiling, the excess land needed to be given on lease.

Since the objectives and strategies of the policy were not clearly defined, they said that it appeared more like a Manual than FDI policy. Moreover, the policy did not specify any programs and activities for economic development and said that the kind of enterprises to be established needed mention.

Echoing the earlier speakers, the Hon'ble Members from Paro and Dagana Dzongkhags, and Hon'ble Karma Damcho Nidup submitted that foreign land ownership should not be granted until the Land Act 2007 and the Companies Act 2000 were reviewed. They also insisted that establishment of FDI projects should not be limited to just the developed Dzongkhags, but also be set up in other Dzongkhags to ensure balanced development.

Based on the above, the Hon'ble Member from Pemagatshel Dzongkhag submitted the following recommendations on FDI Policy and impacts of foreign land ownership:

The National Council,

1. *Being mindful* of its mandates as enshrined in the Constitution (Article 10.2 and Article 11.2) and in the National Council Act of the Kingdom of Bhutan 2008 (Sections 7 and 10) as a House of Review;
2. *Acknowledging* the role of the Foreign Direct Investment Policy 2010 to provide leverage for the successful implementation of the EDP; and
3. *Believing* that FDI could benefit the economy as a purveyor of capital, technology and skills for growth, employment and social development.

Hereby,

1. *Expresses* its appreciation to the government for publishing the FDI Policy 2010, which liberalizes the economy to attract foreign investors to supplement the development efforts of the government;
2. *Conducts* a detailed review of the FDI Policy with a view to providing critical comments on areas of concern such as overall objectives outlined, impact of allowing 100 percent ownership by foreign investors, impact of land ownership by FDI businesses, etc.; and
3. *Provides* the following recommendations to the government for kind review and consideration.

Recommendations:

1. The FDI Policy must set clear objectives that are linked to the development needs and philosophy of Bhutan. Clarity of objectives will help to develop indicators and targets that will enable proper monitoring and review of policy implementation in the future.
2. The government should consider setting performance requirements (such as skill and technology transfer, employment creation, etc.) for FDI companies that are allowed to own 100 percent equity.
3. Section 5.10 of the FDI Policy 2010 states that “Land or space for establishing FDI business shall be available either on lease or ownership...” The government should revoke this clause and should not

allow FDI companies to own land as it could undermine the economic, social and security interests of a small nation like ours and also harm national sovereignty in the long run. This has been further clarified under point 13.

4. If local partners, for lack of adequate capital are allowed to provide land as equity, the FDI policy should be changed to ensure that in this situation, the local partners have a majority control of the company.
5. The FDI Policy should clarify if the minimum project cost includes the cost of land and working capital. It is recommended that these two not be included in the project size as the benefits of capital and technology inflow would be minimized considering the relatively high cost of land in parts of Bhutan and the need for large working capital outlays for many manufacturing sectors.
6. The FDI Policy should ensure that adequate provisions are made to avoid crowding out of local firms from access to finance and markets. For example, the FDI policy allows foreign companies to borrow from the local financial institutions. This could potentially crowd-out domestic businesses from being able to borrow from local banks and also cause interest rates to rise. If FDI companies need to borrow from local banks then the primary purpose of inviting FDI as purveyors of capital is lost.
7. On the legislative front, the government should consider:
 - Submitting to Parliament a Competition Bill to ensure that FDI does not lead to the emergence of monopolies in Bhutan as required by Article 14.16 of the Constitution;
 - Submitting to Parliament FDI Bill as required by Article 14.15 of the Constitution. A legislation to this effect will also provide a sound legal basis for foreign investments;
 - Reviewing the Land Act 2007 to ensure that foreign companies are not allowed to own land; and to assess the merits and demerits of allowing corporations to own land in excess of the 25 acre ceiling; and
 - Reviewing the Companies Act 2000 as this Act was passed even before the first FDI policy of 2002 and does not adequately address concerns related to FDI companies.

8. Section 12 of the FDI Policy states that “The Royal Government reserves the right to permit FDI under terms and conditions that may be different from those specified herein. When such exceptions are made, the nature of the exceptions and the rationale for making them will be made public at the time they are granted.” This clause must be revoked as it provides a high level of discretion to administering authorities and completely undermines transparency and good governance. If such discretions are allowed and exceptions made, then the whole need for publishing a FDI policy is questionable. Further, the fact that the rationale for such decisions is made public only at the time of granting the project does not help. Even if there is a public outcry and objection to such a project, it is fait accompli and too late to annul the deal because by that time considerable investments would have been made in feasibility studies and other costs. In the broader interest of transparency and accountability, this clause should be revoked from the FDI Policy.
9. The FDI Policy should set certain minimum performance requirements so that sector specific policies that are developed, as per Section 3.1, do not vary widely from each other and provide some degree of uniformity and predictability.
10. The provisions of Section 3.5 on “Bilateral Currency arrangements” need to be clarified. Is the bilateral arrangement made between the foreign investor and local investor, or the home country of the foreign investor and host country (Bhutan)?
11. The FDI Policy should take a clear stand on investments in sensitive border areas. It would have a bearing on the security situation as well as impact on cross border population movements and lead to other undesirable social and political complications.
12. The FDI Policy should explicitly mandate the Gross National Happiness Commission (GNHC) to develop indicators and targets and monitor FDI performance against these parameters.
13. The detailed review pertaining to foreign landownership under the FDI Policy points out major concerns where the risks clearly outweigh the potential benefits.

In summary, the review assessment shows that allowing foreign land ownership is NOT:

- a) in keeping with the our primary interest to promote security and sovereignty of the country;
- b) a key factor that determines economic potential and competitiveness, which in turn determines FDI attractiveness;
- c) a key factor to meet the objectives of the FDI policy 2010 in promoting clean, green, sustainable and service oriented enterprises; and
- d) consonant with our environmental principles as FDI activities such as commercial farming (which is a justification for large land holdings) could lead to monoculture, loss of biodiversity and diversion of water resources from food production.

The government should revoke the clause in the FDI Policy that allowed foreign land ownership. As an alternative, Bhutan should ensure clear and transparent processes to provide stable long term lease of (non-agricultural) government land to attract and inspire foreign investors' confidence.

On this, the National Council resolved to submit the above 13 points to the Government as recommendations.

(17th Day of the 5th Month of the Iron Male Tiger Year corresponding to Friday, 28th June 2010)

3 Tax Exemption on Expenses related to Education

The Hon'ble Member from Lhuentse Dzongkhag submitted that in line with the Government policy, particularly, the provisions of Article 9(16) of the Constitution of Bhutan, free education was provided to every Bhutanese child up to the 10th standard. Depending on one's capability, opportunity was also given to pursue tertiary education, some in private colleges through self-sponsorship. Accordingly, personal income tax was exempted for expenses on education up to Nu. 50,000/- per child, annually. However, admission fees and other expenses in private schools within Bhutan itself came to approximately Nu. 100,000/- per annum, if a child failed to obtain government scholarship.

The Hon'ble Member also said that the tax exemption limit had been fixed in 2001 and not revised since then. Therefore, it needed to be reviewed. Moreover, educational expenses of not only one's own children, but those of the relatives had to be borne in keeping with the traditions in the country. Since the

expenses were substantial, this had immensely added burden on the ordinary citizens.

Similarly, prices of commodities increased with country's development. Consequently, expenditure of low income groups far exceeded their income. Therefore, the Hon'ble Member submitted that the limit for tax exemption be enhanced from the current level of Nu. 50,000/- to Nu. 100,000/- and include the expenses incurred on children of relatives besides ones own children. Further, he submitted that the government should study the possibility of partly subsidizing privately funded college education.

Supporting the above, the Hon'ble Members from Dagana and Pemagatshel Dzongkhags submitted that the Income Tax Act of Bhutan 2001 and related rules under it should also be reviewed since these pertained to tax exemption policies.

On this, the National Council resolved to recommend the Government to enhance the tax exemption amount on educational expenses from Nu. 50,000/- to Nu. 100,000/- to cover the expenses incurred on not only one's own children but also that of the relatives, and for the Government to provide support to those who pursued higher studies, privately. To this end, the Ministry of Finance shall be reminded to review the Income Tax Act of Bhutan 2001 and related rules framed under it.

(17th and 27th Days of the 5th Month of the Iron Male Tiger Year corresponding to Monday, 28th June 2010 and Friday, 9th July 2010)

4 Review Report on the National Housing Policy 2002

The Hon'ble Member from Trongsa Dzongkhag submitted that the country was faced with problem of acute shortage of housing, mostly in Thimphu and Phuentsholing. Owing to various complaints supposedly due to high rate of interest for housing loans and non-implementation of the Tenancy Act, he reported that the Social & Cultural Affairs Committee had conducted a review on the issue and prepared a report in accordance with the directive of the National Council during one of its Plenary Meetings.

The National Assembly had, in 2004, passed the Tenancy Act 2004 based on the proposal of the Cabinet. On review by the Committee, it was revealed that the problem faced by the people was due to non-implementation of the Act. Similarly, a Housing Policy had been framed in 2002 for the low and middle

income groups, in which procedures had been clearly defined. More than the Act itself, the Committee felt that it was more important to implement the housing policy.

The Hon'ble Member from Trashiyangtse Dzongkhag said that the National Assembly had passed the Tenancy Act 2004 during its 82nd Session for the convenience of the Bhutanese people while renting apartments. He lamented that the Act had remained without proper implementation, although the authority had been given to Ministry of Works & Human Settlement. Since the problem of housing shortage could not be solved even if the Act and policies were implemented, he said that there was a need for the Government to come up with a policy to increase the number of housing based on population.

In addition, the Hon'ble Member from Chhukha Dzongkhag submitted that the Housing Policy 2002 was framed with the objective of providing safe and affordable housing, promoting house ownership, and creating a transparent and well functioning housing market. The basic premises of the policy were: shelter shall constitute a basic human requirement, any addition to housing stock was considered as increase in national wealth, improved health and reduction in urban poverty. The policy measures, therefore, were to facilitate availability of land for housing, increase land-use density through effective land-use planning, promote usage of local construction materials, facilitate accessibility of affordable housing finance, reduce government participation in commercially viable areas, promote traditional architecture, promote safe and energy efficient building designs, promote mechanization of construction industries, and contribute to a growing and free housing market.

During consultation meeting with officials of the National Housing Development Corporation (NHDC), Thimphu City Corporation (TCC) and National Pension & Provident Fund (NPPF), the Hon'ble Member from Bumthang Dzongkhag said that it was found that urban housing shortage problems were acute in Thimphu and Phuentsholing. While Thimphu required 3,892 units, Phuentsholing needed 1,948 units between 2002 and 2005. The total requirement for the two towns had increased to more than 17,000 between 2006 and 2010.

At present, National Pension & Provident Fund (NPPF) had 280 units, National Housing Development Corporation (NHDC) had 1,119 and Thimphu City Corporation (TCC) had 8,460 units in Thimphu. In Phuentsholing, National Pension & Provident Fund had 280 units. According to National Housing

Development Corporation, around 220 families (1012 individuals) in the low and middle income groups lived across the border in Jaigoan under difficult conditions.

In an analysis of the housing situation in the country, the National Housing Development Corporation mentioned that the urban population in 2007 was 19,6209, of which 20% owned homes, 64% rented accommodation, while 16% lived with siblings, friends and relatives. Judging from the current scenario, the problem of housing shortage was serious.

The National Housing Development Corporation (NHDC) had been established in 2004 with the mandate to implement Housing Policy 2002 which required provision of safe and affordable accommodation to the low and middle income groups. While NHDC had been a government corporation until now, the Government had recently issued an executive order to make it an independent corporate body. However, the Government needed to provide adequate financial and other supports to NHDC as expenditure exceeded its revenue.

As the country's population increased each year, the Hon'ble Members from Dagana, Haa, Thimphu and Zhemgang Dzongkhags and Hon'ble Tashi Wangyal said that the Government should establish government and public offices in the Dzongkhags, wherever possible, for balanced economic development throughout the country. This would not only solve the current problems but also address long term sustainability. The Hon'ble Members also said that the private land in urban areas acquired by the Government for township development had not been utilized for the purposes these were taken over. They submitted that the township development policies, plans and programs be implemented as soon as possible.

According to the Hon'ble Member from Gasa Dzongkhag, the Land Act needed review in order to solve the problem. He said that the present requirement of 13 decimals for construction should be changed so that construction could be done on smaller areas than that. Housing problem of rural and urban areas also needed to be segregated. For example, teachers were reluctant to go to Laya under Gasa Dzongkhag as there were no residential houses within the vicinity of the school. The government should have a policy, and take measures to allot these teachers with government housing, increase monthly rent, and grant them ownership after about 20 years when the cost was recovered from the rent.

Besides ensuring balanced development, the Hon'ble Member from Lhuentse Dzongkhag said that the government should explore possibility of constructing underground roads between Paro and Thimphu, and from Thimphu to Punakha. The present distance of 2 and 3 hours travel could be reduced to half an hour. People working in Thimphu could live in Paro and Punakha thereby solving housing problems.

However, the Hon'ble Member from Pemagatshel Dzongkhag had a different take. He said that while the Tenancy Act 2004 required an agreement between the Lessee and Leaser, this had not been implemented till date. For proper implementation, he submitted that copies of the agreement be submitted to the City Corporation and Revenue & Customs Office. The problem could be solved if a separate tenancy procedure was framed.

The Hon'ble Member from Wangduephodrang Dzongkhag said that while the principles of the Tenancy Act could not solve the housing problem, these would contribute towards the process of raising rent. Since the forces of housing market had not been able to solve the problems of low and middle income groups, the Government should implement the National Housing Policy. The problem of less number of houses versus high housing requirement had resulted in congested dwellings, which should be properly managed by the Government. Since the Government was responsible for ensuring that people had affordable housing, NHDC should be mandated to take measures to solve these problems.

On this, the National Council resolved to remind the Government to implement the comprehensive strategies and policy measures outlined in the National Housing Policy 2002, especially for low and middle income groups in Thimphu and Phuentsholing, establish a system for all relevant agencies to consolidate their efforts in reviewing the existing housing situation, project long term housing needs through a reliable data base, and consider developing long term strategies to decongest these areas through measures such as balanced regional development.

(14th Day of the 5th Month of the Iron Male Tiger Year corresponding to Friday, 25th June 2010)

5 Reinstating of Sokshing Rights

The Chairperson of the Natural Resources & Environment Committee, the Hon'ble Member from Haa Dzongkhag reminded that the Plenary Meeting of the National Council had discussed the nationwide problem pertaining to *Sokshing*. As directed, he said the Committee had reviewed the issue and was submitting its findings to the House.

Sokshing had been used and cared for since time immemorial and passed on from one generation to another. With the adoption of Land Act 2007, Government had supposedly taken over the ownership of *Sokshing* and *Tsamdro*. The Chairperson said that the people were suspicious about the perceived change and had repeatedly submitted that the ownership rights enjoyed by their ancestors in the past be returned to them. In view of this, the National Council had held consultative meetings with the Land Commission and found out that the ownership of *Sokshing* and *Tsamdro* had been with the Government even in the past. But the people had free usufruct right. Under the new system, ownership of land continued to remain with the Government but people had to take it on lease for use. This had been the biggest problem for the people.

Rules and regulations framed under Land Act 2007 provided that the *Sokshing* owners as per Land Act 1979 shall be submitted to Land Commission for compensation by the Government. It also provided that while the Government took over ownership of *Sokshing* and *Tsamdro*, *Sokshing* shall be equally distributed on lease to ensure that those people who did not have it earlier were given equal access. However, these had not been implemented so far. The Act further provided that a citizen or household shall not have access to the use of *Tsamdro* in two different Dzongkhags, thus adversely affecting the people of Bumthang, Haa and Trongsa whose livelihood depended on cattle. This posed a serious problem both to the Government who enforced the law and the people who used the land.

In order to solve the problem, the National Assembly had deliberated on *Sokshing* several times in the past. With the establishment of democracy, the National Council had also deliberated on the issue in its 3rd session and

resolved to ask the Government to review Chapter 11 of the Land Act 2007 which dealt on *Sokshing*.

Citing Chapter 11 of the Land Act 2007, the Hon'ble Member from Dagana Dzongkhag said that all registered *Sokshings* would be deleted from the individual *thrams*. *Sokshing* in towns (*thromde*) would be reverted to Government land, while those in the rural areas would be maintained as Government Reserve Forests which shall be leased to the people. However, those land categorized as *Sokshing* but had no growing trees shall not be leased. Likewise, a household that owned *Sokshing* but did not have agriculture land could not hold it on lease.

Further, he clarified that *Sokshing* could not be held on lease permanently and that it was limited to a period of up to 30 years. The usage would be governed by a management plan prepared jointly between the lessee, Department of Agriculture and Department of Forests for the purpose of collecting leaf litters and not cultivation.

The objective of removing *Sokshing* and *Tsamdro* from Land Act 2007 according to Hon'ble Member from Paro Dzongkhag was for the Government to redistribute the 21,234.1 acres of *Sokshing* under 16,141 *Lagthrams* equally among the people. Unique to Paro Dzongkhag was a tradition known as *Changra* under which trees were planted in order to demarcate boundaries and prevent floods after paying taxes to the Government. He submitted that this be considered while reviewing the Act since it had not been covered under Land Act 2007.

Echoing the earlier speakers, the Hon'ble Member from Samtse Dzongkhag said that while the Land Act 2007 provided that *Sokshing* shall be acquired by the government and given on lease, this had not been properly implemented till now. He said that the Act prohibited the sale of *Sokshing* and did not allow it to be passed down as inheritance. However, people had been utilizing *Sokshing* in the same manner as before. Moreover, in accordance with the resolution of the 31st Cabinet Meeting held on 4th March 2009, the Hon'ble Prime Minister had issued an executive order deferring the date for removal of *Sokshing* and *Tsamdro* from registration till Land Act 2007 had been reviewed by Parliament. The order stated that the National Land Commission, Ministry of Agriculture and other relevant agencies shall be consulted while reviewing the Act.

The Deputy Chairperson clarified that the main purpose of *Sokshing* was to take care of the forest on one's own land and for farmers to collect the leaves to use them for manure. This would enable the maintenance of 60% forest cover as required under the Constitution. But he said that the objective of producing organic crops and vegetables with brand Bhutan using manure made from leaves without resorting to chemical fertilizers and the Land Act were inconsistent. The other objective for the acquisition of *Sokshing* and *Tsamdro* by the Government was to redistribute them equally to those who did not own them previously.

He reported that the main contention of the people was that they did not have to pay taxes when *Sokshings* were registered under individual *lagthrams*, whereas it came with a price when the government acquired it and gave them on lease for a fixed period of time. Therefore, they had submitted that *Sokshing* and *Tsamdro* be either reverted to individual *lagthrams* or be allowed to retain as private forests. The other major worry of the people was that none of the Acts or rules had clear procedures on the redistribution of *Sokshing* to those who did not own it previously, which needed to be borne in mind during the review. While the objective of the Act had been to create equality, there was a need to set a ceiling on the redistribution considering the current scenario under which the number of people who did not possess far exceeded those who owned *Sokshing* and *Tsamdro*.

Similarly, the people had asked for clear guidelines on whether *Sokshings* not given on lease and those with no vegetation growth acquired by Government in accordance with Forest & Nature Conservation Act could be converted into community forests. If allowed, they said, would ensure that the people who took care and nurtured the trees could reap the benefits themselves.

In view of problems faced by the people in connection with *Sokshing*, *Tsamdro*, Foreign Direct Investment (FDI) and other issues related to land, the Hon'ble Members from Trongsa, Lhuentse, Gasa and Bumthang Dzongkhags submitted that the Land Act 2007 be reviewed. However, they said that the use of land should be allowed as before until the Land Act was amended.

They pointed out few pertinent issues that needed to be incorporated in the review of the Land Act. Firstly, *Pangdey* which did not have big trees and now considered as Government land needed to be reinstated as *Sokshing* from where grass and leaves from smaller trees could be collected as manure. Secondly, at present, *Bjishing*, *Tongphushing*, *Yikarshing* and *Changmashing*

were all included in *Sokshing* while the manner in which these were used differed. These needed to be taken out from *Sokshing* and categorized according to the way in which these were used.

They felt that the redistribution of *Sokshing* should be based on population and the size of *Sokshing* under different Dzongkhags and not on a common national standard. The use of *Sokshing* as community forest also posed threat of reducing the area of forest cover, against which a re-forestation program needed to be put in place. Just as crops were necessary for community survival, *Tsamdros* were indispensable to the people of high altitude areas (*Lagongsum*) whose livelihood depended on cattle in the same way as *Chuzhing* and *Kamzhing* were in other areas. Therefore, *Sokshing* and *Tsamdro* needed to be segregated.

On the submission of the Hon'ble Member from Pemagatshel Dzongkhag to introduce the Land Act 2007 as a priority Act for review during the 6th Session in either of the two Houses of Parliament to solve the problem of *Sokshing* and *Tsamdro*, and make it consistent with other laws, the Hon'ble Members from Zhemgang and Wangduephodrang Dzongkhags cautioned that a proper examination should be carried out to determine whether such problems arose from the Act and rules thereof, or from improper implementation of the Act.

Having deliberated on the Economic Development Policy (EDP) 2010 and Foreign Direct Investment (FDI) Policy 2010 on submission by the Economic Affairs Committee followed by research and review on issues related to *Sokshing* by the Natural Resources & Environment Committee, the National Council resolved to review the Land Act 2007 during its 6th Session. If deliberations could not be done, it shall be introduced in that session and deliberated during the 7th Session.

(2nd Day of the 6th Month of the Iron Male Tiger Year corresponding to Tuesday, 13th July 2010)

6 Review on the Honorable Prime Minister's Annual Report

The Deputy Chairperson said that the National Council, being one of the Houses of Parliament, was both a legislative body and House of Review. Therefore, he submitted that the Prime Minister's Annual Report on the State

of Nation should be reviewed in accordance with the provisions under Section 10 (a) & (b) of the National Council Act 2008.

On this, the Hon'ble Members from Zhemgang and Gasar Dzongkhags pointed out that the Ministry of Education had recently assured improvement in the quality of education, which was missing in the Prime Minister's Annual Report. They questioned what comprised a quality education to the Government and felt that it would help in management and prevention of disasters if there was a Disaster Management Act in place. Therefore, they submitted that these two issues be included during the review.

Since the Prime Minister's Annual Report was based on the country's development philosophy of Gross National Happiness, the Deputy Chairperson proposed the following to help the review process:

Firstly, for achievement of Good Governance, media played an important role. As development of our national language also depended on it, the Government had a policy requiring newspapers to publish both in Dzongkha and English. It was important to find out what support the media were being given. Right to Information Bill was critical in this regard but did not feature in the Annual Report, which needed to be borne in mind during the review. Besides, advertisement policy needed to be carefully scrutinized.

Local Governments were important institutions in a democratic setup. While the Local Government Act provided that members of the Local Government, or an observer invited by the Chairperson of the Local Government, or the people in the constituencies could participate as spectators in the Local Government proceedings, the statement by Hon'ble Prime Minister requiring the public to participate as observers needed clarification.

Secondly, since tourism played an important role in socio-economic development, tourism policy if included in the report needed review. He said also that while a "No Objection Certificate" was required to avail rural credit loan from Bhutan Development Finance Corporation (BDFC), such a certificate was not necessary while availing industrial and commercial loans. A review needed to be conducted to ensure uniformity.

Thirdly, on preservation of culture, he said that various measures had been adopted to promote Dzongkha which was our national language. Not only that, it was important to preserve and promote the other 18 local dialects to help

promote the national language, Dzongkha. He lamented that while on one hand, importance was given on promotion of the national dress, on the other, a few offices had come up with shirts and trousers as uniforms for convenience. Bearing in mind its adverse affect on the national dress code in future, a review needed to be carried out on this.

In addition, the Hon'ble Member from Paro Dzongkhag and Hon'ble Karma Damcho Nidup said that while we strived for economic development, it was important to ensure that it did not affect the environment. For instance, the Punatsangchhu project should operate in a manner that did not affect the endangered species of bird in the area. They also submitted that if the Prime Minister's Annual Report had to be reviewed properly during this very session, at least a week would be required. While the Annual Reports of some ministries had been submitted on time, others had not yet to do so. They wanted the reports of the ministries to be submitted as early as possible to enable the National Council to review the Prime Minister's Annual Report.

Recognizing that the Prime Minister's Report was based on the four pillars of Gross National Happiness, it was resolved that the four Committees of the National Council which were also formed based on these pillars, namely, the Social & Cultural Affairs Committee, Good Governance Committee, Natural Resources & Environment Committee and Economic Affairs Committee shall accordingly review the Report thoroughly with research and submit their recommendations during the 6th Session. The National Council Secretariat was directed to get the annual reports from the ministries who had not submitted for distribution to the Hon'ble Members, as soon as possible.

(2nd Day of the 6th Month of the Iron Male Tiger Year corresponding to Tuesday, 13th July 2010)

I Other Issues

1 Discussion on Passing of Budget

Hon'ble Kuenlay Tshering recalled that disagreement between the two Houses on the passing of Budget & Appropriation Bill arose during the first session of Parliament. During deliberation on the Budget & Appropriation Bill, consensus could not be reached on a few issues which were submitted to His Majesty the Druk Gyalpo. However, the Government subsequently submitted it as the

National Budget and not as an Appropriation Bill. The National Assembly asserted that the National Council did not have to pass the budget as per Article 14 (8) and (9) of the Constitution. The National Council refuted on the ground that the Government revenue had to be maintained under an established Consolidated Fund, the expenses of which could be made only through Appropriation under law made by Parliament in keeping with Articles 13 (2) & (5) and 14 (2) & (3) of the Constitution, Sections 47, 50, 10, 11 and 13 (c) of the Public Finance Act of Bhutan, and Section 112 of the National Council Act. Since all laws needed to be passed by Parliament, a Money Bill, by virtue of being a Bill, also had to be deliberated and passed by the National Council, except that it may originate in the National Assembly.

As consensus could not be reached between the two Houses despite numerous efforts and discussions, the Hon'ble Member recommended the House to submit the matter to His Majesty the Druk Gyalpo.

The Deputy Chairperson reaffirmed that the Ministry of Finance had submitted the Budget Report 2008-09 as the National Budget Report and Budget & Appropriation Bill 2008-09 to Parliament. Accordingly, the National Assembly had deliberated and passed the Bill. Having deliberated on it, the National Council returned the Bill to the National Assembly with amendments which were not accepted by the latter. Therefore, the disagreement of the two Houses was submitted to His Majesty the King. A Royal Decree was received on the 21st Day of the 5th Month of the Male Earth Rat Year commanding a Joint Sitting of Parliament to resolve the differences. Unfortunately, the Bill could not be deliberated and resolved.

The National Council had again deliberated extensively on this issue in its 2nd Session and resolved that the Budget & Appropriation Bill should be passed by Parliament like any other Bill. This had been submitted to the National Assembly along with justification and other research documents. The National Assembly during its 3rd Session had deliberated on the proposal but resolved that the Budget shall be passed by the National Assembly alone.

Following the deadlock, he said that the National Council had conducted numerous consultative meetings between the Committees of the two Houses and other relevant institutions. However, consensus could not be reached still since the two Houses interpreted the provisions of the Constitution differently. So, the National Council had only two options; firstly, to go by the resolution of the 3rd Session of the National Assembly, which had resolved that an

Appropriation Bill was not necessary since Budget was not a Bill; secondly, to seek final interpretation of the Constitution to get a better understanding of the legal provisions.

On the disagreement on Budget & Appropriation Bill, the National Council resolved to submit the matter to His Majesty the King since the two Houses of Parliament differed in the interpretation of the provisions of the Constitution, Public Finance Act and National Council Act.

2 Budget Lapses due to non-implementation of planned activities

As one of the highest legislative bodies and a House of Review, the National Council was mandated to review the policies, plans and programs including conduct of the Government. Acknowledging the Government's concerns on the return of funds due to non-implementation of planned activities on time, the Deputy Chairperson reported that the National Council had, in accordance with its mandate, reviewed the budget lapses. Information was sought from all 20 Dzongkhags on the planned activities that had not been implemented with reasons for non-implementation, type of activities and details of funding sources for the fiscal years 2008-09 and 2009-10.

However, Hon'ble Tashi Wangmo said that only 15 Dzongkhags had submitted the information as of now. While complete information had not been received, examination of the ones collected showed that non-implementation of planned activities was prominent in the procurement of basic infrastructure. The main reason behind this had been improper planning. Secondly, procurement of works for basic infrastructure had not been awarded to contractors in certain remote Gewogs as per procedure. Thirdly, insufficiency of funds and fourthly, shortage of human resources were cited as other reasons.

Of the non-planned activities carried out either through government funding or external assistance, most of the ad hoc ones were dependent on external assistance. Therefore, it was important to understand clearly how funds from external sources had not been reflected while the plans were being prepared.

While supporting the review report, the Hon'ble Members from Trongsa and Pemagatshel Dzongkhags felt that it was important for them to know about their constituencies in detail. Therefore, they said that it would be better if they went back to their respective constituencies after this session to collect adequate information and deliberate during the 6th Session.

On budget lapses, the National Council resolved that the issue shall be deliberated during the 6th Session once the members had collected information from their respective Constituencies. The House Committee was accordingly directed to come up with a procedure and put up in a plenary meeting for endorsement whereby a relevant Committee or a group of members could visit not only ones own constituency but others as well to collect information for the purpose of review.

J Closing Ceremony

1 Hon'ble Chairperson's Address

Of the 20 issues the 5th Session of the National Council had deliberated, the Hon'ble Chairperson said that 10 were legislative issues and 6 policy issues besides Question Time and programs related to other businesses.

Although Adoption Bill of Bhutan had been included in the agenda for the 5th Session, the Social & Cultural Affairs Committee needed more time to go through it in detail, as it was an important Bill in the country. The Committee shall consult the stakeholders and present its findings for deliberation during the 6th Session.

The SAARC Convention on Environment and the International Convention Against Doping in Sports had also been submitted for deliberation during this session. However, the National Council could not take these up as it had during its 4th Session resolved that a parliamentary procedure needed to be adopted prior to ratification of international conventions. A proposal had been submitted to the National Assembly on which a response was awaited. The Legislative Committee had been directed to review the two conventions for deliberation in the 6th Session.

The Hon'ble Chairperson also said that during the 11 days Joint Sitting of Parliament, Bills on which consensus could not be earlier reached between the two Houses had been voted upon and adopted in accordance with parliamentary procedures. These included the Tobacco Control Bill of Bhutan, the Royal Monetary Authority Bill of Bhutan, the Bhutan Standards Bill, the Civil Service Bill of Bhutan and the Service Conditions & Entitlement Bill for the Constitutional Post Holders, Members and Commissioners. The Public Accounts Committee Report and Declaration of the *Thromdes* had also been

deliberated and adopted. Similarly, the Hon'ble Prime Minister had made his presentation on the very important Annual Report on the State of the Nation.

During the 6th Session, he said that the National Council shall deliberate on: 1) The Adoption Bill of Bhutan 2010; 2) The Water Bill of Bhutan 2010; 3) The Financial Services Bill 2010; 4) The Income Tax Amendment Bill 2010; ratify two international conventions and review existing Acts, government policies and plans as deem necessary by the various Committees.

Whatever laws were framed for the present and future good of the country, he said that it was important to consult the fellow citizens in order to understand their problems and views of point. The House Committee was, therefore, directed to come up with a procedure whereby a Committee or a group of members could go and visit the remote villages not only in ones own constituency but others as well so that they could collect differing views and understand better the local situations.

The Hon'ble Chairperson attributed the successful completion of the 5th session of the National Council mainly to the blessings of the Triple Gem, the guidance of Their Majesties the two Druk Gyalpos, the dedication of the Hon'ble Members, and the unwavering support rendered by the Secretariat. He expressed his gratitude to all those involved in the smooth conduct of the session.

The 5th Session of the National Council concluded on the 2nd Day of the 6th Month of the Male Earth Tiger Year with prayers for the wellbeing of the people, everlasting peace and prosperity in the country, the continued good health and long life of His Majesty the King, the Fourth Druk Gyalpo and the Royal Family.