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Second Submission to the Protected Areas Department RDTL Secretary of State for Forestry

From
La'o Hamutuk

Regarding the 13 May 2013 Draft of the Decree-Law on Establishment and Management of Protected Areas

14 June 2013

La'o Hamutuk is grateful for the invitation from the Protected Areas Department of the Secretary of State for Forestry, Ministry of Agriculture and Fisheries, to participate in this public consultation and to have the opportunity to share our perspectives during the drafting process of the Protected Areas Decree-Law, including for this latest version of the draft. We appreciate your effort to follow-up and be receptive to input. We wish that we had more time to analyze this draft, but hope that our comments will help to improve and finalize it.

The current draft is significantly better than the March one, and we particularly appreciate:

- The effort to integrate this Decree-Law into the existing legal framework.
 - ✓ The previous list of penalties has been replaced by a welcome reference to Timor-Leste's Penal Code (Article 29) and, as we suggested, different penalties have been set for individuals and legal persons (Article 28.8).
 - ✓ The previous Articles 32, 33 and 34 of Chapter 5 specifying processes for financing, revenues, revenue sharing and establishing bank accounts have been either removed or modified, avoiding inconsistencies with Budget and Financial Management Law No. 13/2009.
 - ✓ The status of the Head of protected areas has been clarified, with reference to the Lei No. 8/2004 on Estatuto da Função Pública. His powers have also been reduced, recognizing the responsibility of the police (Articles 22.2, 22.3e, 26.2, 27.3c) to deal with violations of the law.
 - ✓ The Protected Area Committee's powers have been limited to set *customary* penalties (Article 6.7d) respecting Timor-Leste's Constitution.

- The removal of the potentially dangerous delegation of powers from the Ministry responsible for protected areas to district, suco or private authorities (previous Article 6). As we mentioned in our first submission, this could open the door to corruption and decisions based on financial gain, to the detriment of the environment.
- The inclusion of women and the elderly in the protected area management committees (Articles 7.2c, 7.2d), as these knowledgeable stakeholders have key roles in society.
- The enhanced focus on the “ecosystem approach” (Articles 1.2, 22.4), which is consistent with the principles of this law (Article 3.4) and counterbalances short-term economic priorities in decision-making.
- The effort to mainstream environmental and cultural protection by involving relevant ministries and State Secretariats (Articles 6.2a, 6.2e, 6.2p, 6.2v, 6.4a, 7.2i, 12.2, 13.2, 15.3, 17.3b and others).
- The addition of Article 7.6h and 21.4e specifying the participation of Protected Area Committee members in consultations carried out for Environmental Impact Assessments. As we mentioned in our first submission, Decree Law No. 5/2011 on Environmental Licensing unfortunately does not guarantee the participation of local authorities in EIAs.
- The removal of the previous Article 12 on private administration, leaving the question for further study (Article 6.2r).
- The effort to ensure that information is published before decisions are made (Articles 6.2c, 6.2l).
- The addition of a consultation process before designating a provisional protected area (Article 13.2).

However, we are concerned about the following:

- Article 19 listing the activities prohibited in a protected area does not clearly prohibit mining activities, did in previous Article 25.4 that stated: “*Mining and any other activity related to exploration or exploitation of any non-renewable resources within any protected area in the National System of Protected Areas is prohibited.*” The words “extracting and excavating” (Article 19.1a) should be defined, and perhaps made more explicit.
- Previous Article 18 setting compensation guidelines has been removed, and there is now no mention of any form of compensation for communities impacted by the creation of protected areas. In our first submission, we suggested consideration of the draft Expropriation Law which is pending enactment, and wrote: “We believe that compensation for people living in areas which are to be protected should be fair, based on what it will cost the person to replace what they will be deprived of [...]”
- Previous Article 37.1 on citizens’ responsibilities to report violations they observe has been removed. We believe it should be restored, as it is the responsibility of each of us to ensure our environment is protected.
- Previous Article 31 on the necessity for the Government to allocate sufficient budget funds to the National System of Protected Areas has been removed and should be

restored, as environmental protection is, unfortunately, often given lower priority than physical infrastructure projects.

- Articles 12.2 and 13.2 still lack consultation with communities living *near* the potentially protected area, only including those living “*where all or part of the proposed protected area would be located.*” As we mentioned in our first submission, the consultation process should be expanded to include others likely to be affected.
- The new Article 8.4 “*Any proposal by any other person to reduce the size of a protected area, eliminate a protected area, or change a protected area in any other way may only be implemented by an act of the National Parliament*” recognizes the hierarchical legal power of the Parliament to change a protected area if the Ministry responsible declines to do so. Although this is consistent with Timor-Leste’s Constitution, we hope this clause does not weaken the intent of this law.

Other observations

- In Article 20.5, “or” should be “and/or”, and in Article 20.6, “and” should be “and/or”. These are examples of small errors which could give rise to large technical misinterpretations, and the entire official Portuguese Decree-Law should be checked carefully.
- In Article 12.3a, we suggest that notice of a protected area proposal, in addition to being published on the website, should be distributed to local communities through notice boards, flyers and door-to-door visits in cases when a protected area will have major impact on people’s life.
- In Article 4, define threatened species, extracting and excavating activities.

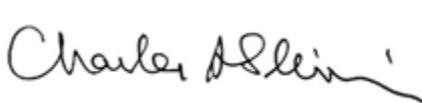
We thank the Secretary of State for Forestry for holding this consultation and hope that you will be able to further improve this draft before it is submitted to the Council of Ministers. We look forward to continuing involvement in the process of developing Timor-Leste’s legal framework to protect our environment.

Thank you.

Sincerely,



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Charles Scheiner



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