



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

**From  
La'o Hamutuk**

**Regarding the Draft Decree-Law on  
Establishment and Management of Protected Areas**

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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, to share our perspectives about the draft Protected Areas Decree-Law. We also appreciate your political will which can also help improve other regulations already in force to protect our environment and biodiversity more effectively for a beautiful and green world in the future.

Although time does not allow a deeper analysis, we hope that the following suggestions can help enrich and improve this Decree-Law.

### **Delegation of power must avoid corruption and damage to Protected Areas.**

Many underdeveloped nations often prioritize public and private economic interests over protecting their environment. This preference comes with a high cost – the loss of both resources and biodiversity.

Decentralizing power in order to exploit local resources – including the power to grant licenses, sign contracts or collect rent – could cause local authorities to commercialize their resources. But inside a Protected Area, preventing environmental degradation should take priority over local profits.

This draft Decree-law, particularly **Article 6**, allows power to be delegated from responsible national authorities to district, suco or private authorities to manage a Protected Area. We feel that this delegation should be limited and specified more clearly.

**Article 8.3** specifies that the responsible national entity can, *“Review any proposal for a change to a protected area, submit a written opinion on the proposal to the Minister responsible for protected areas, and ensure that consultations are carried out.”* Delegating this responsibility may facilitate corruption or conflict of interest by local authorities. Next year, our Government plans to implement municipalities which will have the power to use and manage natural resources in their autonomous areas. Therefore, this legislation should learn from sad experiences in other countries (such as Indonesia) and prevent them from happening in Timor-Leste.

La'o Hamutuk also suggests that the decision the decision to accept or reject creating a Protected Area, as outlined in **Article 10.6**, should stay at the national level.

The power to set penalties, assigned to the Protected Area Committee by **Articles 10.7(b)** and **10.8(d)**, should belong to the prosecutor and the courts, not a local committee. We think that these provisions contradict Article 30.2 of Timor-Leste's Constitution: *“No one shall be arrested or detained, except under the terms clearly provided for by applicable law, and the order of arrest or detention should always be presented for consideration by the competent judge within the legal timeframe.”*

### **Involve the responsible entity in EIAs for projects in Protected Areas.**

Although we don't agree with allowing local authorities to grant permits for resource exploitation, we believe that they should be empowered to be involved in Environmental Impact Assessments for projects which will impact on Protected Areas. A new line should be added to **Article 10.8** to ensure this.

Some people think it's not necessary to include local authorities in EIAs because Decree-Law No. 5/2011 on Environmental Licensing already does so. Unfortunately, that Decree-Law provides for an Evaluation Commission which only includes people

nominated by each ministry, and not the local authorities who better understand the situation in the Protected Areas and its social, cultural and economic relationships to their communities.

We appreciate that **Articles 16.2** and **16.3** provide for public consultations when establishing Protected Areas. Unfortunately, this consultation process is not open enough for communities living near the potentially Protected Area. Therefore, we suggest that such a consultation be enlarged to include local people who live in or near the proposed Protected Area, not depending on whether their livelihoods depend on resources from the Protected Area, as well as including academics, environmental activists and civil society organizations. Such a process would be more democratic and participatory.

### **The contents of the law should not contradict its own principles.**

We strongly agree with the principle expressed in **Article 3.2** that *“No part of a protected area may be transferred, traded, or sold.”* We feel that this important principle should be reinforced by the content of the law, but unfortunately it can be changed by Ministerial Decree according to **Article 26.1**.

Although **Article 26.5(a)** requires an *“environmental, social and economic justification for changing the protected area.”* This article opens the way for a person, group or state agency to convert a Protected Area to a production area in the name of “national interest” or “economic development” of the nation or a particular area. Mining or mineral extraction activities are often the reason for revoking a Protected Area, to make a quick and fast buck, but they are not sustainable compared with Protected Area investment. Many nations regret that they failed to protect their environment against such activities.

We also suggest changing **Article 26.6** to read: *“The State will organize the consultations, and the person proposing changes to the protected areas must reimburse the state after the consultations are completed.”* This will help ensure that the consultation process is effective, rather than depending on expenditures by the proponent.

### **Too much power can enable conflicts of interest.**

We think that the status and powers of the Protected Area Head need to be considered carefully. **Article 9.1** specifies that the Head is a public employee, with powers under **Article 9.3(a)** to “hire and dismiss Protected Area Staff.” However, this law does not clearly define “Protected Area Staff.”

If Protected Area staff have the same status as other public servants, the power to hire and dismiss them lies with the Public Service Commission. But if they are not public servants, this power opens the way to conflicts of interest or abuse of power.

In addition, we wonder about **Article 9.3(d)** which empowers the Protected Area Head to detain persons who violate the protected area rules and/or confiscate their possessions. We think that this is too much power, could cause conflict or human rights violations, and may be difficult to implement. Perhaps this was copied from the Indonesian Forest Police (*Polisi Kehutanan*), who have police powers but are also trained in human rights and have mechanisms for oversight and accountability.

We suggest clearer explanations in this Decree-Law about several issues:

- Protected Area Community Guards, mentioned in **Article 11**
- Forest Guards, mentioned in **Article 11.2**
- Secretary of the Protected Area Committee, mentioned in **Article 9.4(d)**

### **Who should oversee Protected Areas?**

This draft Decree-law, especially **Articles 10.2(f), 26** and **27**, does not clearly specify the state entity which is responsible for Protected Areas. It therefore exhibits confusion from dividing this mandate between two ministries with different orientations and responsibilities.

Although the Secretariat for the Environment and the Secretariat for Forestry are under different ministries, we think it is important to involve the State Secretariat for Environment, as well as the Ministry for Commerce, Industry and Environment, in decision-making and management of Protected Areas, which will include marine and other non-forestry ecosystems.

### **Private Administration needs more careful attention.**

**Article 12** describes how a private administrator can manage a protected area, with powers specified in **Article 9**. **Articles 12.3(a)** and **9.1** contradict each other on whether the Head of a Protected Area must be a government employee.

**Article 12.1** should refer to standard procurement procedures. A contract with a private protected area administrator should come through a public and transparent tender process, just like other contracts between private and state entities.

**Article 12.2(a)**, requiring five years' experience in Protected Area management, would exclude virtually all Timor-Leste entities; this should be re-examined.

**Article 12.5** implies that such contracts endure forever, with "review" (English) or "revision" (Tetum) at least every five years. It might be better for such contracts to have a defined duration (perhaps five years), with the possibility of renewal or amended extension after an appropriate process.

### **Finances and revenues from Protected Areas should follow legal pathways.**

**Chapter V** of this draft decree-law specifies processes for financing, revenues, revenue sharing and establishing bank accounts. Article 12 of Budget and Financial Management Law No 13/2009 of 21 October, classifies public (state) monies as follows:

- a) *Taxes;*
- b) *Fees;*
- c) *Interests;*
- d) *Dividends or other payments from public companies where the State holds capital;*
- e) *Revenues from the location of movable or immovable assets;*
- f) *Revenues from the licensing or selling of any rights controlled by the State;*
- g) *Royalties;*
- h) *Fines, regulatory fees, civil case indemnities and insurance revenues;*
- i) *Donations and gifts.*

According to this Budget and Financial Management Law, revenue sources from Protected Area activities should be considered public monies, to be used according Article 14 of the Budget and Financial Management Law:

1. *No person may spend or use public monies in an improper or illegitimate manner.*
2. *Public monies should only be spent after the Director of Treasury issues an Expenditure Authorization Notice, informing the Ministry or Secretariat of State that it is authorized to carry out expenses regarding the budget appropriation specified in the notice.*
3. *Payments with public monies may only be done in accordance with the Expenditure Authorization Notice regime, as set in the present diploma.*

Therefore, we suggest that **Chapter 5** (especially **Articles 32, 33** and **34**) in the draft Protected Areas Decree-law should be consistent with the Budget and Financial Management Law and state financial management systems to prevent maladministrasau, corruption and abuse of power.

All receipts from Protected Area activities should come into the annual General State Budget. This is illustrated by table 2.5.2.3.1 in Book 1 of the 2013 State Budget, which shows all such state receipts, including fines from illegal logging.

### **Other observations**

**Article 4** should include definitions of “*ecosystem/environmental services*”, “*native/protected/alien/threatened species*” and other terms. Perhaps this can be done by references to the Basic Environmental Law and an international convention.

**Article 10.2(g)** should be revised because NGOs are not part of the “private sector.”

**Article 13** says that any community or individual can request that a particular area be included in the national Protected Area system. **Article 13.4 (13.3** in Tetum version) says that when such a request is made, “*the national government department responsible for administering protected areas shall designate the area as a provisional conservation area...*” We think that this could create social conflict, and that there should be a prompt review, including others from the community, before a provisional conservation area is designated.

In **Articles 16.4(j), 26.5(g), 27.3(a), 27.4** and **27.5**, we suggest replacing “legitimate activities” with “interests.” In **Article 27.4**, “or” should be “and/or” while in **Article 27.5**, “and” should be “and/or.” These are examples of small errors which could give rise to large technical misinterpretations, and the entire Decree-Law should be checked carefully.

**Article 18** sets compensation guidelines, although the draft Expropriation Law is still pending Parliamentary enactment. 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. The imminent designation of a piece of land as protected may reduce its market value, and the suggested compensation scheme may be insufficient to purchase equivalent land and replace improvements (such as buildings) on the land which they are being moved from.

**Articles 25.1(a), 25.6(g)** and **38.3** should not include the word “intentional” as reefs should have been protected from negligent or reckless damage, such as from boat anchors or motors.

**Article 38** sets minimum fines and sentences so high that they will probably never be applied, and idle threats make for ineffective legislation. Most people who live in or near Protected Areas have daily incomes of less than one dollar; if they violate the rules, the amounts will be impossible for them to pay. It would be better to have one set of penalties for individuals and another for corporate violators. Specifying minimum fines makes it impossible to utilize education or conflict resolution for minor first-time violations, with the threat of more serious penalties if the violations recur.

In addition, this draft does not specify about how these fines will be decided and applied – do they go through the court system? We think it would be better to integrate this article into the Penal Code structure, which establishes and regulates sentences for violations.

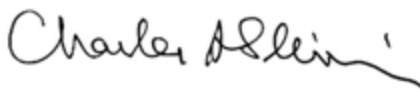
In **Article 39.1**, change the words “any person” to “the person accused of the violation.” If the intention of this article is that someone not satisfied with a decision or fine against some else (including the decision not to apply a penalty) can appeal the decision, it needs more clarity and safeguards.

This concludes our submission, and we continue to be ready to share our perspectives with you or answer any questions. We appreciate your collaboration.

Sincerely,



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