

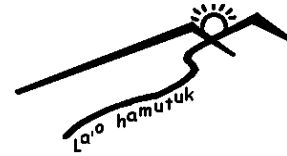
# La'ó Hamutuk

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Dili, 31 May 2016

To: Sr. Silverio Pinto, Ombudsman for Human Rights and Justice (PDHJ) - Timor-Leste

Re: **Implementasaun of large infrastructure projects which continue to violate Decree-Law No.5/2011 Environmental licensing.**

CC Sr. Constâncio da Conceição Pinto, Minister of Commerce, Industry and Environment  
Sr. João Carlos Soares, Director-General for Environment  
Sr. Antonio Lelo Taci, National Director for Control of Pollution and Environmental Impact (DNKPIA)  
Sr. Francisco Poto, Chief of Technical Team, (DNKPIA)  
to Media and public

With respect,

La'ó Hamutuk is writing this letter based on a citizen's responsibility to bring cases to the Ombudsman for Human Rights and Justice (PDHJ) to use its Constitutional Powers to promote and protect human rights by establishing effective rule of law, and also to promote a culture of efficiency, transparency, integrity and responsibility for every entity, including public agencies and the private sector.

Through this letter, La'ó Hamutuk would like to provide informasaun to the Ombudsman for Human Rights and Justice (PDHJ) that several projects in Timor-Leste do not follow efficiency, transparency, integrity and responsibility to protect social, economic and environmental rights as required by Decree-Law No. 5/2011 about Environmental Licensing and also Decree-Law No. 26/2012, the Basic Law on Environment. We believe that when project proponents do not want to comply with the legal framework which is in force, people's human rights will be violated, especially those who are most vulnerable and depend on an environment which is clean, healthy and can provide a balanced and sustainable life.

Decree-Law No. 5/2011 about Environmental Licensing requires that projects Classified A<sup>1</sup> with a high likelihood of environmental damage must present an Environmental Impact Assessment before they can receive a license,<sup>2</sup> conduct a public consultation,<sup>3</sup> receive an Opinion and Technical environmental Analysis<sup>4</sup> and also conduct an environmental analysis and receive a license from Timor-Leste's environmental authority (National Directorate for Control of Pollution and Environmental Impact – DNKPIA, formerly DNMA) before implementing a project.<sup>5</sup> In addition, proposals made to the environmental authorities must present complete information about the project to enable DNKPIA to decide which category and criteria are applicable,<sup>6</sup> including that the environmental authority must make a list and register this information in a database.<sup>7</sup>

We think that this legal framework which Timor-Leste has established is very important to regulate and protect our environment, biodiversity and ecology, by regulating both public and private sectors to produce reports about social and environmental impacts of projects which they implement in Timor-Leste, according the classification of the project. Therefore, we ask that all project owners comply with these laws, and that public authorities which are responsible for the environment<sup>8</sup> take decisions according to law. Unfortunately, many applicants do not prioritize this, because some projects without environmental licenses have already started,<sup>9</sup> and we are very worried that the environmental authority often does not apply the penalties to the implementing companies.<sup>10</sup>

With the observations we are making through this letter, under article 6.5<sup>11</sup> of Decree-Law No. 26/2012 the Basic Law on Environment, La'o Hamutuk would like to bring a Case to the PDHJ under Article 2 of Law No.7/2004 about the PDHJ Statutes, and hope that the PDHJ will do its duty under Article 27.1 of the RDTL Constitution 'to examine and seek to settle citizens' complaints against public bodies, certify the conformity of the acts with the law, prevent and initiate the whole process to remedy injustice.'

Below, we provide a list of some of the projects being implemented in Timor-Leste by state institutions and the private sector. We see that some are following the law, while we believe that others are in violation of Decree-Law No.5/2011 on Environmental licensing which is in force in Timor-Leste.

### List of large projects identified by La'o Hamutuk

| Title of project                                | Owner                          | Place               | Work   | Land area     | Status of license  |
|---|--------------------------------|---------------------|--|---------------|--|
| <b>Implemented by the State</b>                 |                                |                     |  |               |  |
| Suai Supply Base                                | TimorGAP                       | Suai                | Suai Supply Base, Nova Suai, airport, port, two crocodile pens                                     | 1105 hectares | Received license on 12 June 2013, which was issued due to political interference. (Nevertheless, the project design has changed, and the EIA needs to be revised.) |
| Refinery Project                                | TimorGAP                       | Betano              | Oil refinery, new Betano town and water supply system  | 1420 hectares | DNKPIA approved the Terms of Reference (TOR) for the licensing process, and Environmental Impact Assessment (EIA) is in process.                                   |
|   |                                |                     | Pipeline to transport oil between Betano and Suai  | 78 km         | DNKPIA approved the TOR and EIA is in process.   |
| Ministry of Finance building, 11 stories.       | Ministry of Finance, RDTL      | Dili - Kampung Alor | Construction completed   | 2 hectares    | Has not applied to DNKPIA for a license.   |
| Tibar Port                                      | MOPTK                          | Liquiça - Tibar     | Construction has not yet started   | 41 hectares   | Presented draft TOR and got comments from DNKPIA, but has not yet revised TOR.   |
| Hera Power Plant                                | EDTL, MOPTK                    | Dili - Hera         | Construction completed   | 3.5 hectares  | Never applied for a license. Construction began in 2009 and operation in 2011.   |
| Betano Power Plant                              | EDTL, MOPTK                    | Betano - Same       | Construction completed   | 82 hectares   | Never applied for a license. Construction began in 2010 and operation in 2012.   |
| <b>Implemented by the private sector</b>        |                                |                     |  |               |  |
| TL Cement Plant                                 | BGC Australia Pty. Ltd         | Baucau              | Construction not yet started   | 3 hectares    | DNKPIA approved the Terms of Reference (TOR), and Environmental Impact Assessment (EIA) is in process.   |
| Complex with offices, apartments and businesses | Palm Business and Trade Centre | Dili - Surik Mas    | Construction completed   | 2 hectares    | Never applied for a license. Construction began in 2011 and opened to the public in 2013.  |
| Timor-Plaza, five stories, and other buildings  | Tony Jape                      | Dili - Comoro       | Construction for some commercial buildings is finished, while others are still under construction. | 4 hectares    | Never applied for any license. Construction began in 2009 and opened to the public in 2011, but new construction continues.  |
| Five Star Hotel                                 | Pelican Paradise Holdings      | Dili - Tibar        | Construction not yet started   |               | Has not applied to DNKPIA for a license  |

| Title of project                                    | Owner                         | Place            | Work                         | Land area                    | Status of license  |
|---|-------------------------------|------------------|------------------------------|------------------------------|--|
| Beverage bottling plant                             | Heineken Asia Pacific Pte.Ltd | Dili, Metinaro   | Began clearing land          | 5 hectares                   | Environmental Impact Assessment (EIA) is in process      |
| Pacific Beach Resort                                | Tony Jape                     | Dili - Dolok oan | Construction not yet started | 22 hectares                  | Has not applied to DNKPIA for a license                  |
| Jetty for unloading fuel                            | Sacom Energia                 | Dili - Hera      | Construction not yet started |                              | Has not applied to DNKPIA for a license                  |
| Jetty for unloading fuel                            | Esperansa Timor-Oan (ETO)     | Dili - Hera      | Construction completed       | 2 hectares                   | Received a license from DNKPIA                           |
| <b>Implemented in the Oecusse Autonomous Region</b> |                               |                  |                              |                              |  |
| Sakato Power Plant                                  | MOPTK                         | Oecusse - Sakato | Construction completed       | 79.5 m wide and 165.3 m long | Submitted Environmental Impact Statement (EIS) to DNKPIA |
| Airport   | ZEESM                         | Oecusse-Palaban  | Construction already started |                              | Has not applied to DNKPIA for a license                  |
| Irrigation  | ZEESM                         | Oecusse-Tono     | Construction already started |                              | Has not applied to DNKPIA for a license                  |
| Road  | ZEESM                         | Oecusse-Palaban  | Construction already started |                              | Has not applied to DNKPIA for a license                  |
| Five-Star Hotel                                     | ZEESM                         | Oecusse-Palaban  | Construction already started |                              | Has not applied to DNKPIA for a license                  |

Although Decree-Law No.5/2011 gives DNKPIA a lot of power to control infrastructure projects so that they do not damage the environment, unfortunately, DNKPIA does not yet have the strength and courage to apply serious sanctions, such as canceling their licenses or stopping their project activities, against big projects which violate the law.

Therefore, we are asking the Ombudsman for Human Rights and Justice (PDHJ), to investigate and make recommendations to the relevant agencies to prevent actions which violate the law and create injustice, in the scope of its work to ensure the rights and benefits of the most vulnerable, such marginalized people, women, children, minority groups and the disabled.

In closing, La'ó Hamutuk greatly appreciates the presentation of PDHJ's preliminary studies which were shared with us and other organizations a few months ago, which showed evidence of violations against vulnerable people in Oecusse, in relation to irrigation construction and road widening. Therefore, we trust that you will continue to secure the people's rights in relation to the other projects we have listed above.

We are confident that your work will further strengthen DNKPIA's work to implement the law, ensure the quality of work, and safeguard people's lives, environment, money and biodiversity. Thank you very much and we are always ready to respond to your questions.

Sincerely,

Adilsonio Da Costa Jr.,

**(Researchers on Natural Resources and Economy - La'ó Hamutuk)**

Juvinal Dias,

Charles Scheiner,

## Notes

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### <sup>1</sup> Article 4. Definition of Categories and Type of Environmental Assessment Procedure

1. The classification of projects is made in accordance with Annex I and II and is structured in the following categories:
  - a) Category A - includes projects that may potentially cause significant environmental impacts, and are subject to the procedure of Environmental Impact Assessment (EIA), this based on Environmental Impact Analysis and Management Plan (EMP) in accordance with the provisions in this law.
  - b) Category B - includes projects that may cause environmental impacts, and are subject to the procedure of Initial Environmental Examination (IEE), this based on the Environmental Management Plan in accordance with the provisions of this law.
  - c) Category C - includes projects where environmental impacts are negligible or non-existent, and not subject to any procedure for Environmental Assessment in accordance with the provisions of this law.

### Artigo 4.º Definição das Categorias e Tipo de Procedimento de Avaliação Ambiental

1. A classificação dos projectos é efectuada de acordo com o anexo I e II e estrutura-se nas seguintes categorias:
  - a) Categoria A - compreende os projectos que potencialmente podem causar impactos ambientais significativos, e que são sujeitos ao procedimento de Avaliação de Impacto Ambiental (AIA), este baseado no Análise de Impacto no Plano de Gestão Ambiental (PGA), de acordo com o disposto no presente diploma.
  - b) Categoria B - compreende os projectos que podem causar impactos ambientais, e que são sujeitos ao procedimento de Exame Ambiental Inicial (EAI); este baseado no Plano de Gestão Ambiental, de acordo com o disposto no presente diploma.
  - c) Categoria C- compreende os projectos em que os impactos ambientais são desprezíveis ou inexistentes, e que não estão sujeitos a qualquer procedimento de Avaliação Ambiental, de acordo com o disposto no presente diploma.

### <sup>2</sup> Article 9. Presentation of the Request for EIA and environmental license

1. The proponent of a project classified as Category A initiates the procedure for environmental impact assessment and environmental license application by submitting to the Environmental Authority, the following information and documentation:
  - a) Name of the applicant, and their identifying information and contact details;
  - b) Membership of any economic group, which includes the proponent;
  - c) The location and scale of the Project;
  - d) The plans and technical drawings of the Project;
  - e) Technical studies on the feasibility of the Project;
  - f) Opinions or other documents on the project emanating from other entities;
  - g) Any other document legally required by law for approval of the project and without which an environmental license cannot be granted;
  - h) Environmental Impact Statement (EIS) including Non-Technical Summary and Environmental Management Plan (EMP)
  - i) Application for grant of Environmental license;
2. The information and documentation referred to in the preceding paragraph shall be presented in proper form and as provided by statute.
3. The proponent must prepare the EIS and EMP in accordance with the provisions of paragraphs 2, 3 and 4 of Article 4 and in accordance with relevant legislation.
4. In presenting the documents, the proponent must pay the fee for the phase of Environmental Impact Assessment, as defined in statute.

### Artigo 9.º Apresentação do Projecto para AIA e Pedido de licença Ambiental

1. O proponente de um projecto classificado como categoria A inicia o procedimento de avaliação de impacto ambiental e pedido de licença ambiental com a apresentação, à Autoridade Ambiental, das seguintes informações e documentação:
  - a) Nome do proponente, e os seus dados identificadores e de contacto;
  - b) Composição de qualquer grupo económico em que se inclua o proponente;
  - c) A localização e escala do Projecto;
  - d) As plantas e desenhos técnicos do Projecto;
  - e) Estudos técnicos sobre a viabilidade do Projecto;
  - f) Pareceres ou outro tipo de documento sobre o Projecto emanado de outras entidades;
  - g) Qualquer outro documento legalmente exigível pela legislação para a aprovação do projecto e que para a sua obtenção não se exija a comprovação da atribuição da licença ambiental;
  - h) Declaração de Impacto Ambiental (DIA) incluindo Resumo Não Técnico, e Plano de Gestão Ambiental (PGA)

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- i) Pedido de atribuição da licença Ambiental;
  2. As informações e documentação referidas no número anterior são apresentadas em formulário próprio e na forma prevista em diploma próprio.
  3. O proponente deve instruir o DIA e PGA de acordo com o disposto no número 2, 3 e 4 do artigo 4º e de acordo com a legislação complementar.
  4. No acto da apresentação dos documentos, o proponente tem de proceder ao pagamento da taxa da fase de Avaliação de Impacto Ambiental, definida em diploma próprio.

### **3 Article 8. Procedural steps**

For the purposes of environmental licensing, projects classified as Category A are subject to a procedure of Environmental Impact Assessment (EIA) and granting of an Environmental License, which includes the following phases:

- a) Presentation of the project for evaluation and application for environmental license;
- b) Public Consultation;
- c) Technical Analysis and Opinion by the Evaluation Committee;
- d) Decision on the procedure of Environmental Impact Assessment and granting of the Environmental License;

### **Article 11. Public Consultation**

1. It is the role of the Evaluation Committee to promote public consultation, which has the following objectives:
  - a) Providing access to public documents referred to in Article 8 of this law;
  - b) Inform and enlighten the public about the project, including potential environmental impacts and their way of mitigation;
  - c) Promote discussion about the EIS and EMP.
2. The duration of public consultation is 24 days, beginning 10 days after the formation of the Evaluation Committee.
3. Any member of the public may provide recommendations or proposals based on the EIS and EMP to the Evaluation Committee, under the deadline specified in paragraph 2 of this article.
4. The requirements and procedures for public participation are defined in statute.
5. Public consultation on Defining the scope is necessary to discuss the project TOR, and the opinions of interested parties must be reflected to the TOR.

### **Artigo 8.º Fases do procedimento**

Para efeitos de licenciamento ambiental, os projectos classificados como Categoria A estão sujeitos a um procedimento de Avaliação de Impacto Ambiental (AIA) e atribuição da Licença Ambiental, que compreende as seguintes fases:

- a) Apresentação do projecto para avaliação e pedido de licença ambiental;
- b) Consulta Pública;
- c) Análise e Parecer Técnico pela Comissão de Avaliação;
- d) Decisão sobre o procedimento de Avaliação de Impacto Ambiental e Atribuição da Licença Ambiental;

### **Artigo 11.º Consulta Pública**

1. Compete à Comissão de Avaliação promover a consulta pública, que possui os seguintes objectivos:
  - a) Dar acesso ao público da documentação referida no artigo 8º do presente diploma;
  - b) Informar e esclarecer o público sobre o projecto, incluindo potenciais impactos ambientais e sua forma de mitigação;
  - c) Promover a discussão sobre o DIA e PGA.
2. O prazo para a realização da consulta pública é de 24 dias e inicia-se 10 dias após a constituição da Comissão de Avaliação.
3. Qualquer integrante do público pode remeter à Comissão de Avaliação recomendações ou propostas fundamentadas sobre o DIA e PGA, dentro do prazo definido no número 2 do presente artigo.
4. Os requisitos e procedimentos para a participação pública são definidos em diploma próprio.
5. Consulta pública para a Definição do âmbito é necessário discutir o TOR projecto, e os pareceres das partes interessadas deve ser refletida para a TOR.

### **4 Article 12. Technical Project Analysis for Evaluation Committee**

#### **Article 13. Issuance of Opinion by Evaluation Committee**

#### **Article 14. Decision on the Environmental Impact Assessment and Environmental License**

#### **Article 21. Decision on Simplified Environmental Assessment paragraph 4**

The decision referred to in the preceding paragraph is made by order and within 10 days from the date of receipt of technical advice by the Environmental Authority and published in the Official Gazette.

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**Artigo 12.º Análise Técnica do Projecto pela Comissão de Avaliação.**

**Artigo 13.º Emissão do Parecer pela Comissão de Avaliação.**

**Artigo 14.º Decisão sobre a Avaliação de Impacto Ambiental e da Licença Ambiental.**

**Artigo 21.º Decisão sobre a Avaliação Ambiental Simplificada parte (4)**

A decisão referida no número anterior é efectuada por despacho e no prazo de 10 dias a contar da data do recebimento do parecer técnico pela Autoridade Ambiental e publicada em Jornal da República.

**<sup>5</sup> Article 3. Environmental licensing procedure**

1. The environmental licensing procedure includes
  - a. Guidance for Scoping;
  - b. Environmental Assessment and granting of the Environmental License;
  - c. Issuance and Renewal of the Environmental License;
  - d. Oversight.
2. The environmental licensing procedure begins when the project documents are delivered to the Environmental Authority for the purpose of fulfilling the provisions of b) above.

**Artigo 3.º Procedimento de licenciamento ambiental**

1. O procedimento de licenciamento ambiental constitui-se em:
  - a) Orientação para a Definição de Âmbito;
  - b) Avaliação Ambiental e Atribuição da Licença Ambiental;
  - c) Emissão e Renovação da Licença Ambiental;
  - d) Fiscalização.
2. Considera-se o início do procedimento de licenciamento ambiental o momento da entregados documentos do projecto à Autoridade Ambiental com o propósito de cumprir o estabelecido na alínea b) do número anterior.

**<sup>6</sup> Article 5. Defining Project Scope**

1. The proponent, for guidance on the instruction of the environmental assessment procedure, can present to the Environmental Authority for consideration on the Definition of Scope.
2. It is understood by Definition of Scope the classification of the project in one of the categories mentioned in this law and in addition, for projects of category A, the preparation of terms of reference.
3. The submission of the Definition of Scope referred to in paragraph 2 of this article, is considered a preliminary Environmental Assessment and is optional.
4. For the purposes of paragraph 1 of this Article, the applicant must submit project documents to the Environmental Authority, which shall contain the following information:
  - a) Name of the applicant, and their identifying information and contact details;
  - b) The location and scale of the project;
  - c) The plans and technical drawings of the project;
  - d) Technical studies on the feasibility of the project;
  - e) Opinions or other documents on the project emanating from other entities;
  - f) Proposal for classification of the project category according to Annex I of this statute;
  - g) Proposed Terms of Reference for projects in Category A, according to complementary legislation.
5. When presenting documents, the proponent must pay fees for the information phase, as defined by statute.

**Artigo 5.º Definição de Âmbito do Projecto**

1. O proponente, para efeitos de orientação sobre a instrução do procedimento de avaliação ambiental, pode apresentar á Autoridade Ambiental para apreciação sobre a Definição de Âmbito.
2. Entende-se por Definição de Âmbito a classificação do projecto em uma das categorias previstas neste diploma e adicionalmente, para os projectos da categoria A, a elaboração dos termos de referência.
3. A submissão da Definição de Âmbito referida no número 2 do presente artigo, possui carácter preliminar à Avaliação Ambiental e é facultativa.
4. Para efeitos do disposto no número 1 do presente artigo, o proponente deve submeter os documentos do projecto à Autoridade Ambiental, dos quais devem constar as seguintes informações:
  - a) Nome do promotor, e os seus dados identificadores e de contacto;
  - b) A localização e escala do projecto;
  - c) As plantas e desenhos técnicos do projecto;
  - d) Estudos técnicos sobre a viabilidade do projecto;
  - e) Pareceres ou outro tipo de documentos sobre o projecto emanado de outras entidades;
  - f) Proposta de classificação do projecto em categoria, de acordo com o anexo I deste diploma;
  - g) Proposta dos Termos de Referência para os projectos da categoria A, de acordo com o definido em legislação complementar.

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5. No acto de apresentação dos documentos, o proponente tem de proceder ao pagamento da taxa a fase informativa, definidas em diploma próprio.

#### **7 Article 38. Records and Information Access**

1. The Environmental Authority maintains a register of environmental assessment procedures and the procedures for issuing environmental licenses conducted in accordance with the provisions of this law, including:
  - a) documents relating to procedures for environmental assessment of any project;
  - b) decisions taken by the Superior Environmental Authority about the stages of the Procedure for Environmental Assessment of any project;
  - c) Opinions of communications and Evaluation Committee and the Environmental Authority;
  - d) Granted Environmental licenses and their respective approved EMPs;
  - e) Documents relating to previous projects in accordance with the provisions of Article 29 and 30.

#### **Artigo 38.º Registos e Acesso a Informação**

1. A Autoridade Ambiental mantém um registo dos procedimentos de Avaliação Ambiental e dos procedimentos de Emissão das Licenças Ambientais realizados de acordo com o disposto nesta lei, inclusive:
  - a) dos documentos relativos aos procedimentos de Avaliação Ambiental de qualquer Projecto;
  - b) das decisões tomadas pela Autoridade Superior Ambiental, em relação às fases do Procedimento de Avaliação Ambiental de qualquer Projecto;
  - c) dos Pareceres e comunicações da Comissão de Avaliação e da Autoridade Ambiental;
  - d) das licenças Ambientais atribuídas e respectivos PGA aprovados;
  - e) dos documentos relativos aos projectos anteriores de acordo com o disposto no artigo 29 º e 30 º.

#### **8 Article 10. Evaluation Committee**

1. For each category A project, within 10 days after submission of the documents referred to in the preceding article, the Superior Environmental Authority will form an Evaluation Committee, with a deliberative character, and with the aim of managing the EIA procedure, and which shall:
  - a) Submit EIS and Environmental Management Plans for public consultation and give its views on the proposals, suggestions and comments received;
  - b) Verify the legal compliance and technical assessment of the EIS and its Environmental Management Plans;
  - c) Promote and convene, as necessary, meetings with the proponent and other Interested parties;
  - d) Request, when necessary, expertise from entities outside the Environmental Authority;
  - e) Prepare the final technical report of EIA.
2. The Evaluation Committee is constituted, with an odd number of members, by:
  - a) A representative from the governmental department responsible for environmental impact assessment and pollution control, who chairs the Committee;
  - b) A representative from the governmental department responsible for tourism, commerce and industry;
  - c) A representative from the governmental department responsible for the health sector;
  - d) A representative from the governmental department responsible for the cultural sector;
  - e) A representative from the governmental department responsible for the infrastructure sector;
  - f) At least two expert technicians in the area or sector related to the project;
3. In the case of a government agency becoming an advocate for project development, they are excluded from the committee to ensure the objectivity of the judgment.
4. The rules for functioning of the Evaluation Committee are defined in statute.

#### **Artigo 10.º Comissão de Avaliação**

1. Para cada projecto da categoria A, e até 10 dias após a apresentação dos documentos referidos no artigo anterior, a Autoridade Superior Ambiental constitui uma Comissão de Avaliação, com carácter deliberativo, e com o objectivo de gerir o procedimento de AIA, e à qual compete:
  - a) Submeter o DIA e Planos de Gestão Ambiental à consulta pública e pronunciar-se sobre as propostas, sugestões e comentários recebidos;
  - b) Proceder à verificação da conformidade legal e à apreciação técnica do DIA e respectivos Planos de Gestão Ambiental;
  - c) Promover e convocar, sempre que necessário, reuniões com o proponente e demais interessados;
  - d) Solicitar, quando necessário, pareceres especializados de entidades externas à Autoridade Ambiental;
  - e) Elaborar o parecer técnico final da AIA.
2. A Comissão de Avaliação é constituída, em número ímpar de elementos, por:

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- a) Um representante de departamento governmental responsável pelo sector de avaliação impacto ambiental e controlo de poluição, que preside à Comissão;
  - b) Um representante de departamento governmental responsável pelo sector do turismo, comercio e industria;
  - c) Um representante de departamento governmental responsável pelo sector da saúde;
  - d) Um representante de departamento governmental responsável pelo sector da cultura;
  - e) Um representante de departamento governmental responsável pelo sector da infra-estrutura;
  - f) Técnicos especializados na área ou sector referente ao projecto, em número não inferior a dois;
3. no caso de um órgão governmental torna-se um defensor para o projeto de desenvolvimento, são excluídos da comissão para garantir a objetividade do julgamento.
4. As normas de funcionamento da Comissão de Avaliação são definidas em diploma próprio.

<sup>9</sup> **Article 23. Issuance of Environmental License**

5. ... No project can proceed to implementation without having an approved final decision of the evaluation procedure, an issued environmental license and payment of the environmental license fees, in accordance with the provisions of this law.

**Artigo 23.º Emissão da Licença Ambiental parte (5)** Nenhum projecto pode prosseguir a sua implementação sem ter a decisão final do procedimento de avaliação aprovado, a emissão da licença ambiental e o pagamento da taxa de licença ambiental, de acordo com o disposto neste diploma.

<sup>10</sup> **Article 34. Offenses**

5. The practice of any of the following offences is punishable by a fine of \$5,000 to \$50,000 in the case of a natural person, or \$25,000 to \$250,000 in the case of a legal person:
- a) The total or partial implementation of a project classified as Category A and B:
    - i. Contrary to the decisions set out under this statute;
    - ii. Without prior completion of the Environmental Assessment procedure prior to the award of the Environmental License under the provisions of this statute;
    - iii. Without completion of the procedure for issuing the Environmental License, pursuant to this statute;
    - iv. Without payment of fees under this statute.
  - b) The non-implementation of projects of category A or B, according to the defined in the EIS and the EMP approved pursuant to this Act and its supplementary regulations, includes its phases of construction, development and decommissioning;
  - c) Any obstacle or impediment, by the holder, to carry out any oversight given by the Inspectorate of the Environment;
  - d) Any project activity that causes environmental impact outside the scope of the approved environmental management plan;
  - e) Non-compliance with its obligation to register the project with the Environmental Authority, in accordance with Article 29;
  - f) Operation of project facilities without an environmental license;
  - g) Operation of project facilities without an adequate environmental license under the category of the project in accordance with the provisions of Article 28;
  - h) Operation of project facilities whose environmental license is suspended or expired;
  - i) Failure to comply with the conditions of the environmental license.

**Artigo 34.º Das Contra-ordenações parte (5)** Constitui contra-ordenação punível com coima de (USD) 5,000 a (USD) 50,000 no caso de pessoa singular, e de (USD) 25,000 a (USD) 250,000 no caso de pessoa colectiva, a prática de qualquer das seguintes infracções:

- a) A execução total ou parcial de um Projecto classificado como Categoria A e B:
  - i. Contrária às decisões definidas nos termos deste diploma;
  - ii. Sem prévia conclusão do procedimento de Avaliação Ambiental ou antes da atribuição da Licença Ambiental, nos termos do disposto neste diploma legal;
  - iii. Sem conclusão do procedimento de emissão da Licença Ambiental, nos termos do disposto deste diploma;
  - iv. Sem pagamentos das taxas previstas neste diploma.
- b) A não execução de projectos de categoria A ou B, de acordo com o definido no DIA e o PGA aprovados nos termos deste diploma e respectiva regulamentação complementar, nas suas fases de Construção, Desenvolvimento e Desactivação;
- c) Qualquer impedimento ou obstáculo, pelo titular, à realização de qualquer fiscalização determinada pela Inspeção do Meio Ambiente;
- d) Qualquer actividade do projecto que cause impacto ambiental fora do âmbito do plano de gestão ambiental aprovado;



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- e) Não cumprimento da obrigação de efectuar o registo do Projecto junto à Autoridade Ambiental, de acordo como artigo 29º;
  - f) Operação de instalações do projecto sem licença ambiental;
  - g) Operação de instalações do projecto sem a adequada licença ambiental de acordo com a categoria do projecto de acordo com o disposto do artigo 28º;
  - h) Operação de instalações do projecto cuja licença ambiental esteja suspensa ou fora de prazo;
  - i) O incumprimento das condições previstas na licença ambiental.

<sup>11</sup> “Any citizen who deems that the terms of the present law or any environmental legislation or regulation has been infringed or is at risk of being infringed is entitled to petition the courts, under the general terms of the law, to stop the causes of the said infringement and to secure the respective compensation, irrespective of having suffered or eventually suffering any damages or having a personal interest in the matter.

“Independentemente de ter interesse pessoal na demanda, qualquer cidadão, por si, ou através de organizações associativas, que considere terem sido violados ou estar em vias de violação as disposições da presente lei ou de qualquer acto legislativo ou normativo de protecção ambiental tem o direito de recorrer às instâncias judiciais para propor e intervir, nos termos previstos na lei, em processos principais e cautelares destinados à defesa do meio ambiente.”