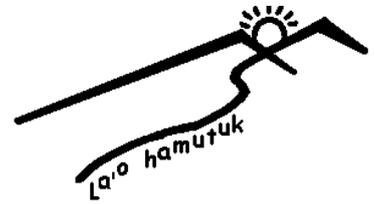


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## **Second submission to the State Secretariat for Environment Democratic Republic of Timor-Leste**

**from  
La'o Hamutuk**

**regarding the  
draft Basic Environmental Law**

**7 October 2011**

## **Introduction**

Last February, Secretary of State Abilio Lima invited La'ó Hamutuk to participate in the first public consultation on the draft Basic Environmental Law, and we appreciate that opportunity, as well as this second chance to offer input. At that time, La'ó Hamutuk made an extensive, detailed submission, with help from volunteer international environmental experts.<sup>1</sup> We hope that our inputs helped the State Secretariat for Environment improve this law so that it will provide long-term benefits to our people, the nation and planet earth.

We appreciate that the revised draft law currently under discussion is significantly better than the first draft. However, it still needs many improvements to effectively protect and advance Timor-Leste's environment and our people's lives. We believe that it is unfortunate that a wider public consultation was not undertaken, as the draft Law could be greatly improved by incorporating a broader range of civil society (not just two or three selected national NGOs), local communities, and especially vulnerable groups, women, and those whose livelihoods depend on the environment, such as farmers and fisherpeople.

Last week, the Government submitted Annual Action Plans for 2012 as part of the General State Budget documents. We do not see this law in the Plan from the Ministry of Economy and Development or any other agency, and wonder how seriously it is being taken. If there is indeed no intention to circulate, socialize, train or implement on this law during 2012, there is plenty of time for a more thorough public consultation prior to submitting it to the Council of Ministers a year from now.

This submission includes the following parts:

- 1. This draft law is better than the previous version..... 1**
- 2. However, some parts have changed for the worse..... 2**
- 3. In addition to improving the points mentioned above, we suggest a few revisions:..... 3**
- 4. Some important previous suggestions were not addressed, so we reiterate them..... 3**
- 5. Conclusion ..... 5**

## **This draft law is better than the previous version.**

Many articles of the law have been improved, and some incorporate suggestions from La'ó Hamutuk's earlier submission. In particular, we appreciate the following:

- ✓ The Preamble's emphasis of the State's responsibility to fulfill its obligations regarding the implementation of the international conventions ratified by Timor Leste. We also welcome Article 34, which recognizes that the State should implement measures for mitigation and adaptation to climate change and promote the reduction of greenhouse gas emissions. Timor-Leste should also advocate at international fora for climate justice and the reduction of GHG emissions by industrialized countries.
- ✓ Increased attention to the need for the State to protect and conserve a healthy environment for its intrinsic value, and not just for the economic benefits resulting from its exploitation. Article 4.a's objective to "reduc[e] environmental pressures at each stage of the life cycle of natural resources, decoupling the use of these resources for economic growth" is good, as is more consideration given to the conservation and protection of the environment components and specific ecosystems in Article 28.3; and the use of the broader concept of environmental heritage including culture and history in Article 29. However, we still believe that the law should be clearer about the inherent

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<sup>1</sup> Available at <http://www.laohamutuk.org/Agri/EnvLaw/11EnvBasicLaw.htm>, which also contains the Portuguese originals and our unofficial English translations of both versions of the law.

value of the environment and the ecosystem services it provides, as discussed on pages 1-2 of our previous submission.

- ✓ The addition of a Strategic Environmental Assessment (Article 13), recognizing that a narrow project-level approach is not always sufficient. This SEA, which needs a clearer definition, will consider policy, legislation, program, plan and project levels, as well as how elements of a multi-component project (such as Tasi Mane or the national electricity project) interact with each other.
- ✓ The integration of the concept of “environmental mainstreaming” in the law (Article 17), although it still needs clearer definition and implementation.
- ✓ The addition of “advertising” and “activities with harmful effects on countryside” in the article on visual pollution (Article 37.2).
- ✓ The unambiguous application of this and other environmental laws to the mining sector (Articles 30.1 and 31.1); small-scale or household extractive uses (previous Article 25.4 removed) ; the inclusion of extraction of sand and gravel from beaches (Article 31.2) as well as considering the cumulative impact of activities (Article 30.3).
- ✓ The use of the broader term “community authorities” instead of *Chefes do Suco* in Article 11. We hope that this includes *lia nian sira* and other traditional leaders.
- ✓ The clause “regardless of whether he has suffered or could suffer damage or has any personal interest” in Article 6.4, clarifying that someone doesn’t need to prove they have personally suffered to have standing to bring an environmental violation to court. We hope this will help everyone in Timor-Leste better understand their responsibilities to support the principles of this law. We also appreciate the clearer elucidation of the rights of anyone to raise legal cases to protect the environment in Articles 64.4, 64.5 and 65.4.
- ✓ The additional specificity in Article 50.2 about types of environmental information which should be available to the public. However, we continue to believe that the public consultation provisions of Decree-Law 5/2011 on Environmental Licensing are seriously flawed and should be revised.

### **However, some parts have changed for the worse.**

We realize that this second draft incorporates input from a variety of commentators, not all of whom give priority to protecting the environment. As a result, some revisions have weakened the law. Since these were not in the earlier draft, we would like to mention the most important ones.

- Instead of receiving special attention to ensure that their needs are addressed and their voices are heard, “vulnerable groups” are not considered at all in the revised law. Previous Article 11.1 gave specific attention to the participation of “vulnerable groups” in setting environmental policy, implementation and monitoring, and previous Article 6.5 discussed the importance of involving “women and vulnerable groups” in environmental decision making processes. We hope that this is a clerical oversight, and that these clauses will be restored and strengthened as suggested in our earlier submission.
- In the new Article 12.1 about Local Communities, the importance of involving local communities is merely *recognized* by the State, whereas it was *guaranteed* by Article 11.1 of the earlier draft.
- In Article 16 about Environmental Monitoring, the periodic review of changes in the quantity and quality of renewable and non-renewable natural resources which had been in Article 17.2(b) has been removed. For both renewable and nonrenewable resources, measuring changes in the quantity and quality is an essential part of the monitoring process.
- The promotion of “measures to facilitate alternatives to use of agrochemicals and fertilizers” in previous Article 29.3 has been removed from new Article 32.3 about Pollution Control. Considering the human, environmental, social and financial disasters caused by these substances in many countries, that clause should be restored.

- Former Article 20 about surface and groundwater previously defined an integrated water management plan to *regulate* various components, and our previous submission suggested that dams should be added to the items to be regulated. This article (Article 24) has been revised to say that the plan will *include* these elements, and “dams and water diversion” has been added. This law should not mandate that dams be included, although it should be sure to regulate them if they are.
- The definition of alternative energy (previous Article 2.12) has been removed, but the term is still used in Articles 19, 39.5 and 46.1(d). It should be restored.
- The definition of preventive principle (Article 5.c) has been changed to make considering the actions “in advance” apparently optional. The definition contained in previous Article 4.c should be restored.
- In the definition of participatory principle (Article 5.e), “planning” has been deleted. It should be restored.
- The definition of Environmental decommissioning plan has been removed and should be put back: A document that identifies the potential environmental impacts of the decommissioning phase of the project and provides the way they are managed and monitored.

**In addition to improving the points mentioned above, we suggest a few revisions:**

- The definition of waste should be rewritten. In particular, commercial waste and industrial waste should be clearly defined, as they are treated differently in Article 39.
- The definition of a “Strategic Environmental Assessment” (Article 1.d) is the same as the previous definition of “Environmental Assessment,” but both terms should be defined. A *Strategic Environmental Assessment* is not confined to the project at hand, but takes a broader view to encompass spatial planning, zoning, economic development and appropriate pricing of resources. This would also include mitigation of preventable natural disasters, such as landslides, floods and droughts.
- Articles 6(f) and 139.3 of the Constitution of Timor Leste should be cited in the preamble: “The fundamental objective of the State To protect the environment and to preserve natural resources;” and “The exploitation of the natural resources shall preserve the ecological balance and prevent destruction of ecosystems.”
- Article 8.3 should clearly guarantee the protection by the State of all types of *Tara Bandu*. The article is not clear that the State must protect all the types of *Tara Bandu*, or only actions of *Tara Bandu* carried out by the State. This should be defined better and developed further.
- The current draft is less clear on the distinction between renewable and non-renewable resources. For example, Article 30.2 states that “the extraction of nonrenewable natural resources must be made in a sustainable manner,” which is an oxymoron. We encourage prioritizing protection and conservation of both renewable and nonrenewable natural resources, rather than advocating less injurious ways to use them.
- In Article 69 about Environmental Audits, the “significant risk of serious irreparable harm to the environment” mentioned in Article 69.1 should also be included in Article 69.2. In addition, Environmental Audits should include the opportunity for public participation and comment, and their results should be published and reported back to affected communities.

**Some important previous suggestions were not addressed, so we reiterate them.**

- In the Explanatory Memorandum, it would be better to quote all of Article 61 of the Constitution instead of paraphrasing it.

- Unfortunately, there were no public consultations in the districts as claimed in the Explanatory Memorandum.
- The following important definitions should be added or improved:
  - Ecosystem Services: include services provided by ecosystems that benefit humans including water purification, pollination, erosion control, soil formation and nutrient recycling, as well as providing cultural and aesthetic resources. Eco-tourism made possible by intact natural environments can help development and provide employment and other benefits to the nation and to local communities.
  - Vulnerable Groups: include women, the elderly, youth, poor, ethnic minorities, religious minorities, the disabled and displaced persons, subsistence farmers and fishers.
  - Endangered species: Another category of “threatened species” should be defined to cover species which are endangered locally but not globally, or don’t quite make the international listing criteria.
  - Protected area: The definition may be too vague or narrow. In Timor-Leste this should include areas with multiple values of national and/or international importance (biodiversity, culture, history, prehistory, geology, landscape, terrestrial, tourism, freshwater and marine etc.).
  - Degradation or environmental damage: The definition should also include reduction in biodiversity or population, fertility of land, groundwater, atmospheric composition (e.g. emission of greenhouse gases).
  - Sustainable development: The definition should include cultural aspects and the maintenance of “environmental services.”
  - Environmental management: The planned, coordinated and directed process to make and implement decisions to regulate the interaction of humans with the natural environment to ensure sustainable use of environmental components and the environmental services they provide, the appropriate protection of threatened, rare and endangered species and their habitats, threatened, rare and endangered environments, preservation of culturally significant components and sustainable development of economy.
  - Spatial planning: This needs to include coastal, marine and seabed areas.
  - Waste: Should specify that it can be solid, liquid or gaseous. Some “waste” is not worthless, but could be recycled (for example, discarded plastic water bottles or junked cars), used (e.g. sawdust) or has value (such as natural gas flared from Kitan).
  - Pollutants: Make consistent with Pollution. It is not only ‘gases and waste,’ as other materials may be accidentally or deliberately released in to the environment and cause pollution. Chemical fertilizers and pesticides are also pollutants, even if they may provide some benefit.
- Add state responsibilities to protect ecosystem services, educate the public, establish regulations and institutional structures to implement this law, and cooperate with other agencies.
- Prioritize scientific expertise and evaluation in making decisions, to balance political and commercial pressures; increase capacity and resources in scientific analysis (Article 5 (d) and others).
- Improve the quality, quantity, accuracy, and completeness of information distributed to the public, (Articles 4, 6.2, 16, 51).
- Improve coordination with land and planning related processes and legislation (Articles 5, 18).
- Add Environmental Quality Standards on biodiversity and cultural resources (Article 14). Also, WHO standards are inadequate in the interim (Article 68).
- Ban the importation of genetically modified organisms (Article 27.2).

- Include concerns about negative environmental impacts of some forms of alternative energy (Article 19).
- Remove support for carbon and emissions trading (Article 46.1(e)).
- Establish a Government-wide environment policy for procurement and construction.
- Clarify how compensation and benefits will be distributed to communities.

## **Conclusion**

We thank the State Secretariat for the Environment (SEMA) for holding a second consultation before the draft law is signed off. We hope that it is still possible to improve on this draft before the law is submitted to the Council of Ministers.

As always, La'o Hamutuk appreciates your consideration of our ideas. We are happy to meet or try to answer questions. We look forward to continuing our involvement in the process of developing Timor-Leste's legal framework to protect our environment, and are confident that a broad and deliberative process will produce a law which can protect our environment and the interests of our citizens.

Thank you.

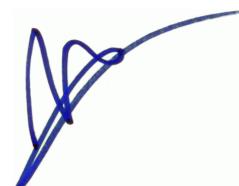


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