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**Submission to the
State Secretariat for Environment
Ministry of Economy and Development
Democratic Republic of Timor-Leste**

**From
La'o Hamutuk**

**Regarding the
draft Biodiversity Decree Law**

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La’o Hamutuk appreciates the invitation from Hon. Egídio Guimarães of the National Directorate for Environment to participate in this public consultation, and we hope that our suggestions are helpful in improving this law. However, we are concerned about the short time available for this consultation, and that there appears to be a last-minute rush for the Council of Ministers to enact this law before the Government mandate expires in less than three months. It would be wiser, and produce a better outcome, to wait until after the elections and have this law enacted by the Government which will be responsible to implement it.

La’o Hamutuk has given input to many stages of the creation of Timor-Leste’s legal framework for protecting the environment and using our natural resources sustainably. With the help of volunteer experts, we made a 48-page submission¹ on the first draft Basic Environmental Law in February 2011; and after this draft was revised, we made a second submission² in October 2011. Today, La’o Hamutuk is pleased to be given the opportunity to share our views with the State Secretariat for Environment (SEMA) regarding the draft Biodiversity Decree Law.

1) Introduction

It is imperative to adopt measures to preserve Timor-Leste’s biodiversity, because our current economic development model, based on exploiting nonrenewable oil and gas, puts our environment under pressure. Extractive industries are world-renowned for their huge ecological footprint and environmental destruction, as well as problematic socio-cultural impacts. In addition, the implementation of the many large, environmentally-intrusive infrastructure projects envisioned in the National Strategic Development Plan will inevitably lead to the loss of agricultural or natural land and sea ecosystems, including their living organisms. Our rapidly increasing population also creates challenges in protecting our environment.

Although a healthy environment can provide economic benefits through activities like ecotourism, ecosystems are also intrinsically invaluable, as they provide many services essential for human beings, such as water purification, pollination, erosion control, soil formation and nutrient recycling, as well as offering cultural and aesthetic values. In addition, most Timorese live within the natural environment in rural communities and towns, depending directly on the environment’s resources for their lives and livelihoods, and relying on it to protect them from “natural” disasters.

Therefore, we believe that Timor-Leste’s legislation on biodiversity is more important than merely fulfilling the country’s obligations under the Convention on Biological Diversity, as stated in the introduction of this draft Decree Law. Protecting our biological diversity is a national imperative for the well-being of Timor-Leste people. It is our most valuable – indeed priceless – asset.

2) Important elements introduced

To begin with, we would like to highlight some important positive elements in this draft decree law.

From a sustainable development perspective, biological diversity should not be considered merely a resource to be exploited for financial gain. Therefore, we welcome the inclusion of the principle of “intrinsic value” in Article 4(a). Although this is fundamental, it is unfortunately often forgotten in international fora that see economic valuation of biodiversity as a universal solution.

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

² Available at <http://www.laohamutuk.org/Agri/EnvLaw/Sep11/LHsubLeiAmbiental7Oct2011.pdf>.

We strongly agree with the “recognition, support and use of Tara Bandu” (Article 34), which attempts to respect Timor-Leste’s traditional system and values. Too often, the imposition of an alien model has led to the destruction of traditional societies, without providing an appropriate, workable alternative. As local communities are the traditional owners and managers of local resources, their rights and traditions must be respected. Similarly, the consideration, in environmental assessments, of the impacts on “areas subject of cultural or traditional protection mechanisms such as Tara Bandu” (Article 41.2(b)) is essential.

La'o Hamutuk is often critical of the lack of consultation and participation of local citizens and communities prior to the approval and implementation of projects, programs, policies and legislation. This negligence can cause failures and conflicts, and it violates people’s basic rights. Therefore, we appreciate the mention of the minimum requirements for consultation and public participation in Chapter 11. However, we believe the consultation process must also involve people in the communities, and cannot be limited to the “local authorities” level, as mentioned in the English version of this draft decree-law. Public participation (guaranteed by Article 59) with no prior public consultation is mere socialization. In terms of biodiversity management, it is simply not acceptable. The content of the Tetum version, which specifies “komunidade lokál”, should be preferred, as it refers to the right of each individual, as a stakeholder (“any person who ... will be indirectly or directly affected” (Article 1(bb))), to be consulted.

Regarding the genetically modified organisms (GMO), we welcome the wise decision to adopt the precautionary principle and to strictly prohibit any activity involving GMO (Article 39.3), as there is still uncertainty about their long-term environmental effects, complex potential ecological interactions and impacts on biodiversity. However, we are worried about future laws and regulations which will govern the trade and use of GMO. We hope there will be a broad public consultation before they are enacted, and that Parliament will be allowed to debate and approve them. Timor-Leste’s government should be brave enough not to bow to powerful laboratory and industry lobbyists, and protect our country and population from unnecessary risks.

3) Fundamental issues causing our concern

We would like to share our concerns regarding some fundamental issues raised by this decree law.

Protection of biodiversity requires balancing conflicting interests and viewpoints:

- Despite the stated goal of conserving biological diversity, especially for its intrinsic value, we want to put a monetary price on nature, as well as to exploit genetic resources for profit;
- Despite a stated commitment to respect communities’ traditional ownership and management of biological resources, we attempt to transfer these rights to the private sector.

La'o Hamutuk believes that there are clear choices to make if we want to preserve our biodiversity, traditional values and communities’ rights.

Timor-Leste’s government should fully exercise its responsibility to provide public services and protect the environment, and should not hand over this responsibility to the private sector (Articles 56.1; 56.5). By its very nature, the private sector’s goal is to maximize its short-term profits, not to consider social, environmental, or human concerns. Privatizing the management of biodiversity puts the Nature at considerable risk, reduces communities’ control over biological resources, and opens a door to bio-piracy.

Although this draft law does not clearly express it, it addresses intellectual property rights and of patenting of living beings. The theoretical “fair and equitable sharing of benefits arising from the

utilisation of genetic resources and their derivatives with local communities" (Article 48.3(c)) barely happens, and instead profit-generating monopoly rights are created to benefit companies and institutions. The example of pharmaceutical industries blocking the distribution of generic drugs illustrates this point. "Private entities"(Article 34.4) should not be involved in "the documentation and research into traditional knowledge and practices such as Tara Bandu."

La'o Hamutuk believes Timor-Leste's government should promote community management and control over biodiversity, as well as locally-developed sustainable resource practices.

We should think twice before accepting the currently fashionable idea that economic valuation of biodiversity is adequate enable sustainable use of biological resources and conservation of biodiversity (Article 57). The effort to commodify and privatize public goods converts treasures whose principal value is not economic into soulless, tradable manufactured goods. Land, for example, is much more than an asset that can be sold through the transfer of property rights. It defines our identity, roots us to a specific socio-cultural environment, provides food, connects us with our ancestors, and as a part of the cosmos, is associated with our spiritual life. All these precious non-economic values are still strong in our country, and we should protect them. Putting a monetary price on biodiversity is even more dubious, as we are dealing with life. Losing biodiversity is one of the highest costs we could ever have to pay, as life is irreplaceable and the damage irreversible. Timorese people know how valuable our Nature is, and we do not need to price it in dollars.

Market-based mechanisms, which are promoted along with privatization, commodification and economic valuation of biodiversity, should not be used. Indeed, markets are motivated by profit, not environmental concerns, and they are characterized by irrationality and speculative exuberance, as demonstrated by the recent global financial crisis. It would be totally irresponsible to rely on market forces to protect biodiversity. Carbon trading schemes and credit mechanisms (Article 56.3) have already proved incapable of reducing greenhouse gas emissions – they mainly serve the interests of investment banks and transnational companies, increasing social and environmental injustice. Instead, measures like public investment in renewable energy and environmental-friendly technologies, a tax imposed on polluters, or other appropriate legislation should be explored.

Biodiversity conservation should be mainstreamed, as it is a global concern and can be injured by or provide benefits to many sectors. In particular, the Ministries in charge of infrastructure, agriculture, economic development, and natural resources should integrate the goal of biodiversity conservation into their programs, and agencies responsible for health, education and local communities should also be involved. Without a multi-sectoral approach, we will not be able to address the complex issues posed by biodiversity conservation.

4) Other comments

In addition to the fundamental issues above, we would like to add a few specific comments:

- The Biodiversity Advisory Committee, in charge of providing scientific and technical advice regarding sustainable use of biological resources and the conservation of biodiversity, should integrate relevant local traditional knowledge-owners, so that this committee can make appropriate recommendations.
- Chapter 5, concerning the "Threats to biodiversity and biological resources", should list the potentially negative effects of human activities, as they are the main source of pressure. This would help identify the principal actors concerned and prevent biodiversity damage. Article 40, transferring this identification effort to the Ministry responsible for the environment, is not

appropriate. In addition, Article 40 is focused on climate change, instead of, for example, citing infrastructure projects as a cause of biodiversity loss.

- In Article 49.3, why is this information only shared with the “Ministry responsible for agriculture, fisheries and forestry?” The Ministries of Education and Health, and other relevant agencies should also be informed.
- In Article 71(c), as the “degree of contrition demonstrated by the responsible person or persons” may not be sincere, we suggest considering their willingness to accept responsibility and demonstrated behavior change.

5) Conclusion

We thank the State Secretariat for the Environment (SEMA) for requesting our input on this draft Decree-Law. We believe that fundamental issues raised by this Law deserve a broader, longer consultation.

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 continued involvement in developing Timor-Leste's legal framework to protect our environment.

Thank you.