

DRAFT FOR DISCUSSION

Environmental Impact Assessment Legislation Law

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DEMOCRATIC REPUBLIC OF TIMOR-LESTE

NATIONAL PARLIAMENT

Environmental Impact Assessment Legislation Law

The Constitution creates rights and obligations for the State and for the people of the Timor-Leste in relation to the environment and in particular the Constitution recognises and provides for:

- a) rights to a humane, healthy and ecologically balanced environment;
- b) the need to preserve and rationalise natural resources; and
- c) the State to promote actions protecting the environment and safeguarding sustainable development.

Taking into account that the development of law for the protection of the environment and sustainable development is a basic issue for the Timor-Leste's domestic policy.

And also taking into account that the Constitution provides for environment policy and legislation to have direct impact on economic policy and the management of economic sectors that especially relate to natural resources which then enables direct intervention by environment policy and law in the management rules and practices of economic sectors.

There is established a need for laws that further those principles which:

- a) allow the Minister responsible for environment to issue policies on the environment and sustainable development;
- b) begin to fulfil the provisions of section 61 of the Constitution in relation to the protection of the environment of Timor-Leste;
- c) assist in identifying, predicting and evaluating the foreseeable environmental consequences of development proposals;
- d) apply economic, environmental and social factors to the approval processes of development proposals that have the potential for significant impact on the environment;
- e) provide for open decision making by Government and allow for the participation of the community in decision making for development proposals that have environmental impacts;
- f) prevent developments that have a significant environmental impact.

Accordingly pursuant to Section 95 and in particular section 61, paragraph (f) of section 6 and item 3 of section 139 of the Constitution, the National Parliament enacts the following that shall have the force of law.

Part 1 - Preliminary

Section 1. Definitions

Authorised Person means a person authorised in writing by the Director and includes the Director.

Development Proposal means an industrial or commercial activity, building or structure.

Division of Environment means the Division established as an organisational unit of the public administration of Timor-Leste that has responsibility for the Environment.

Endangered species has the same meaning as in Regulation 2000/19 on Protected Places.

Environmental Impact Assessment Process includes:

- a) An Environmental Impact Statement;
- b) An Environmental Management Plan.

Environmental Impact Statement means the document that contains the results of the comprehensive study of the significant environmental impacts of a development proposal.

Environmental Management Plan means the document which sets out the way the environmental impacts identified in the environmental impact statement will be managed and monitored.

Environmentally Sensitive Area means:

- a) Any Protected Area defined under Regulation 2000/19
- b) Any area where a development proposal is likely to have an adverse impact on a threatened species;
- c) A sacred site
- d) Atauro Island;
- e) A National Park;
- f) A coastal or marine park;
- g) A mangrove area;
- h) A recharge area for an aquifer or a water spring; or
- i) A wetlands area.

Line Agency means the organisational unit of the public administration of Timor-Leste that is authorized to make decisions on the authorisation for licensing or permitting of a development proposal.

Minister means the Minister assigned responsibility for environment and includes a person to whom a power or function has been delegated under **section 4**.

Proponent is the person, company or institution responsible for the development proposal to be undertaken.

Protected Place means a protected wild area specified in Regulation 2000/19.

Regulation is a reference to a Regulation promulgated under the United Nations Transitional Administration in East Timor.

Sacred Site means a sacred site under customary law.

Screening Criteria are the provisions of **section 8** and the criteria that is applied by the Division of Environment to categorise a development proposal in accordance with **section 10**.

Significant Environmental Impact means an impact on the environment as a result of an activity which is likely to cause major harm or damage to people, fauna, flora or their habitat and may be further defined by guidelines issued under this Law.

Terms of Reference means the scope of the study for an environmental impact assessment process for a development proposal, and includes processes for community consultation.

Timor-Leste means the Democratic Republic of Timor-Leste.

Section 2. Application of the Law

- 1) This Law also binds the organs of Government of Timor-Leste.
- 2) The scope of this Law extends and applies to the territorial seas and the exclusive economic zone of Timor-Leste.

Section 3. Repeal of Indonesian Law

When this Law comes into effect the laws of Indonesia relating to Environmental Impact Assessments as Regulation 1999/1 applied them are repealed.

Section 4. Delegation of Powers and Functions

- 1) A power or function provided to the Minister under this Law may be delegated by the Minister in writing to a person who holds an office of Vice Minister or Secretary of State of the Government of Timor-Leste.
- 2) A delegation issued under **sub-section** (1) must specify the reporting requirements of the person receiving the delegation and may be:
 - a) limited in duration;
 - b) restricted in relation to a particular matter or issue; and
 - c) restricted to particular sections of this Law.
- 3) A delegation of a power or a function under **sub-section** (1) may not be further delegated by the person nominated in the instrument of delegation.
- 4) The delegation of a power or function by the Minister does not prevent the Minister from exercising that power or carrying out that function.

Part 2 – Environment Policy

Section 5. Environment Policy

- 1) To provide a context for the preparation and assessment of and decision making about the Environmental Assessment Process in this Law the Minister may, after considering the recommendations of the Division of Environment, issue policies on the environment (including sustainable development) that:

- a) set the principles for environmental management for Timor-Leste;
 - b) establish environmental performance standards to be applied in managing the natural resources of Timor-Leste;
 - c) establish principles for integrating environmental programs and projects across all organs of the government of Timor-Leste; and
 - d) establish principles for educating the people of Timor-Leste about environmental protection and management.
- 2) Before policies are issued under **sub-section** (1) there must be consultation with Line Agencies.

Part 3 – Environmental Impact Assessment Process

Section 6. The Environmental Impact Assessment Process

- 1) The Environmental Impact Assessment process comprises the following steps:
 - a) the submission of a development proposal by a proponent to the Line Agency;
 - b) the Line Agency providing the development proposal to the Division of Environment;
 - c) the Division of Environment after consultation with the Line Agency applying screening criteria to the development proposal to categorise the development proposal;
 - d) the preparation of Terms of Reference by the proponent and the approval, rejection or modification of the Terms of Reference by the Minister;
 - e) the lodgement of a processing fee by the proponent with the Division of Environment after the Terms of Reference have been approved;
 - f) the preparation of a draft Environmental Impact Statement and an Environmental Management Plan by the proponent;
 - g) the review by the Division of Environment of the draft Environmental Impact Statement and Environmental Management Plan to establish compliance with the guidelines issued under this Law;
 - h) the display of the Environmental Impact Statement and Environmental Management Plan by the proponent for public comments and consideration;
 - i) the submission by the proponent of the completed Environmental Impact Statement and Environmental Management Plan to the Division of Environment for assessment;
 - j) the preparation of a report by the Division of Environment to the Minister recommending a decision about the development proposal;
 - k) a decision of the Minister to approve or reject a development proposal only after considering a recommendation of the Division of Environment.
- 2) Despite any provision in any law a decision of the Minister not to approve a development proposal under **section 15** prevents a development proposal from occurring.

Section 7. Responsibility for Environmental Impact Assessment Process

- 1) The Minister is responsible for:
 - a) approving the Terms of Reference; and

- b) approving or not approving a development proposal.
- 2) The Division of Environment is responsible for:
 - a) managing the Environmental Impact Assessment Process; and
 - b) monitoring compliance by the proponent with the provisions of this Law and any guidelines issued under this Law.
- 3) The Division of Environment is required to manage the Environmental Impact Assessment Process cooperatively with the Line Agency and any other Agency that has an interest in or is impacted by the development proposal.

Section 8. Development Proposals to Which the Environmental Impact Assessment Process Applies

- 1) An Environmental Impact Assessment is required of a development proposal that:
 - a) is proposed to be sited or conducted in or in close proximity to an Environmentally Sensitive Area;
 - b) involves any of the following industries or activities:
 - i). Mining;
 - ii). Hazardous or dangerous chemicals as a core aspect of the industry or activity;
 - iii). Petroleum, petrochemicals or hydrocarbons;
 - iv). Coffee processing that involves 'wet' processing methods;
 - v). Plant or farming projects that may introduce foreign species; or
 - vi). Major government infrastructure projects, including major irrigation projects;
 - c) is of a kind specified in guidelines issued under this Law; or
 - d) is considered by the Minister on the recommendation of the Division of Environment to have the potential for significant environmental impact.
- 2) Guidelines issued under this Law may specify activity levels or types of activities in development proposals that are included in or exempt from the whole or any part of the Environmental Impact Assessment Process.
- 3) In exercising the power under **sub-section(1)(d)**, the Minister may take into account the effect incremental development has had and the further environmental impact a development proposal may have on the area where the development proposal is proposed.
- 4) The onus is on the proponent to prove that a development proposal will not have a significant detrimental effect on the environment.

Section 9. Submission of a Development Proposal

The proponent must forward a development proposal to the Line Agency with the following information:

- a) the location and scale of the development proposal;

- b) all plans and drawings of the development proposal;
- c) any feasibility study for the development proposal;
- d) the name of the proponent and the proponent's contact details;
- e) the composition of any syndicate that comprises the proponent;
- f) any formal documents from a Line Agency about the development proposal; and
- g) any consultation conducted about the development proposal.

Section 10. Screening of Development Proposals

- 1) The Division of Environment is responsible for the decision whether a development proposal is required to proceed through the Environmental Impact Assessment process.
- 2) The Division of Environment must make a decision under this **section** and advise the proponent within 30 days of receiving the development proposal from the Line Agency.
- 3) Decisions made under this **section** must apply one of the following categories to a development proposal:
 - a) Category A – the proponent is required to undertake an Environmental Impact Assessment;
 - b) Category B – the proponent is required to develop an Environmental Management Plan only; or
 - c) Category C – the proponent is not required to undertake an Environmental Impact Assessment or develop an Environmental Management Plan
- 4) The Division of Environment must consult with the community leaders in the area affected by the development proposal before a decision is made under **sub-section (3)**.

Section 11. Preparation of Terms of Reference

- 1) The proponent is responsible for developing the Terms of Reference.
- 2) Draft Terms of Reference approved by the Division of Environment must be published by the proponent in a daily newspaper and in the Gazette and invite comments from the general public within 30 days of the publication.
- 3) The Division of Environment must prepare a report to the Minister within 30 days of the close of public comments under **sub-section (2)** which must recommend one of the following actions:
 - a) that the Terms of Reference be approved;
 - b) that the Terms of Reference be approved with amendments to take into account matters it considers necessary for a proper assessment to be undertaken of the development proposal; or
 - c) that the Terms of Reference be not approved.
- 4) The Minister is responsible for approving or not approving Terms of Reference only after considering the report and recommendation of the Division of Environment under **sub-section (3)**.

- 5) If the Minister does not follow the recommendation of the Division of Environment, he or she must by memorandum set out the reasons and that memorandum is to be published in the Gazette within 10 days of the decision.

Section 12. Preparation and Review of Draft Environmental Impact Statement and Environmental Management Plan

- 1) The proponent is responsible for the preparation of the draft Environmental Impact Statement and Environmental Management Plan and during the preparation process must:
 - a) conduct community forums with the community affected by the development proposal; and
 - b) make the draft Environmental Impact Statement and Environmental Management Plan generally available and facilitate access by the public to that documentation.
- 2) The Division of Environment may require amendments to the draft Environmental Impact Statement and Environmental Management Plan so there is compliance with the guidelines issued under this Law before the proponent begins public consultation under **section 13**.

Section 13. Public Display of Approved Environmental Impact Statement and Environmental Management Plan

The proponent is responsible for the public display of the Environmental Impact Statement and Environmental Management Plan and must:

- a) comply with the guidelines for public display issued under this Law and any specific instructions of the Division of Environment for community consultation;
- b) have the Environmental Impact Statement and Environment Management Plan on public display for at least 30 days; and
- c) actively facilitate comments by the public.

Section 14. Assessment of Development Proposal

- 1) The Division of Environment is responsible for assessing the impacts of a development proposal on the environment based on the Environmental Impact Statement and Environmental Management Plan.
- 2) In undertaking an assessment, the Division of Environment may constitute a Committee to hear further submissions about the development proposal and its environmental impacts. The Committee is not bound by the rules of evidence and is open to the public.
- 3) In any case the Division of Environment must prepare a report to the Minister within 30 days of the close of public comments under **section 13** which must recommend one of the following actions:
 - a) that the development proposal proceed as set out in the Environmental Impact Statement and Environmental Management Plan;

- b) that the development proposal proceed but with conditions or restrictions the Division of Environment considers necessary for the protection of the environment; or
- c) that the development proposal not proceed because the environmental impacts outweigh the benefits.

Section 15. Development Approval

- 1) The Minister is responsible for approving or not approving:
 - a) a development proposal; and
 - b) an Environmental Impact Statement and an Environmental Management Planafter considering the report and recommendation of the Division of Environment under **section 14**.
- 2) If the Minister does not follow the recommendation of the Division of Environment, he or she must by memorandum set out the reasons and that memorandum is to be published in the Gazette within 10 days of the decision.

Section 16. Application of the EIA Process to Government Departments and Instrumentalities.

The Environmental Impact Assessment process in this Part applies to all organisational units of the public administration of Timor-Leste and the relevant organisational unit becomes the proponent.

Section 17. Transparency

- 1) The Division of Environment will establish and maintain a register of all Environmental Impact Assessments undertaken under this Law that contains:
 - a) copies of all documents relating to the Environmental Impact Assessment process of any development proposal ; and
 - b) copies of any decision made by the Minister or the Division of Environment in relation to any step in the Environmental Impact Assessment Process of any development proposal.
- 2) The register will be available for inspection at no fee by the public during normal working hours at the Division of Environment.

Section 18. Environmental Management Plans for Category B Development Proposals

- 1) The Division of Environment is responsible for the approval of Environmental Management Plans in relation to a development proposal that is categorised as Category B under **section 10**.
- 2) The proponent is responsible for the preparation of an Environmental Management Plan in accordance with the guidelines issued under this Law.

- 3) Before approving an Environmental Management Plan the Division of Environment must be satisfied that the proponent has:
 - a) Actively consulted for at least 30 days with the community affected by the development proposal; and
 - b) If necessary, incorporated an agreement required under **section 19** in the Environmental Management Plan

Section 19. Special Provisions for Traditional Customs and Rights

In the case of a development proposal that affects traditional land use, customs or rights, the proponent is obliged to include in the Environmental Management Plan an agreement with the affected community that provides for the protection of and respect for the traditional land use, customs and rights of that community.

Part 4 – Enforcement and Legal Provisions

Section 20. Enforcement

- 1) The proponent is required to construct operate, manage and monitor a development proposal in accordance with the Environmental Impact Statement and Environmental Management Plan approved under this Law. .
- 2) If a person fails to comply with **sub-section (1)** he or she is liable to a penalty of at least \$5000 and no more than \$50,000.

Section 21. Offences

- 1) It is an offence to undertake a Category A development proposal without:
 - a) the approval of the Minister under **section 15**; and
 - b) an approved Environmental Impact Statement and an Environmental Management Plan.
- 2) It is an offence to carry out a Category B development proposal without an approved Environmental Management Plan.
- 3) The issue of a notice by the Division of Environment to the person who has undertaken a development proposal stating that the proposal is a Category A proposal or a Category B proposal is sufficient proof of that category.
- 4) The Division of Environment after consultation with the Line Agency has the following powers in relation to a development proposal which is the subject of this **section**:
 - a) in the case of a Category A proposal, require the development proposal to cease occurring, be dismantled or deconstructed;
 - b) in the case of either Category A or B, require the proponent to fully rehabilitate any site or area that has been affected by the development proposal; and

- c) in the case of either Category A or B if rehabilitation is not practical, require the proponent to pay compensation for any damage that has or impacts that have occurred as a result of the development proposal.
- 5) A proponent to whom this **section** applies is also liable to a penalty between \$5,000 and \$50,000 as the Court determines.
- 6) Compensation under this **section** as it relates to a payment by the proponent to the Government of Timor-Leste will be determined by a Court or tribunal of competent jurisdiction.
- 7) Nothing in this **section** interferes with or removes customary law as a means of establishing compensation for a natural person.

Section 22. Appeals

- 1) Every person has the right to appeal on a matter of law to a Court or tribunal of competent jurisdiction against the use of a power or the issue of a notice under this Law by the Minister, or the Division of Environment.
- 2) An appeal must be lodged with the Court within 90 days of a decision being made or a notice being issued.

Section 23. Court Jurisdiction

A Court of Competent Jurisdiction established under **section** 123 of the Constitution is empowered to hear and determine prosecutions and impose penalties under this Law or until such a Court is established the Dili District Court.

Section 24. Prosecutions

Proceedings for an offence against this Law may be brought only by an authorised person.

Section 25. Delegated Legislation

The Minister is empowered on the recommendation of the Division of Environment to issue:

- a) Guidelines for the purposes of section 8;
- b) Guidelines for screening criteria, including categorising development proposals into Category A, Category B and Category C for the purposes of **section** 10;
- c) Guidelines for developing Terms of Reference for preparing an Environmental Impact Statement;
- d) Guidelines for preparing Environmental Impact Statements and Environmental Management Plans ;
- e) Guidelines for assessing Environmental Impact Statements and Environmental Management Plans;
- f) Guidelines for public consultation to be followed by a proponent;
- g) Any other Guidelines that are necessary for the effective implementation of this Law;
- h) Rules setting Environmental Impact Assessment processing fees.

Section 26. Records of Division of Environment

In any proceedings before a Court about an offence under this Law, the records of the Division of Environment are sufficient to establish any fact the records relate to in those proceedings, until the contrary is proven.