

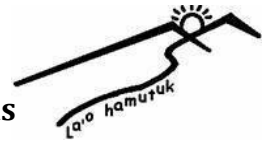
La'ó Hamutuk

Timor-Leste Institute for Development Monitoring and Analysis

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Dili, 11 September 2018

To: Taur Matan Ruak, Prime Minister, RDTL
Re: The VIII Government giving power to the Ministry of Petroleum and Minerals to issue environmental licenses does not follow principles of good governance and will jeopardize the integrity of the RDTL Environmental Authority.

Cc: Demetrio Amaral de Carvalho, Secretary of State for the Environment
Hermenegildo Pereira, Interim Minister of Petroleum and Minerals
Fidelis Magalhaes, Minister of Legislative Reform and Parliamentary Issues
Amenica Marcal Machado, National Director for the Control of Pollution and Environmental Impacts
Francisco Guterres 'Lu-Olo', President of the Republic
Arão Noe, President of National Parliament
Virginia Ana Belo, President of Commission D, National Parliament
Media and the public

With respect,

La'ó Hamutuk is a non-governmental organization which for years has done research, analysis and political advocacy with the main objective to help leaders in their work to decide wisely about development policies which will be sustainable and give benefits to all people in our beloved nation.

Through this letter, La'ó Hamutuk requests your immediate attention and action regarding Decree-Law No. 14/2018 of 17 August, *Orgânica do VIII Governo Constitucional* (VIII Constitutional Government's Organization) which poses a threat to the independent, accountable and transparent implementation of environmental licensing laws designed to preserve and protect Timor-Leste's natural environment.

Environmental Licensing serves to protect our environment and people’s lives; there cannot be any conflict of interest in the process.

The goal of environmental licensing processes is to ensure that the fundamental spirit of our Constitution is upheld, such as Article 6(f) about the state’s objective “*to protect the environment and to preserve natural resources*”. Article 61.3. of the Constitution declares: “*The State should promote actions aimed at protecting the environment and safeguarding the sustainable development of the economy.*” And also in Article 139.3. “*The exploitation of the natural resources shall preserve the ecological balance and prevent destruction of ecosystems.*”

In order to implement the responsibilities noted above, the State must ensure there is independence – meaning no conflict of interest – in the environmental licensing process for large projects which may have serious impacts on people’s lives, environment, wealth and future. La’o Hamutuk views Decree-Law 14/2018, and especially Article 33.1(o)¹ as threatening Timor-Leste’s environment and sustainable development goals.

Article 33.1(o) of Decree-Law 14/2018 gives the Ministry of Petroleum and Mining (MPM, formerly MPRM) the power to carry out the environmental licensing process, including the approval of environmental licenses, in the petroleum and mining sector. Decree-Law 14/2018 also lists other roles of MPM which demonstrate a conflict with the environmental licensing process, such as to guarantee maximum participation in Timor-Leste’s activities in the petroleum and mining sector, and to promote opportunities in this sector through attracting and ensuring foreign investments.²

In Decree-Law 14/2018, MPM is also given the role of coordinating the implementation of the Tasi Mane Project (Art.33(h)), and deciding on the contractual terms with companies seeking to exploit our natural resources and issue licenses related to mining activities (Art.33(i)).³

We note that MPRM had various programs in their previous 2012-2017 plan, establishing institutions to support their work to do research about and monitor Timor-Leste’s petroleum, gas and mineral wealth. These institutions have included ANP-ANPM, TimorGAP, IPG, and Minas de Timor (MT). Besides this, through the management of the Extractive Industries Transparency Initiative (EITI), MPRM has promoted transparency and good governance at an international standard.⁴

¹ “o) Considerando a complexidade e especialidade tecnica do setor do petroleo e recursos minerais, conduzir os respetivos procedimentos de licenciamento ambiental e aprovar as correspondentes licencas ambientais nesse setor;”

² “c) garantir a maxima participação de Timor-Leste na atividade do setor do petroleo e recursos minerais atraves dos instrumentos juridicos, administrativos e tecnicos adequados;” no “ d) promover as oportuidades nacionais no setor de modo a atrair e fixar o investimento externo a ele consagrado.”

³ h) no coordenar a execucao do projeto ‘Tasi mane’, criando as estruturas juridicas e institucionais consideradas necessarias ou adequadas para o mesmo e, licenciar e monitorizar as atividades desenvolvidas em zonas territorialmente dedicadas ao projeto ‘Tasi Mane’; i) determinar, de acordo com as condicoes gerais previstas na lei, os termos contratuais especificos de prospecao e aproveitamento dos recursos petroliferos e das licencas de mineracao;

⁴ MPRM’s information packet to the National Parliament’s Commission C and D, page 5. To see the complete document, see <https://www.laohamutuk.org/econ/OGE15/MPRM/MPRMIntro.pdf>

These entities were established to implement the program of the State and to serve the people's interests. MPM continues to broaden their institutions and their power in the petroleum and mining sector, but their power cannot include the power to approve and issue environmental licenses for their own projects. La'o Hamutuk worries about the real possibility that these entities will not show the will and responsibility to follow the Environmental Licensing Law that already exists. MPM makes regulations for the petroleum and mining sector, but they must continue to respect the law, its processes and the power of other State entities on certain issues such as land rights, security, health, protected areas and environmental licensing.

Environmental regulations already have clear principles, mechanisms and processes.

Six years ago, Timor-Leste enacted its own Base Law on the Environment, Decree-Law 26/2012 (DL26/2012), no Decree-Law 5/2011 (DL5/2011) about Environmental Licensing. While implementation of the laws is a work in progress, these laws define the principles, processes and role of the Environmental Authority around how project proponents fulfil their legal obligations.

Decree-Law 5/2011 on Environmental Licensing defines the mechanisms and procedures for carrying out an Environmental Impact Assessment, Environmental Management Plan and issuing an environmental license for those projects – including in the petroleum and mining sector – which may have a significant impact on the environment.

In Articles 8(a), (b), (c) and (d) of this law, the procedural steps for larger projects (Category A) are defined: proponents must present project documents and carry out a study to evaluate environmental impacts from a specific project; all of these documents must be accessible by the public. According to the law, there must be a public consultation so that the local community can understand the project's impact and so that they can share their ideas. Technical analysis and opinion must also be considered through an Evaluation Committee which should be led by the government department responsible for environmental impact evaluations and pollution control, and must include representation from government offices responsible for tourism, land, health and culture (Decree-Law 5/2011, Article 10).

Environmental licensing processes must follow and respect all of the requirements laid out in our current environmental laws, thus ensuring no conflict of interest. To make environmental regulation more effective, the process must be led by a State entity which is independent and not one which is promoting and implementing the projects.⁵ This

⁵ Iha mós Diploma Ministerial oioin hanesan *Diploma Ministerial N.º 45/2017 de 2 de Agosto Regulamento Relativo ao Estatuto e Regras de Procedimentos para a Comissão de Avaliação para a Gestão do Processo de Avaliação Ambiental para Projetos da Categoria A; Diploma Ministerial N.º 46/2017 de 2 de Agosto Regulamento sobre os Requisitos Detalhados para Triagem, Definição de Âmbito e Termos de Referência, das Declarações de Impacto Ambiental e Planos de Gestão Ambiental para a Avaliação Ambiental no Diploma Ministerial N.º 47/2017 de 2 de Agosto Regulamento sobre os Procedimentos de Consulta Pública e Requisitos durante o Processo de Avaliação Ambiental*

mechanism helps provide a process of accountability (*checks and balances*), transparency and ensure no political intervention in the implementation of these laws.⁶

Decree-Law 14/2018 weakens the Environmental Authority and gives too much power to the MPM.

Since 2011 when the Environmental Licensing Law (Decree-Law 5/2011) was enacted in Timor-Leste, the government body responsible for regulating and leading the approval and issuance of environmental licenses has been the Office of the Secretary of State for the Environment through the National Directorate for Pollution Control and Environmental Impact (DNCPIA). DNCPIA has already the experience as a technical body or 'Environmental Authority' responsible with implementing policies and laws related to the promotion and preservation of our natural environment. They also have had the job of controlling project implementers, both from the private and public sectors, for project activities in Timor-Leste.

La'o Hamutuk views the 8th Constitutional Government's new law on its organization, which gives the MPM competencies for approving and issuing environmental licenses for petroleum and mining activities, as very dangerous because it gives too much power to the MPM and decreases the competencies of the Environmental Authority. We have noted that DNCPIA faces various difficulties including a lack of human resources, financing and equipment to carry out monitoring and evaluation, as well as limits in their decision making power. These limitations can be reason to transfer competencies from them to another institution. Instead of weakening the Environmental Authority, we insist that you use the knowledge, experience and skills of the environmental Authority which already exists, and to further strengthen their work through investing in the DNCPIA according to their needs.

In the Base Law on the Environment (Decree-Law 26/2012), Article 9 about Responsible Entity states: "The government department responsible for the environment must, in accordance with the principle of integration, establish a central institutional structure with competence for coordination with other central, district or local public entities of policies, programs, plans or projects with significant effects on the environment." (La'o Hamutuk translation).⁷

The Base Law on the Environment explains about the need to ensure that when there is collaboration between various entities linked with a program, project or plan that may have an impact on the environment, the State's Environmental Authority must lead coordination so that the laws and policies will be implemented consistently and effectively (Artigu 10)⁸;

⁶ Bele haree mós iha La'o Hamutuk nia submisaun ba Autoridade Nasionál ba Petróleu no Minerais (ANPM) kona-ba proposta Decree-Law ba Operasaun Petrolíferu iha Rai-Laran (*Onshore*) iha Timor-Leste, 15 Agostu 2017; bele hetan iha: <http://www.laohamutuk.org/Oil/onshore/LHSubDecreeLawOnshorePetroActivities15Aug2017en.pdf>

⁷ From original Law in Portuguese: "O departamento governamental responsável pela área do ambiente deve, nos termos do princípio da integração, estabelecer uma estrutura institucional central com competência para a coordenação, com as demais entidades públicas centrais, distritais ou locais das políticas, programas, planos ou projectos com efeitos significativos no ambiente."

⁸ From original Law in Portuguese and Tetun: *Decreto-Lei 26/2012 – Lei Base de Ambiente, Artigo 10.º Colaboração*
1. *As entidades públicas que no exercício das suas atribuições desenvolvam legislação, programas, planos ou projectos susceptíveis de produzirem efeitos significativos no ambiente devem ter em conta as disposições*

it also explains the importance of the environmental evaluation and licensing processes (Artigu 15)⁹.

Timor-Leste has had the bad experience of how political intervention can paralyze the Environmental Authority. In 2014, La'ó Hamutuk received information from DNCPIA that the Suai Supply Base project received an environmental license through political interference.¹⁰ There are many projects which have never fulfilled the environmental licensing legal obligations but have received support from our leaders. For this reason, La'ó Hamutuk is worried about the change presented in Decree-Law 14/2018 which gives more space for sidelining the legal requirements of this process.

La'ó Hamutuk suggests that Timor-Leste should create an autonomous and independent body which would act as the sole Environmental Authority, free of political intervention to implement environmental law and monitor development to ensure its sustainability. DNCPIA, by our observation, has the capacity to take on this independent role and responsibility, which should not need to submit itself to any political institution which bring different political interests. In this way, the Environmental Authority can truly be an autonomous body, neither under the Ministry of Tourism, Commerce and Industry (MTCI) or the MPM.

da presente lei.

2. As entidades públicas previstas no número anterior têm o dever de colaborar e cooperar com o departamento governamental responsável pela área do ambiente, quanto à concretização da política do ambiente de forma a garantir a unidade e a uniformidade na sua aplicação.

3. O departamento governamental responsável pela área do ambiente deve promover a coordenação e o planeamento das políticas públicas de desenvolvimento a nível central, distrital e local, de modo a garantir que as mesmas sejam compatíveis com a política ambiental.

Dekretu-Lei 26/2012 – Lei Base ba Ambiente, Artigu 10. Kolaborasaun

1. Entidade pública sira ne'ebé iha sira-nia knaar hodi fahe no dezenvolve lejislasaun, programa, planu ka projetu ne'ebé iha possibilidade hodi hamosu efeito signifikativu iha ambiente tenke tuir mós dispozisaun sira iha lei ida-ne'e.

2. Entidade pública sira prevee ona iha número liubá iha devér atu kolabora no koopera ho departamentu governamental ne'ebé tau-matan ba área ambiente nian, kona-ba atu konkretiza política ambiente hodi garante unidade no nia aplikasaun oin ida de'it.

⁹ From original Law in Portuguese and Tetum:

Decreto-Lei N° 26/2012 – Lei Base de Ambiente, Artigo 15.º Avaliação e licenciamento ambiental

1. É proibida a implementação de programas ou projectos da responsabilidade ou iniciativa de instituições públicas ou privadas que possam afectar o ambiente, o território, a qualidade de vida e saúde humana e os componentes ambientais, que não estejam em conformidade com o disposto no sistema de avaliação e licenciamento ambiental e que não sejam portadores da respectiva licença, nos termos da lei.

2. Para efeitos do número anterior, a lei define o sistema de avaliação e licenciamento ambiental a que estão sujeitos os programas ou projectos públicos ou privados que pela sua natureza, dimensão, impacto, escala, características ou localização tenham efeitos no ambiente, no território, na qualidade de vida e na saúde dos cidadãos e nos componentes ambientais.

Dekretu-Lei 26/2012 – Lei Base ba Ambiente, Artigu 15.º Avaliasaun no Lisensamentu Ambientál

1. Bandu atu implementa programa ka projetu responsabilidade nian ka inisiativa instituisaun pública ka privada sira, ne'ebé bele estraga ambiente, rai, qualidade moris nian no ema nia saúde no komponente ambientál sira-ne'ebé la kona di'ak ho dispostu iha sistema avaliasaun no fó lisensa ambientál hodi la bele sai portadór ba lisensa ne'e rasik tuir termu lei nian.

2. Atu número liubá la'ó kmanek, lei define sistema avaliasaun no fó lisensa ambientál ba buat hirak ne'ebé hola parte iha programa ka projetu públiku ka privadu sira, tuir natureza, dimensaun, impaktu, eskala, karakteristikika ka fatin ne'ebé iha efeito ba ambiente, ba rai, ba qualidade moris no sidadaun sira-nia saúde no komponente ambientál sira.

¹⁰ <http://laohamutuk.blogspot.com/2014/05/environmental-licensing-who-needs-it.html>

The Government needs to alter Decree-Law 14/2018 immediately.


La’o Hamutuk thinks that the MPM should not have the power to approve or issue environmental licenses because it indicates sectoral ambition and goes against the principles of good governance. The Environmental Authority is the one who should lead the various Ministries, to coordinate, evaluate and issue environmental licenses.

With the concerns expressed above, we ask your Excellency to use all your power to find a constructive way to return the role of approving and issuing environmental licenses to the Environmental Authority. In this way, we can strengthen the power of the Environmental Authority (now the Secretary of State for the Environment) and the law which has been in place for some time. In this way, we can guarantee sustainability of our natural resources, that they give benefits to the Timorese people now and in the future.

La’o Hamutuk wishes to commend and thank the VIII Government for several positive initiatives such as the renewable energy program which will promote sustainable development and the ‘Zero Plastic’ program which will promote a clean and healthy environment. Once again, we wish to acknowledge the capacity and knowledge which have already been developed and demonstrated by the Office of the Secretary of State for the Environment, especially the DNCPIA.

Finally, La’o Hamutuk thanks your Excellency for your attention to this important matter. We are ready to share information or meet with you to discuss this issue further.

Sincerely,



Adilsonio da Costa, Jr.
Environment Team



Pamela Sexton



Celestino Gusmão
La’o Hamutuk Coordinator