

# La'o Hamutuk

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20 June 2012

Legal Advisors

Office of President of the Republic Taur Matan Ruak

Palacio Nicolau Lobato, Aitarak-laran, Dili, RDTL

Your Excellencies,

We are writing this letter to follow up on our recent informal conversation about the Environmental Basic Law which was approved by the Council of Ministers on 11 April 2012. We hope it will be helpful to you in advising the President of the Republic whether to promulgate this law or send it back for further consideration.

**We are gratified that many of La'o Hamutuk's recommendations<sup>1</sup> on earlier drafts have been incorporated, and we believe that this law will be good for Timor-Leste and should therefore be promulgated by the President of the Republic. We especially appreciate the inclusion or strengthening of special attention for vulnerable groups, environmental services, public information, cultural rights, citizens' participation and consultation, marine ecosystems and pesticides.**

Since environmental policy is fundamental for Timor-Leste, it would be better if the law were discussed publicly, with committee hearings and reports, and enacted by Timor-Leste's Parliament, under Article 95.1 of the RDTL Constitution. Although it is legal for Parliament to delegate its power to the Government under Article 96.1, it is not mandatory. We do not think that the avoidance of an open legislative process is justified, especially as the law will probably not come into effect until after the Parliamentary election next month.

Wouldn't it be better for the next Parliament and Fifth Constitutional Government to enact this basic law, which will create the framework for other legislation, programs and projects that the new Government will carry out? We raise this question with some trepidation, as it is possible that Parliament could weaken some of the good provisions in the latest version of law, but that is a risk of democratic process.

Although the law passed by the Council of Ministers is significantly better than earlier drafts, there are still a few areas which need improvement. Most of these were discussed in our earlier submissions:

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<sup>1</sup> We have collected information and analysis on the history of this law at <http://www.laohamutuk.org/Agri/EnvLaw/11EnvBasicLaw.htm>, which links to our submissions to DNMA made in February (<http://www.laohamutuk.org/Agri/EnvLaw/LHsubLeiAmbiental28Feb.pdf> and <http://www.laohamutuk.org/Agri/EnvLaw/LHsubLeiAmbientalTable28FebEn.pdf>) and October (<http://www.laohamutuk.org/Agri/EnvLaw/Sep11/LHsubLeiAmbiental7Oct2011.pdf>) 2011.

## Article 1: Definitions.

- Add definitions of Environmental decommissioning plan, endangered species and threatened species, National Park.
- (d) Restore “consultation” to definition of *Strategic environmental assessment*
- (g) Add atmospheric composition (e.g. emission of greenhouse gases) as part of *Environmental degradation*.
- (h) Include the idea of Environmental Services in defining *Sustainable Development*.
- (j) The term being defined is “renewable energy”, not “alternative energy”.
- (x) Remove “considered worthless, unnecessary or without value” from the definition of “waste.” For example, the cans and plastic water bottles which litter Dili are “waste” even though they were considered necessary at one point, and have value to recyclers.

**Article 4 (d):** We agree with the addition of this article, but suggest that Article 4(d) from the previous version, “The creation, development and management of hazardous areas, the protection of species and habitats, to ensure the conservation of nature and preservation of biodiversity and other environmental values, and the appreciation and conservation of natural heritage;” should also be in the legislation. Perhaps it was removed by clerical error?

**Article 5 (c):** The definition of *Principle of Prevention* was worsened between the two 2011 drafts to make considering the actions “in advance” apparently optional. The definition in Article 4 (c) of the January 2011 draft should be restored: “*Principle of prevention*: all actions or actions with immediate effects or long-term environment should be considered in advance, so as to reduce or eliminate the causes of environmental degradation. Actions with immediate or short-term effects should be considered in advance, reducing or eliminating the causes, primarily to correct the effects of these actions or activities that may alter the quality of the environment.”

**Article 5 (e): Participation**, including public consultation, should also be required for planning, formulation of policy and decision-making, not only for specific projects.

**Article 6.5:** Citizens should also have the right to ask the courts to order **cessation** of the causes of violation, and for compensation. Article 6.4 of the September 2011 draft was better.

**Article 12:** The state should **guarantee** (not only recognize) the right of local communities and vulnerable groups to participate, as in Article 11.1 of the January 2011 draft.

**Article 14:** Should include environmental **standards for biodiversity, cultural resources and environmental services**.

**Article 16 (b) and (c)** are identical. Perhaps one of them is supposed to be “periodic review of changes in the quantity and quality of renewable and non-renewable natural resources”?

**Article 27.2** should ban imports of **genetically modified organisms**, not just regulate them. This is consistent with the precautionary principle.

**Article 28** should be restored to the previous version, which also covered species endangered due to their “**size, age or rarity.**”

**Article 30.2** states that “the extraction of nonrenewable natural resources must be made in a **sustainable** manner,” which is impossible – nonrenewable resources by definition cannot be used sustainably. We encourage prioritizing protection and conservation of both renewable and nonrenewable natural resources, rather than advocating less injurious ways to use them.

**Article 44** about the future **Environmental Fund** is less detailed than in previous versions. We expect that it will be filled out in a subsequent law or decree, and hope that there is an effective public consultation before it is enacted.

**Article 46 (e):** Timor-Leste should not support or participate in **carbon trading**. Carbon trading and similar market mechanisms provide economic benefits to traders but allow continuing destruction of the global environment. This law should aim at preserving the environment, not making brokers rich.

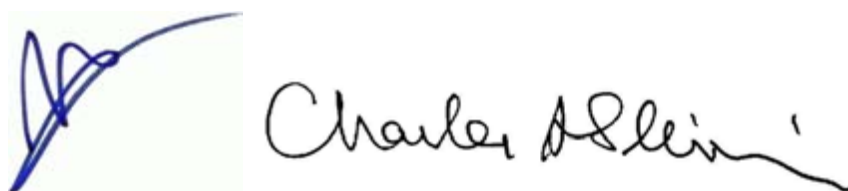
**Article 67: World Health Organization standards** are inadequate, even in the interim. They are the absolute minimum, not strict enough to ensure sustainable development of Timor-Leste. They do not follow the Precautionary Principle in Article 5(d) of this law. Standards issued by the International Standards Organization (ISO) would better safeguard Timor-Leste.

We would like to suggest an additional article to stimulate the creation of an **environmental policy** for procurement, construction and other projects and activities undertaken by RDTL state entities. This could include catering using local foods; construction using energy-efficient design (i.e. air vents, natural light etc.); first preference for sustainable and locally made goods and services, minimizing waste, etc.

In conclusion, we have based the suggestions in this letter on computer-assisted English translations of drafts of the law. We hope that we have not made errors due to translation, and that you can easily apply our comments to the official Portuguese text.

We hope that this letter is useful to you, and would be happy to try to answer questions or have more discussion, either in person or by email.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles Scheiner". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alexandra Arnassalon and Charles Scheiner  
La’o Hamutuk