

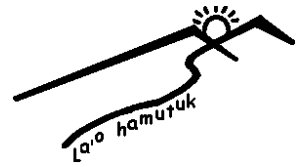
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Submission to the National Directorate for Environment Democratic Republic of Timor-Leste

From La'o Hamutuk

Regarding the draft Regulations and Guidelines for Decree-Law 5/2011 on Environmental Licensing

22 January 2014

La'o Hamutuk is grateful for the invitation from the National Directorate for Environment and the Asian Development Bank to participate in this public consultation, to share our perspectives about the draft Regulations and Guidelines for Decree-Law 5/2011 on Environmental Licensing. For more than ten years, La'o Hamutuk has worked to ensure that development in Timor-Leste benefits our people and preserve our environment. We participated in many consultations and hearings aiming at building Timor-Leste's environmental legal framework, and expressed our worries and disappointment when the poorly designed Decree-Law No. 5/2011 was enacted without any public consultation.

Although time does not allow a deeper analysis, we hope that the current stakeholder consultation process and our following suggestions can help fill the gaps in Timor-Leste's environmental regulatory framework to ensure a greener future for all.

These regulations will improve the current regulatory framework for environmental assessment, and Decree-Law No. 5/2011 on Environmental Licensing must be appropriately reviewed and revised to make it effective.

We believe the draft regulations developed concerning the minimum requirements for Terms of Reference (ToR), Environmental Impact Statement (EIS) and Environmental Management Plan (EMP), Public participation procedures, the status of the Evaluation Committee, and Impacts and Benefits Agreements will help clarify and complete the weak Decree-Law 5/2011 on Environmental Licensing.

We particularly appreciate:

- The fundamental clauses regarding public participation procedures, that ensure the involvement of affected communities during the different phases of an EIA process
- The consideration of local, traditional forms of social and environmental regulation (*Tara Bandu*)
- The consideration of the non-economic value of the environment
- The attempt to address the imbalance of negotiating power between affected communities and the proponent through Impact and Benefit Agreements (IBA), to avoid repeating the confusion around the “10%” Suai Supply Base agreement.
- The attempt to ensure the independence of the Evaluation Committee members

However, we would like to share our following concerns, some of which were mentioned in our previous submission¹:

- Public consultation is not only about distributing information to interested parties, but allowing them **to grant or withhold free, prior, informed consent**. It is not enough for DNMA and the proponent to tell the public what they intend to do – affected citizens must have the opportunity and the capacity to make an informed decision to consent *or not*, and a denial of public consent should almost invariably prevent the issue of an environmental license, save in clearly exceptional circumstances.
- Minimum requirements for an EIS, Simplified EIS and EMP must include concrete, project-specific actions to be taken by the proponent to prevent (not only to mitigate) any negative environmental and social impact identified. It is not enough to identify mitigation measures or monitoring indicators, the proponent must take concrete actions to prevent and deal with those negative impacts.
- Sufficient time must be allowed to participants to analyze and comment on any information provided to make the consultation process useful. We believe 30 days should be the minimum, given the complexity of the issue, and taking into account peoples’ availability. Allowing 10 working days to comment a ToR (Article 4.3.k), and organizing a public meeting 7 days after EIS, Simplified EIS and EMP documents are made public is not sufficient (Article 10.2). Articles 10.2 and 10.3 must be clarified, to make them consistent with Article 10.7 mentioning 2 weeks between the delivery of the public notice and the public meeting.

¹ <http://www.laohamutuk.org/Agri/EnvLaw/LHsubLeiAmbiental28Feb.pdf>

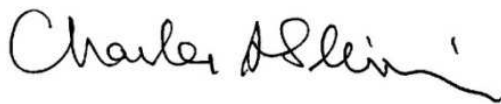
- The Environmental Authority or the proponent must report back to those who participated in the consultations with a list of all suggestions received, what actions were taken in response, and why. We suggest to add a clause requiring that a document listing comments and opinions received during a public consultation and how they were taken into account (Article 12.2; Article 5, Article 6.3, Article 16.2, Article 18).
- The information provided to the public prior to the consultations must be comprehensive and accurate, especially when negotiating Impacts and Benefit Agreements (Article 5.6), to ensure the communities' informed consent.
- The choice of a "reasonable methodology" for publication should take into account the local situation. For example, publication in local newspaper as suggested in the public participation guidelines is not the best means to reach communities in the district. Suggest instead: pamphlets distribution, radio or loudspeaker announcements, use of local communities and church mechanisms, etc.
- The legislation developed should spell out or refer to sanctions and/or penalties which are severe enough to compel compliance. If the sanctions are too small, it is a no-lose gamble for a large company to profitably destroy the environment. Sanctions should be specified and enforced against proponents, public officials and others who violate the regulations or Decree-Law.
- Effective mechanisms must be put in place to ensure that citizens can act if state agencies fail to perform their duties, for example if a license is delivered to a project which is clearly environmentally unacceptable. Provisions should also make operational the "complaint and grievance mechanism" mentioned in the general regulations and the IBA.
- The law must condemn any intentional or negligent understatement, omission or distortion of project components aiming at downplaying the projects' impacts or the proponent's duties. If a proponent's EIA or EMP are later discovered to be substantially inaccurate or incomplete, any issued license should be revoked immediately.
- Measures must be taken to increase the implementation capacity of DNMA/SEMA and other relevant Ministries and regulatory and monitoring bodies during all phases of any licensed project.
- Provisions must be adopted to ensure the Evaluation Committee will be resistant to political pressure not to reject environmentally and socially destructive projects.

- To ensure transparency and accountability, and enhance public participation, all relevant public documents should be made available on DNMA's website, and the register required by Article 38 of the Decree-Law should be made effective, including on-line and in-person availability, before any more Environmental Licenses are issued.
- More generally, education and awareness activities must be put in place to recognize the true and priceless value of a healthy and preserved environment versus its exploitation for economic purposes.


La'o Hamutuk appreciates policy-makers' time and effort to consider the ideas and recommendations in this submission. 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 the wisdom, integrity, skills, professionalism, impartiality and efficiency of the drafters and decision-makers will produce a law that truly protects our environment and the interests of our citizens.

We hope that Timor-Leste's efforts to design and implement effective environmental licensing processes will continue to improve even after the current ADB technical assistance project terminates.

Thank you.



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La'o Hamutuk



Alexandra Arnassalon



Adilson da Costa