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Senor Abilio de Jesus Lima  
Secretary of State for the Environment  
Democratic Republic of Timor-Leste  
Dili, Timor-Leste

Dear Sir,

This purpose of this letter is to provide the Secretary of State for the Environment with comments on the Draft Basic Law for the Environment, as requested by the local NGO La'o Hamutuk. The comments are submitted by the undersigned in his capacity as a private individual and based on his academic and professional expertise in environmental management and sustainable development.

The Government of the Democratic Republic of Timor-Leste and, specifically, the Secretary of State for the Environment should be commended for progress on establishment of an Environmental Law for Timor-Leste. As noted in the Preamble of the Draft Law, Article 61 of the Constitution provides for the protection of the environment. However, until now, the Government has failed to provide for the necessary legal framework for these protections. The increasing levels of economic development in Timor-Leste threaten to degrade the environmental resources of the country. Unless efforts are undertaken immediately to preserve and protect the fragile environment, permanent degradation of Timor-Leste's natural resources will occur. Furthermore, the promotion of environmental protections will help improve public health leading to a stronger nation.

The Government should be further commended for seeking comments from civil society. However, the Government should not limit vetting of this important Law to only two organizations, but should rather make the draft available to and solicit comments from a much broader audience. Good environmental governance demands a commitment to transparency and broad public participation. The Government is urged to broaden the scope of public consultation throughout the process of drafting the Law.

In general, the draft Law represents a positive first step towards creating a legal framework for environmental protection. As the draft Law defers much of the specifics to subsequent decree-laws, the Government is urged to codify these regulations quickly. The draft Law focuses on the concept of sustainable development, but it fails to disclose how the Government plans to reconcile the short-term

need for economic development with the long-term sustainability of the country's natural resources and ecological services. It is expected that the draft Law will be amended to further resolve this discrepancy.

The draft Law largely recognizes and addresses the Interdisciplinary nature of environmental science, including ecology, human health, hydrology, agriculture, and forestry. However, the Law fails to address the social aspects of the environment including socio-economic impacts, cultural impacts, and issues of environmental justice. The Government is encouraged to incorporate these issues in the Law to better address people's relationship with their environment.

The draft Law briefly describes the processes for environmental permitting, environmental monitoring and environmental auditing. However, the Law fails to address the need for environmental impact assessment (EIA) as a critical planning and decision-making tool. A publically-vetted EIA should form the basis of any public or private development activity with the potential to impact on the environment, including the adoption of plans, regulations, and other non-physical activities that nonetheless possess the potential to harm the environment.

In addition to the above general comments, the following comments on specific provisions of the draft Law should be addressed.

1. Article 2: The law should define "Vulnerable Groups" to include women, youth, poor, ethnic minorities, religious minorities, and the disabled.
2. Article 2: The law should define "Multilateral Environmental Agreement (MEA)" as a legally binding agreement between two or more states relating to the environment.
3. Article 3: The law should define "Ecosystem Services" as services provided by ecosystems that benefit humans including water purification, pollination, erosion control, soil formation and nutrient recycling, as well as providing cultural and aesthetic resources.
4. Article 2, Definition 31: The reviewer notes that the law adopts the definition of sustainable development established by the World Commission on the Environment and Development (WCED) publication of "Our Common Future" commonly referred to as the "Brundtland Report." The definition should further note that the Brundtland Report further defined "the needs of the present generation" as those primarily benefiting the poor.
5. Article 4, Item A, Principle of Sovereignty: The reviewer respects the sovereignty of Timor-Leste and their rightful ownership of natural resources in its territory. However, the reviewer notes that Timor-Leste is signatory to several MEAs and thus has restricted its "right to operate [its natural resources] according to its own environment and development policies..." This item should be revised to acknowledge Timor-Leste's responsibilities under the various MEAs.
6. Article 4, Item E, Principle of Participation: This item should specifically address the need to engage "vulnerable groups" as defined in Response 1, above.
7. Article 5: The law should provide for the protection and restoration of functioning ecosystem services.
8. Article 5, Item E: In addition to the ecosystem components already listed, this item should include the promotion and maintenance of the quality of biodiversity of Timor-Leste's flora and fauna, including its marine and forest resources.

9. Article 6, Item 2: Legal protections for third parties are codified elsewhere. It is inappropriate to emphasize the protection of third party information in this context. The clause "...subject to the legally protected rights of third parties" should be struck from this item.
10. Article 9: The law should provide additional clarity as to nature of the "central institutional structure." Under whose authority will this structure be established? What authority will this institutional structure maintain? Will this structure be accountable to Parliament? How will this structure be financed? How will this authority adjudicate priorities between the need for short-term economic development and long-term sustainability?
11. Article 9: The law should recognize the need to involve the appropriate national Ministries and other State agencies possessing appropriate technical expertise.
12. Article 12: What agency or authority is responsible for establishing "environmental quality standards?" What methodology will be followed in establishment of standards? Will the process of establishing standards be open for public participation? Will the public have the right of recourse to the courts to challenge these standards?
13. Article 12, Item 2: The Law fails to address the need to establish environmental quality standards for the protection of biological diversity of terrestrial and marine flora and fauna.
14. Article 12, Item 2: The Law fails to address the need to establish environmental quality standards for the protection of cultural resources, including archaeological and paleo-archaeological remains, cultural monuments, gravesites, and other sensitive traditional cultural structures and practices.
15. Article 12, Item 2: The categories of environmental standards listed require sophisticated monitoring and analysis techniques, including field and laboratory testing. How will the Government ensure that Timor-Leste has sufficient numbers of trained environmental scientists and facilities to conduct the necessary sampling, testing and analysis?
16. Article 13: This reviewer supports the Government's assertion that public development policies require coordinate planning with public participation at all levels of government, including central, regional, local, AND community levels. The Government is strongly encouraged to facilitate these efforts as soon as possible.
17. Article 14: Effective land-use planning should focus on sustainable land use that preserves the long-term function of the land. A stated objective of "increasing of value" risks prioritizing short-term economic gains at the expense of future generations.
18. Article 14: Effective land-use planning can only be based on robust land rights that recognize both legitimate private ownership and customary communal land rights. The use of State-owned must be transparent, democratic, and respectful of private and communal land rights.
19. Article 15: What agency or authority is responsible for identifying "activities likely to produce environmental and social impacts"? What methodology will be followed in identification of these activities? Will the process of identifying activities be open for public participation? Will the public have the right of recourse to the courts to challenge these standards?
20. Article 15: The Law fails to acknowledge the potential for significant environmental impacts from the cumulative effects of individual development activities. For example, it could be argued that construction of a single high-voltage electrical transmission tower has a less than

significant impact. However, construction of thousands of towers over thousands of kilometers would have a massively significant environmental impact. For this reason, individual development actions and/or environmental impacts must not be viewed in isolation; but, must rather account for previous, concurrent, and future development actions at various spatial scales.

21. Article 15, Item 3: Both effective environmental management and environmental decommissioning require environmental monitoring and adaptive environmental management to be conducted at the expense of the polluter. Monitoring protocols must include baseline surveys, regular environmental auditing, and post-activity monitoring. Results of monitoring must be made available for public review. Environmental management must be adaptive to the results of the monitoring efforts to ensure effective environmental protection. Project monitoring must be “ground-truthed” by regular environmental audits.
22. Article 17: Refer to Response 15 regarding the need for a sufficient numbers of trained environmental scientists and facilities to conduct the necessary sampling, testing and analysis required for effective monitoring.
23. Article 17, Item 2: The Law fails to address the need to continually monitor impacts to the following: biodiversity of terrestrial and marine flora and fauna; cultural and archaeological resources; and socio-economic resources.
24. Article 17, Item 3: Refer to Response 21 regarding need for robust and transparent environmental monitoring, environmental auditing, and adaptive environmental management.
25. Article 19: The Law fails to address the emission of greenhouse gases (GHGs) known to contribute to global climate change. Timor-Leste is signatory to the UN Framework Convention on Climate Change and the Kyoto Protocol. It is recognized that Timor-Leste is a “non-Annex I” country and thus does not have quantitative emission reduction commitments. However, as signatory to the Protocol, Timor-Leste is committed to mitigation actions. It is foreseeable that the ambitious development plan currently proposed by the Government will result in a significant increase in GHG emissions, especially as a result of the current planned reliance on Heavy Fuel Oil for power generation. Timor-Leste hopes to benefit from “adaptation” funding resulting from ongoing international climate change negotiations. As such, it would strengthen Timor-Leste’s claim to this funding if the country was at least engaged in attempts to mitigate its GHG emissions.
26. Article 19: The Law should recognize the impact of poor air quality (and the emissions of air pollutants) on public health, especially children. In particular, the Law and any subsequent regulations should address the effects of particulate matter resulting from combustion of diesel fuels (PM-2.5) and from construction-related dust (PM-10) which have been shown to dramatically increase childhood respiratory diseases, including asthma and pneumonia.
27. Article 20: The reviewer supports the Government’s call for an integrated water management plan. In addition to the components included in this article, the management plan should address prevention of contamination of surface and groundwater, especially from urban stormwater runoff and solid and sanitary waste disposal.
28. Article 21: The Law should also address prevention of soil contamination.

29. Article 23: The Law should commit the State to providing for the protection and sustainable use of terrestrial, coastal, marine, and other aquatic ecosystems.
30. Article 25: The provisions of this Article should in no way be interpreted to exclude extractive industries from the other elements of the Law.
31. Article 25, Item 4: How are “household, micro or small-scale non-industrial uses” defined? Refer to Response 20 regarding the need to consider cumulative environmental impacts.
32. Article 26, Item 2: Why are beaches excluded from the conditions of this paragraph? Extraction of sand and gravel from beaches should either be covered by this provision or, preferably, prohibited outright.
33. Article 27: The reviewer fully supports the Government’s commitment to the use of alternative, clean and renewable energy sources.
34. Article 28, Item 1: In addition to the issues highlighted in this paragraph, the planning and management of urban areas should also address stormwater management, including flood protection and control of pollutants in runoff.
35. Article 30: Refer to Response 25 regarding the need to address GHG emissions. Also refer to Response 24 regarding the need to address the impact of air pollutants on public health.
36. Article 31: Refer to Response 34 regarding the need to address urban stormwater runoff.
37. Article 33: The Law should address visual impacts related to aesthetics and viewsheds. In particular, coastal and mountain views contribute to the scenic beauty of Timor-Leste and their degradation impacts the potential for tourism as well as the enjoyment of the environment by citizens.
38. Article 34: The Government’s objective for waste management is commendable; however, it should also provide for when reduce/reuse/recycle is not feasible. Specifically, it should provide for safe disposal to further minimize the negative impacts on public health and the environment.
39. Article 35, Item 2: This provision should be clarified to state that local authorities are the appropriate entity for collection and transport of solid wastes from households and business. Article 36 notes that the State is responsible for construction and operation of disposal (landfill) facilities.
40. Article 39, Item 3: This provision proposes that the appropriation from the State budget for environmental management and protection activities should always be greater than the previous year. This is a noble aspiration but it is not foreseeable that the environmental budget will be increased every year indefinitely.
41. Article 49: What rights will citizens of Timor-Leste have to ensure that the “entity responsible for environmental enforcement” is adequately and appropriately carrying out that enforcement?
42. Article 52: The Annual Report on activities that have environmental implications should include all current and future planned activities to allow for the analysis of cumulative impacts to the environment.

43. Chapter IX: How are fines, penalties, and other sanctions levied on public institutions and/or public officials? Or does this Chapter only apply to private parties? If so, how does the Law penalize public officials for non-compliance?
44. Article 62: The standards approved by the World Health Organization are absolute minimum global standards and may not be appropriately stringent for the sustainable development of Timor-Leste. Per Article 4, Item D of the draft Law, standards should be established based on the “precautionary principle” which states that if an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of scientific consensus that the action or policy is harmful, the burden of proof that it is not harmful falls on those taking the action.

In conclusion, the draft Law provides a promising starting-point for public discussion on the content and form of an environmental protection legislative framework for Timor-Leste. A robust and well-considered law is essential to preserve the rights to a healthy environment provided in Article 61 of the Constitution. I trust that the Secretary of State will accept these comments in good faith. I look forward to the opportunity to further participate in the process of drafting the law.

If the Secretary wishes to discuss these comments in further detail or if clarification is required, please contact me at [cserjak@gmail.com](mailto:cserjak@gmail.com) or by phone at +670 724 8169.

Sincerely,

**Chris Serjak**