

| Draft RDTL Basic Law on Environment [unofficial translation by La'o Hamutuk] | La'o Hamutuk comments |
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| <p style="text-align: center;">Preamble</p> <p>Recognizing the need for conservation and environmental protection as a duty of all States, the Fourth Constitutional Government has as its goal the creation of an environmental legal system capable of defining the principles and rules of sustainable use of natural resources, a holistic and integrated approach to environmental management, reinforcing the mechanisms of protecting fundamental rights of citizens.</p> | |
| <p>With a clearly growing market economy, natural resources and the environment represent a source of wealth and support the economic growth of Timor-Leste. However, both require balanced management to be able to provide the citizens with more and better quality of life.</p> | |
| <p>Good governance is closely associated with the strengthening of democracy and ensuring domestically and internationally recognized human rights and fundamental freedoms requires, therefore, and necessarily, appropriate environmental management. In this field the environment is widely recognized as a value in itself. In the Constitution of the Democratic Republic of Timor-Leste, environmental protection faces a dual perspective, considering it as a fundamental task of the state, and simultaneously as a fundamental citizens' right.</p> | |
| <p>Thus, recognizing the quality of the environment as an integral and essential quality of life for all Timorese, the RDTL Constitution provides in Article 61 that everyone has the right to a humane, healthy, and ecologically balanced environment and the duty to protect it and improve it for the benefit of future generations.</p> | <p>Include the other two clauses of Constitution Article 61 (see comment on Article 3 below).</p> |
| <p>In this context, is constitutionally recognized the need for preservation and enhancement of natural resources and the need to determine promotion and protection of the environment as an essential vehicle for sustainable development of Timor-Leste's economy.</p> | <p>The environment has more value than just supporting economic development. Unfortunately, throughout this draft law, the environment is seen primarily as something to be used (albeit responsibly), rather than having value in itself and providing services for humans and others (see suggested definition of "ecosystem services" below).</p> |
| <p>An integrated view of this Basic Law may say that it aims at the conservation and improvement of environmental quality, protection of human health, sustainable use of natural resources and pollution control, as one of the most serious problems resulting from human action.</p> | <p>The preamble and the text of the law should include ways that citizens and communities can help protect the environment, as well as the human rights of every citizen.</p> |
| <p>We also heard from representatives of national and international associations of environmental conservation for sustainable development, advisors and national and international experts, several officials and leaders of public administration, having carried out a public consultation process in all districts.</p> | <p>The district level public consultation has not happened yet – we hope it will. Is it appropriate to include this paragraph in the text of the law?</p> |
| <p>The National Parliament enacts, in accordance with paragraph 1 of Article 95 of the Constitution, to be enforced as law, the following:</p> | <p>This law is also based on Constitution Article 96.1 (Legislative authorisation) "The National Parliament may authorise the Government to make laws on the following Matters ... (h) Definition of the bases for a policy on environment protection and sustainable development;"</p> |

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| <p style="text-align: center;">CHAPTER I: Scope and Principles</p> <p style="text-align: center;">Article 1: Scope</p> <p>This law defines the bases of environmental policy, the basic principles of sustainable use, conservation, preservation and protection of natural resources and promoting quality of life of citizens in compliance with the provisions of paragraph f) of Article 6 and Article 61, Constitution of the Democratic Republic of Timor-Leste.</p> | |
| <p style="text-align: center;">Article 2: Definitions</p> <p>For purposes of interpretation and enforcement of this Act, it adopts the following definitions of words and concepts used in its statement:</p> | |
| <p>1. <u>Activity</u>: Is any action for public or private initiative, related to the operation or use of environmental components, the application of technologies or processes, policies, legislation or regulations, plans, programs, which affect or could affect the environment.</p> | |
| <p>2. <u>Environment</u>: A set of physical, chemical and biological systems, and their relationship with economic, social and cultural rights.</p> | |
| <p>3. <u>Protected Environmental Area</u>. It is an area of land and or sea especially dedicated to the protection and maintenance of biological diversity and of natural and associated cultural resources, and managed through legal or other effective means.</p> | <p>This definition may be too vague or narrow. MAF has informally used a broader definition: <u>Protected Area</u>. An area of land and/or sea specially dedicated to the protection and maintenance of biological diversity, landscape, scenic and other natural values and/or of cultural values, practices and resources, and managed through legal and/or other effective means.”</p> <p>It may also be appropriate to separately define “National Park” with a higher level of environmental protection, as declared by specific legislation:</p> <p><u>National Park</u>. Natural area of land and/or sea designated to protect and conserve the ecological integrity of ecosystems, in addition to other significant natural and cultural values present.</p> <p>In Timor-Leste this includes areas with multiple values of national and/or international importance (biodiversity, culture, history, prehistory, geology, landscape, terrestrial, tourism, freshwater and marine etc.).</p> |
| <p>4. <u>Environmental assessment</u>: Instrument of preventive environmental policy, supported in the studies, consultation and assessment tools and environmental management that are aimed at decision-making on environmental sustainability and implementation of certain projects.</p> | <p>This phrase does not appear elsewhere in the law.</p> |
| <p>5. <u>Biodiversity</u> is the variability among living organisms from all sources including, among others, terrestrial ecosystems, marine and other aquatic ecosystems and the ecological complexes of which they are part, including diversity within species, between species and ecosystems.</p> | |

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| 6. <u>Environmental components</u> : Are the various elements that comprise the environment and whose interaction allows its equilibrium, including air, water, soil, subsoil, living beings, non-renewable natural resources and socio-economic conditions. | Should also include cultural aspects of the interaction. |
| 7. <u>Degradation or environmental damage</u> : It is the adverse change in the characteristics of the environment, and includes, among others, pollution, desertification, erosion and deforestation. | Should also include reduction in biodiversity or population, fertility of land, groundwater, atmospheric composition (e.g. emission of greenhouse gases) |
| 8. <u>Deforestation</u> : It is the destruction, the disappearance of mass or indiscriminate felling of woods and forests without ecologically appropriate replacement. | Remove "without ecologically appropriate replacement" as it is too vague and could allow indigenous forests to be replaced by monoculture tree plantations or forests in other countries. Delete "indiscriminate" which is unquantifiable and therefore unenforceable, opening a legal loophole. |
| 9. <u>Sustainable development</u> is development based on an effective environmental management that meets the needs of the present generation without compromising the environmental equilibrium and the ability of future generations to meet their own needs. | Should include cultural aspects and the maintenance of "environmental services." |
| 10. <u>Desertification</u> : Land degradation in arid, semi-arid and dry sub-humid, or dry zones, resulting from various factors, including climatic variations and human activities. | Lack of rainfall or retention of ground water can cause desertification (in terms of inability to grow crops, wind-blown erosion, etc.) in areas which were not originally arid. |
| 11. <u>Ecosystem</u> : A dynamic complex of plant, animal and micro-organisms and their nonliving environment interacting as a functional unit. | There are five or six taxonomic kingdoms: (Animal, Plant, Fungi, Protista, and Prokaryota or Monera). |
| 12. <u>Alternative Energy</u> : Is that which originates from natural sources that are capable of regeneration, such as wind, sun, sea water, geothermal, biomass and other renewable sources. | |
| 13. <u>Erosion</u> is the detachment of soil surface by the natural action of wind or water which is often intensified by human practices of removal of vegetation. | "Erosão" is only used in definition 7 above, and not in the law itself. |
| 14. <u>Environmental impact assessment</u> : document based on research and technical consultation, with public participation, prepared by the proponent, which contains a brief description of the project, identification and assessment of likely impacts, both positive and negative effects that the project may have on the environment, the expected development of the factual situation without the project, and environmental management measures designed to avoid, minimize or compensate for adverse impacts expected and a non-technical summary of this information. | Add "investigation," before "research". Public consultation should be part of the basis of an EIA document, as discussed in the narrative part of our submission. |

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| <p>15. <u>Environmental management</u>: The planned, coordinated and directed process to make and implement decisions to regulate the interaction of humans with the natural environment to ensure sustainable use of environmental components, the appropriate protection of endangered species and their habitats and sustainable development of economy.</p> | <p>Reword as follows (added words in <i>red italics</i>): <u>Environmental management</u>: The planned, coordinated and directed process to make and implement decisions to regulate the interaction of humans with the natural environment to ensure sustainable use of environmental components <i>and the environmental services they provide</i>, the appropriate protection of <i>threatened, rare and</i> endangered species and their habitats, <i>threatened, rare and endangered environments, preservation of culturally significant components</i> and sustainable development of economy.</p> |
| <p>16. <u>Environmental impact</u>: Set of positive and negative changes produced in the environment, social and environmental parameters, including people and their economic and social structures, air, water, flora, fauna or their habitats in a given period of time and a given area, resulting from the completion of a project, compared to a situation that would occur in this period of time in this area if the project was not implemented.</p> | |
| <p>17. <u>Spatial planning</u>: Is the integrated organization process for biophysical space, aiming to use and transformation of the territory according to capacity, permanent vocations to keep the values of biological equilibrium and geological stability, with a view to maintaining and increasing their ability to support life.</p> | <p>This needs to include coastal, marine and seabed areas.</p> |
| <p>18. <u>Environmental quality standards</u>: A set of standards that define the maximum levels of pollutants allowed to environmental components.</p> | |
| <p>19. <u>Environmental decommissioning plan</u> - A document that identifies the potential environmental impacts of the decommissioning phase of the project and provides the way they are managed and monitored.</p> | |
| <p>20. <u>Environmental management plan</u> - A document that identifies the potential environmental impacts during construction and development and provides the way they are managed and monitored.</p> | |
| <p>21. <u>Pollution</u>: Direct or indirect introduction as a result of human activity, of substances, vibrations, heat, light, or noise in air, water or land which may harm human health or environmental quality, result in damage to property or cause entries, compromise or impair the use and enjoyment of fruits and other legitimate uses for the environment.</p> | <p>Make consistent with 28: Pollutants.</p> |
| <p>22. <u>Genetic Resources</u>: Includes any material of plant, animal, microbial or other origin, that have functional units of heredity of actual or potential value.</p> | |
| <p>23. <u>Natural resources</u>: includes all living and nonliving components of the ecosystem.</p> | |
| <p>24. <u>Nonrenewable natural resources</u>: living and nonliving components to ecosystem with finite nature and not subject to regeneration within a relevant time period for humans.</p> | |

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| 25. <u>Repair and rehabilitation of degradation or environmental damage</u> : It includes any activity to restore the environmental conditions existing before the occurrence of degradation or damage to environmental components. | |
| 26. <u>Hazardous waste</u> : waste that has flammable, explosive, corrosive, toxic, infectious or radioactive, characteristics, or constitutes a danger to other people's health and the environment. | |
| 27. <u>Waste</u> : Includes all effluents, substances or objects and material considered worthless, unnecessary, and/or of no value, generated by human activity, commerce and industry which needs to be eliminated. | <p>Should specify that it can be solid, liquid, or gaseous.</p> <p>Some "waste" is not worthless, but could be recycled (for example, discarded plastic water bottles or junked cars), used (e.g. sawdust) or has value (such as natural gas flared from Kitan).</p> <p>Does requiring waste to have no value weaken this law by excluding some of what we normally think of as "waste?"</p> |
| 28. <u>Pollutants</u> : Are any gases and waste, including hazardous, which may temporarily or irreversibly alter the natural characteristics and qualities of the environment, may interfere with the normal conservation or evolution or have any other damage. | <p>Make consistent with 21: Pollution. It is not only 'gases and waste,' as other materials may be accidentally or deliberately released in to the environment and cause pollution, as happened with hydrochloric acid at Dili port a few years ago, or with oil at Montara. Chemical fertilizers and pesticides are also pollutants, even if they may provide some benefit.</p> |
| 29. <u>Controlled substances</u> : Those defined in the Montreal Protocol on Substances that Deplete the Ozone Layer. | <p>See comment on article 30.3 below.</p> |
| 30. <u>Tara Bandu</u> : It is a custom in the culture of Timor-Leste to regulate the relationship between humans and the environment around them. | <p>See comment on article 8 below. This is a vague definition, and there are different <i>Tara Bandu</i> customs in different parts of Timor-Leste.</p> |
| 31. <u>Sustainable use</u> : Use of environment in a balanced way, able to effectively meet the needs of the present generation without compromising the balance of the environment and the possibility of future generations to meet their own needs. | <p>This definition comes from the WCED publication "Our Common Future" (the "Brundtland Report."). That report further defined "the needs of the present generation" as those primarily benefiting the poor, explaining that "Poverty is seen as a major cause and effect of environmental degradation." Equitable development is also part of sustainability.</p> |
| "Ecosystem Services" (not defined in draft law) | <p><u>Ecosystem Services</u> include 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. Eco-tourism made possible by intact natural environments can help development and provide employment and other benefits to the nation and to local communities.</p> |

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| <p>“Endangered species” (not defined in draft law)</p> | <p>We do not have precise wording, but this needs to be defined for Article 22 and elsewhere. Perhaps another category of “threatened species” should be defined to cover species which are endangered locally but not globally, or don’t quite make the international listing criteria.</p> <p>Eni’s EIS on Cova-1 refers to many lists of threatened or endangered marine species, including Australia Environment Protection and Biodiversity Conservation Act (EPBC), the Convention on International Trade in Endangered Species (CITES), Convention on Migratory Species (CMS), Japanese and Australian Migratory Bird Agreement (JAMBA), Chinese and Australian Migratory Bird Agreement (CAMBA), the International Union for the Conservation of Nature (IUCN) Red List or the United Nations Convention on the Law of the Sea (UNCLOS).</p> |
| <p>“Vulnerable Groups” (not defined in draft law)</p> | <p><u>Vulnerable Groups</u> include women, the elderly, youth, poor, ethnic minorities, religious minorities, the disabled and displaced persons, as well as subsistence farmers and fishers.</p> |
| <p style="text-align: center;">Article 3: General Principle</p> <p>Everyone is entitled to a healthy and ecologically balanced environment and a duty to ensure the sustainable use of environmental components and improve for the benefit of future generations.</p> | <p>This is an abridged statement of article 61.1 of the RDTL Constitution, with the inappropriate removal of the duty of the citizens and the state to protect and improve the environment, and not only to exploit it.</p> <p>It would be better to quote the entire article, as well as to include a definition of an ecologically balanced environment and the services the environment provides (ecosystem services).</p> <p style="text-align: center;">Article 61 Environment</p> <ol style="list-style-type: none"> 1. Everyone has the right to a humane, healthy, and ecologically balanced environment and the duty to protect it and improve it for the benefit of the future generations. 2. The State shall recognise the need to preserve and rationalise natural resources. 3. The State should promote actions aimed at protecting the environment and safeguarding the sustainable development of the economy. <p style="text-align: center;"><i>Artigo 61.º (Meio ambiente)</i></p> <ol style="list-style-type: none"> 1. Todos têm direito a um ambiente de vida humano, sadio e ecologicamente equilibrado e o dever de o proteger e melhorar em prol das gerações vindouras. 2. O Estado reconhece a necessidade de preservar e valorizar os recursos naturais. 3. O Estado deve promover acções de defesa do meio ambiente e salvaguardar o desenvolvimento sustentável da economia. |

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| <p align="center">Article 4: Specific Principles</p> <p>The general principle of the previous article implies that the following specific principles:</p> | <p>In general, we agree with these principles and appreciate that they are being included in this law. However, many of them need to be more specific, as described below, and need to be legally enforceable.</p> |
| <p>a. <u>Principle of sovereignty</u>: as a sovereign state, Timor-Leste is the owner of natural resources in its territory, with the right to operate them according to its own environmental and development policies, and the responsibility to ensure that activities within its jurisdiction or under its control do not cause damage to the environment of other States or areas outside the limits of national jurisdiction.</p> | <p>The national maritime territory is defined by Timor-Leste Maritime Zones Act (Fronteiras Marítimas do Território da República Democrática de Timor-Leste, Law No. 7/2002 of 20 September), which should be referenced. When Timor-Leste signs and ratifies the UN Convention on the Law of the Sea (which is long overdue), that can also be referred to. Timor-Leste has ratified treaties and Multilateral Environmental Agreements (MEAs) which restrict its “right to operate [its natural resources] according to its own environment and development policies....” This should be revised to acknowledge Timor-Leste’s responsibilities under treaties.</p> <p>The “Principle of Sovereignty” is used by some large industrialized countries to justify continuing high emissions of Greenhouse Gases, leading to climate change that impacts on Timor-Leste and everyone else. This law should recognize that every nation is responsible to preserve our atmosphere and the planet that we share.</p> |
| <p>b. <u>Principle of solidarity between generations</u>: The right to development must be exercised in such a way that responds equally to the development needs and environmental impacts of present and future generations.</p> | <p>“Balances” would be better than “responds equally.”</p> |
| <p>c. <u>Principle of prevention</u>: 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.</p> | <p>We strongly agree.</p> |
| <p>d. <u>The Precautionary Principle</u>: establishes a presumption of validity in favor of measures aimed at protecting the environment, so that the lack of absolute scientific certainty that there is danger of serious or irreversible damage to the environment should not be used as a reason for postponing the adoption of effective measures, as a function of cost, prevent environmental degradation.</p> | <p>We strongly agree with the Precautionary Principle.</p> <p>In addition, it is important for Timor-Leste to develop and utilize scientific expertise and institutions, to be able to independently verify and analyze claims made by vested interests. Delegating decision-making to scientific bodies is one way to insulate environmental policy from political or commercial pressures. Constituting a scientific body to make determinations on the basis of scientific evidence and requiring officials to adopt the scientific determination helps ensure that environmental concerns are fairly considered.</p> |

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| <p>e. <u>Principle of Participation</u>: different social groups should be involved in the formulation and implementation of environmental policy and planning, either through collective bodies which are represented, either through public consultations for specific projects that interfere with their interests or the environmental balance;</p> | <p>See discussion of public consultation in the narrative part of our submission.</p> <p>The Principle of Participation compels state agencies to take extra actions to involve minority and vulnerable groups (see our suggested definition above), as well as people and communities who are most likely to be impacted by a policy or project.</p> <p>The history of Timor-Leste for the last four centuries has been one of excluding large segments of the population from decision-making, and concerted effort must be made not to perpetuate those oppressive practices. During colonialism and occupation, environmental abuses were perpetrated against our interests, and people still live with the destruction of our of ancient forests (causing landslides), loss of biodiversity etc.</p> |
| <p>f. <u>Polluter pays principle</u>: environmental costs should be internalized, where possible, putting the obligation on the polluter to correct or restore the environment, supporting the resulting burdens and courses of ceasing the polluting action.</p> | <p>We agree with this principle, although “where possible” is a major loophole, of the sort for which an Ecuadorian court just fined Chevron (Texaco) \$15 billion for polluting the Amazon rainforest and then leaving the country.</p> <p>Timor-Leste needs technical capability which can anticipate the costs, and enforcement mechanisms and institutions which are strong enough to force the polluter to pay, with enough institutional and personal integrity to overcome corruption and lack of political will. It’s a challenge.</p> |
| <p>g. <u>Principle of international cooperation</u>: determines the search for joint solutions to the problems of environment and natural resources management with other countries or international organizations.</p> | <p>See comment on Principle of Sovereignty (4(a) above). This also includes advocating at international fora for climate justice and the reduction of greenhouse gas emissions by rich countries.</p> |
| <p>h. <u>Principle of integration</u>: Environmental issues should be integrated into other general and sectoral public policies, so that in their definition and application, the requirements of environmental protection are taken into account.</p> | <p>The “Environmental mainstreaming” described in this principle is very important, and should be defined more clearly, with implementing clauses in this and many other laws.</p> <p>Activities conducted or regulated by many government agencies (including SERN, SEAAU, ANP, AND, MTCI, MED, Public Works, Agriculture and Fisheries, Land and Property) have environmental impacts, while other ministries (MSS, Police, Health, Education, Agriculture again) must anticipate or respond to environmental problems. Environmental quality and sustainability can only be assured through building strong institutions throughout the Government.</p> <p>It is not enough to do EIAs for individual projects, but Timor-Leste should conduct a Strategic Environmental Assessment (SEA), which is not confined to the project in hand, but takes a broader view to encompass spatial planning, zoning, economic development and appropriate pricing of resources. This would also include mitigation of preventable natural disasters, such as landslides, floods and droughts.</p> <p>Without this, we could have a perfectly-drafted but largely ineffective law, as actors make “rational” judgments that the short term benefits of environmental degradation outweigh the costs of any penalties. Thus the externalities will be shifted onto the poorest (through natural disasters) and future generations.</p> |

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| i. Principle of seeking the most appropriate level of action: it implies that the implementation of environmental policy measures take into account the most appropriate level of action, be it at international, national, regional, local or sectoral level. | |
| <p style="text-align: center;">Article 5: Responsibilities of the State</p> Considering the implementation of this Act, the State, namely: | Are these legally obligatory? If the state fails to do them, what recourse does a citizen have? |
| a. Define and implement in an integrated form, an environmental policy that ensures sustainable use of natural resources and promotes sustainable development, making published legislation to allow its workability. | Wide public consultation and enactment of this policy should precede the law, as discussed in the "public consultation" part of our narrative submission. This law seems premature; how can it implement a policy which is not yet written. |
| b. Promote environmental education among different social sectors, through the systems of formal and informal education and community participation in activities of environmental preservation. | Under the Principle of Integration, the Ministry of Education should incorporate environmental education into the school curriculum. This can be more specific and proactive than "promote," which could just be issuing a memo. |
| c. Enforce international conventions that Timor-Leste has legally ratified. | As a sovereign member state of the international community, Timor-Leste should use its voice and vote in international fora (such as the UN General Assembly and Conferences of Parties of which Timor-Leste is a member) to advance the environmental principles defined in the Constitution and this Basic Law. |
| d. Adopt comprehensive global and sectoral policies of planning and integrated land use as well as programs of sustainable management and use of natural resources as a means of promoting the welfare of the population and guaranteeing the quality of the environment. | Add "Develop and" at beginning. Add "and based on appropriate and widespread public consultation." at the end. Environmental concerns must be incorporated into the Land Laws and the National Strategic Development Plan that will soon be adopted. The agencies writing those documents may consult with SEMA but this law should require them to mainstream environmental sustainability into their work. La'o Hamutuk's submissions on the Land Law and the Civil Code contain additional suggestions on planning and land use, and are available from http://www.laohamutuk.org/Agri/land/09LandEn.htm . |
| e. Promote and maintain the quality of air, water, soil and subsoil to ensure sustainable development of Timor-Leste and the quality of life. | Should include the promotion and maintenance of the quality of biodiversity of Timor-Leste's flora and fauna, including its marine and forest resources. Pristine environments, including coral reefs, rivers, wetlands, coastal areas and forests, can enable eco-tourism as a component of sustainable economic development. |
| f. Ensure equitable sharing of benefits arising from the use of natural resources. | Add "depletion, damage or " before "use" |

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| | <p>We suggest including the following additional state responsibilities:</p> <ul style="list-style-type: none"> g. Provide for the protection and restoration of functioning ecosystem services. h. Inform and educate citizens on the law, enforcement, etc. Very often people don't know about laws and, particularly outside of Dili, they are often ignored. (Current work to socialize the Domestic Violence Law illustrates the challenge, and La'o Hamutuk's <i>Surat Popular</i> and radio programs on land issues may suggest techniques that could improve the effectiveness of a consultation.) i. Consult, write and enact policy, laws, decree-laws and regulations to enforce and give life to this one. j. Establish institutional structures to do all of this also and to enable effective public participation. k. Cooperate with empower and comply with decisions of the Provedor, Inspector General, CAC, Prosecutor-General Courts and other appropriate institutions to ensure that the state meets its obligations under this law. |
| <p>Article 6: Citizens' rights</p> <p>1. It is guaranteed to all citizens the right to participate in environmental management and protection, either individually or through membership organizations, and must be heard in public consultations to approve environmental projects.</p> | <p>Add "notified of and" before "heard."</p> <p>This could be strengthened with a specific reference to non-discrimination (based on age, socio-economic status, gender and vulnerability (as defined above) in ascribing rights to interact with and make decisions about the environment.</p> <p>International consensus on such consultations is developing around the idea that potentially affected communities should not only to be "heard," but have the right to exercise (or withhold) free, prior, informed consent. This should be incorporated into the law.</p> |

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| <p>2. All citizens have the right of access to environmental information, subject to the legally protected rights of third parties.</p> | <p>Legal protections for third parties are codified elsewhere, and 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; there is already too much reflexive secrecy practiced here. Oil companies complained about the provision in Timor-Leste's Petroleum Act which makes Production-Sharing Contracts public, but they live with it.</p> <p>Environmental information distributed as part of a public consultation process, must be accurate and discuss both positive and negative impacts and risks from the activity or project.</p> <p>The proponent (whether a public agency or private entity) should be responsible for disclosing all environmental impacts of the proposed activity using the EIA process including the need for public participation. Where the proponent fails to adequately disclose potential environmental impacts, the government must reject the EIA and subsequent application. Furthermore, where citizens believe the proponent (or government) has failed to disclose the environmental impacts, there must be recourse to the courts.</p> <p>This is especially relevant to projects being paid for by the state; there should be full disclosure of their possible environmental risks and impacts.</p> |
| <p>3. It is guaranteed the right of access to environmental education to ensure effective participation in environmental management.</p> | <p>Delete "access to" – environmental education should be included in public education, which is guaranteed by Article 59 of the Constitution of RDTL.</p> |
| <p>4. Anyone who considers that they have been violated or are about to have the rights conferred by this Act violated, may apply to the courts, to ask, under general law, the cessation of the causes of violation and related compensation.</p> | <p>The idea behind this clause is very important and we support its inclusion, as discussed in the narrative part of our submission. but it needs three significant changes:</p> <p>This Act does not provide for the right of a citizen not to have his or her water supply poisoned, his air polluted, his farm flooded or his house washed away as a result of deforestation. Citizens should have a cause of legal action if any rights are or are about to be violated due to environmental consequences of another's actions, not only the rights conferred by this act. [Alternatively, this act should spell out those rights.]</p> <p>If a project undertaken by or under contract with the state is responsible for the rights violation, or if the state fails to comply with its responsibilities under this or other environmental laws, an aggrieved person, community group, or class should be able ask a court to compel the government to cease the violation and/or comply with the law. This also relates to Articles 50 and 56 of this draft Law.</p> <p>It should be explicit that if the Polluter Pays Principle is ineffective in a particular case, the state will provide compensation.</p> |

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| 5. The state and other legal persons of public and private law are guaranteed participation and ensure the involvement of women and vulnerable groups of citizens in environmental decision making processes. | |
| <p style="text-align: center;">Article 7: Duties of Citizens</p> 1. All citizens have a duty to maintain and improve the environment of human life for the sake of future generations by promoting sustainable development of the country. | Add "themselves, other citizens and" before "future generations" |
| 2. All citizens have a duty to participate in the mechanisms of public environmental decision making. | |
| 3. All citizens have the duty to preserve, conserve, restore and promote sustainable use of natural resources. | |
| 4. All citizens have the duty to promote and maintain the quality of air, water, soil and subsoil to ensure the sustainable development of Timor-Leste and promote quality of life of citizens. | |
| 5. Every citizen with knowledge of the activities or actions that constitute violations of this law are obliged to inform the legal authorities. | |
| 6. The duties under this article extend to legal persons with the necessary adaptations. | |
| <p style="text-align: center;">Article 8: Tara Bandu</p> 1. The State recognizes the importance of <i>Tara Bandu</i> as integrated into the culture of Timor-Leste, as regulator of the relationship between man ("homem") and the environment around them. 2. Actions of <i>Tara Bandu</i> can be carried out, according to the established rituals aiming at promoting sustainable use of natural resources and environmental preservation. | <p>See comments under Article 2, definition 30.</p> <p>Perhaps <i>Tara Bandu</i> should be supported in a "Specific Principle" in Article 4.</p> <p>In order to use <i>Tara Bandu</i> effectively, the state should conduct a thorough study on models of <i>Tara Bandu</i> and similar customary practices throughout Timor-Leste, and determine which models are best for protecting the environment.</p> <p>Since <i>Tara Bandu</i> may arrive at different outcomes than statutory and judicial processes, this article needs to be clearer how the two will work together, and which will be controlling in what situations. It should respect regional variations in <i>Tara Bandu</i> and ensure that a legalistic, state-instituted variation of <i>Tara Bandu</i> doesn't replace or conflict with local traditional ones.</p> <p>Add a new clause:</p> <p>3. The state will promote and protect the culture of <i>Tara Bandu</i> and provide legal protection for its use. If a community uses <i>Tara Bandu</i> to protect its forest or other local ecosystem, the state and companies undertaking activities which require environmental licensing must respect the <i>Tara Bandu</i> rules and processes.</p> |

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| <p style="text-align: center;">CHAPTER II: Environmental management agencies</p> <p style="text-align: center;">Article 9: State Agencies</p> <p>The State in accordance with the principle of integration, establishes a central institutional structure responsible for the needs of sustainable use of natural resources and pollution control, notwithstanding the need for the involvement of district and municipal governments and in this task.</p> | <p>Will the “central institutional structure” be SEMA? It needs to be defined more clearly, and to be given the technical expertise (including from other state organs) to perform its role, as well as the necessary human, legal, authoritative and financial resources.</p> <p>This institution should be transparent and accountable to the public (perhaps through the National Parliament). As it must balance between short-term economic development and long-term sustainability, it needs protection from political manipulation.</p> <p>See our comment on Environmental Mainstreaming under Article 4(h).</p> |
| <p style="text-align: center;">Article 10: Chefes do Suco</p> <ol style="list-style-type: none"> 1. Notwithstanding the preceding paragraph, the importance of participation of Chefes do Suco in the general awareness of the population to environmental protection and the level of monitoring and auditing of environmental management activities is recognized. 2. The powers of the Chefes do Suco under the preceding paragraph are defined in statute. | <p>In many rural communities, the community trusts local or traditional leaders, such as <i>lian nain sira</i>, more than the Chefe do Suco, and they often have longer-term, closer ties with the local environment than the elected Chefe do Suco. This article should be amended to include a broader range of local leaders, including <i>lian nain</i>.</p> <p>Local leaders are not only responsible to socialize their population, but serve as stewards of the local environment for this and future generations, which should be recognized in this law.</p> <p>Law No. 3/2009, of 8 July, outlines to powers and responsibilities of Chefes do Suco, and says (Article 2.3) that they “are not included in the Public Administration and their decisions are not binding upon the State.” Article 4 of that law assign them roles for national unity and development, and article 10.1 (g) mentions “environmental protection.”</p> <p>We are concerned that Article 10.2 of Law no. 3/2009 (“The activities of the Chefe do Suco and Suco Council shall be carried out without prejudice to such national programs and plans as approved by the Government.”) could be interpreted to limit their ability to represent their community’s views or bring legal action to protect the local environment and sustainability if, for example, the National Strategic Development Plan would damage the local environment. Perhaps it should be amended by this law.</p> |

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| <p style="text-align: center;">Article 11: Local Community</p> <ol style="list-style-type: none"> 1. Participation of local communities and vulnerable groups is guaranteed, alone or acting together with non-governmental organizations, in setting environmental policy, its implementation and monitoring. 2. Community participation under the preceding paragraph is made through public consultation to the population about the definition of environmental policy, the creation of structures of communication between state agencies and local community to enable information sharing and monitoring of environmental activities by the local community. | <p>This should be more specific, and can be improved by adding the definition of “vulnerable groups” suggested in article 2 above.</p> <p>In addition, special priority should be given to participation of communities and individuals who are most likely to be negatively impacted by particular projects, as well as those who depend on these resources for their livelihood and daily needs.</p> <p>Article 11.2 could be expanded to include encouraging the establishment and operation of Community Organizations or cooperatives (farmers, fisheries, forests, water use, etc.) to facilitate the sustainable use of resources. This can help regulate destruction or exploitation of resources by outsiders, and improve the effectiveness of local participation in implementing this law, as outlined in Article 4(e). It could be expanded further in separate legislation.</p> |
| <p style="text-align: center;">CHAPTER III: Quality, planning, evaluation, environmental monitoring</p> <p style="text-align: center;">Article 12: Environmental quality standards</p> <ol style="list-style-type: none"> 1. The criteria and rules to be observed for the control of pollution levels, are defined by the adoption and publication of standards of environmental quality applicable to the whole country or particular areas and for certain processes or products. | <p>This sounds good, but needs to be much more specific about what agency is responsible, what methodology they will follow, public participation, judicial appeals, enforcement. Is it mandatory to adopt and enforce standards? They are not included in the list of State Responsibilities in Article 5, and perhaps should be.</p> |
| <ol style="list-style-type: none"> 2. Environmental quality standards of the preceding paragraph are defined for: <ol style="list-style-type: none"> a. Fresh water; b. Seawater; c. The levels of effluents; d. The Air; e. The soil and subsoil; f. The levels of noise, light and vibration. 3. Notwithstanding the preceding paragraph, environmental quality standards can be set for other areas in accordance with the requirements of the country’s development. | <p>This list should be more inclusive, rather than leaving some items to the catch-all in paragraph 4. It could include:</p> <ul style="list-style-type: none"> • Protection of biological diversity of terrestrial and marine flora and fauna. • Protection of cultural resources, including archaeological and paleo-archaeological remains, cultural monuments, gravesites, and other sensitive traditional cultural structures and practices. <p>Enforcement of these standards will require sophisticated analysis, including field and laboratory testing. Timor-Leste must have enough trained environmental scientists and facilities to conduct the necessary sampling, testing and analysis.</p> |
| <ol style="list-style-type: none"> 4. Failure to comply with environmental quality standards require the issuer to pay fines provided for in statute. | <p>The fines provided in this Law are far too low to deter large-scale violations, and there should be a sliding scale based on the financial resources of the offender (i.e., a multinational corporation should pay much more than a local individual). The threat of serious penalties is necessary to ensure compliance, and criminal sanctions (prison) should apply to people who willfully commit major violations of environmental quality standards, or with command responsibility for such violations. Given the difficulties of enforcement and the importance of preventing (rather than punishing after the fact) environmental destruction, penalties must be large enough to be an effective deterrent. Also, an offender should be required to pay for repairing the damage or cleaning up the pollution, under the Polluter Pays” principle in Article 4(f).</p> |

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| <p style="text-align: center;">Article 13: Planning</p> <p>1. The State shall establish a coordinated planning of public development policies at central, regional and local levels to ensure that they are compatible with the need to conserve and improve the environment and with a view to implementing sustainable management of natural resources.</p> | <p>Add "and community" after "local."</p> |
| <p>2. For purposes of the above, planning should include, in an integrated way, the following:</p> <p>a. Land use and zoning in conjunction with environmental management;</p> | <p>Change 2(a) to read "Participatory/consultative land use mapping, planning and zoning in conjunction with environmental management;"</p> <p>Does "in an integrated way" mean across ministries or across ecosystems (such as considering terrestrial water bodies (wetlands, rivers, lakes, etc.), estuarine and marine areas)? Both should be specified.</p> |
| <p>b. Inventory and valuation of environmental components;</p> | |
| <p>c. Systematization of information on the environmental components;</p> <p>d. Scientific and technological research;</p> | <p>This information should be publicly available, with special effort being made to provide it to potentially affected communities.</p> |
| <p>e. Citizen participation.</p> | <p>Add ", local community and vulnerable groups" after "citizen".</p> |
| <p style="text-align: center;">Article 14: Spatial planning</p> <p>The State must define a land-use planning policy to ensure proper organization and use of national territory, from the perspective of increasing their value, with the goals of economic, social, cultural and environmental development, harmonious and sustainable in the country and districts.</p> | <p>This is very vague and loosely defined, and needs to prioritize sustainable land use that preserves the long-term function of the land. The objective of "increasing their value" risks prioritizing short-term economic gains at the expense of future generations.</p> <p>Spatial planning is made more complicated by the current legal limbo, controversy and confusion over land rights, civil code and the land law. Perhaps this policy should be deferred until those issues have been resolved, including recognition of customary and communal land rights, and pending land-related legislation should be reviewed to facilitate the objectives of this article.</p> |
| <p style="text-align: center;">Article 15: Environmental Licensing</p> <p>1. The public and private activities likely to produce environmental and social impacts on the environment are subject to an environmental licensing procedure, as defined by statute.</p> <p>2. The environmental licensing system is a system based on assessing the scale and potential environmental impact of activities in view of their nature, size, technical characteristics and location.</p> <p>3. The public and private activities that cause potential environmental impacts, are subject to an environmental management plan and an environmental decommissioning plan or the issuance of any other licenses or permits under legislation in force.</p> | <p>This statute has already been promulgated and is seriously flawed; see the discussion in the narrative section of this submission under "public consultation." A more concrete classification of projects similar Article 4.1 of Decree-Law No. 5/2011 should be incorporated into this article, rather than the vague "likely to produce impacts" here.</p> <p>This article should be explicit that a project subject to licensing cannot be carried out if that license is denied or not yet issued, with sanctions for violation.</p> <p>Environmental licensing is required for projects conducted or paid for by the state as well as by private entities. Timor-Leste needs to give this article superior force over future laws (such as the PEDN or the annual State Budget) to overcome the recent opinion of the Appeals Court (on the 2011 State Budget) that one Parliamentary law cannot restrict another. It is essential that every other law authorizing a project which would require environmental licensing under this article incorporate this article by reference.</p> |

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| <p style="text-align: center;">Article 16: Warranty</p> <p>1. The activities envisaged in the preceding paragraph, are subject to a security deposit of money intended to deal with any environmental damage or deterioration including environmental disasters that may occur during the construction, development or dismantling them.</p> <p>2. The terms of guarantee provided for in the preceding paragraph are defined in statute.</p> | <p>We have doubts about the feasibility of this article, and look forward to the public consultation on the draft statute that will define it further.</p> |
| <p style="text-align: center;">Article 17: Environmental Monitoring</p> <p>1. The State must create a decentralized system of environmental monitoring able to exercise integrated control of pollution, the quality of environmental components, the state of exploitation of natural resources, environmental impacts caused by economic activities and to ensure the collection of information needed to comply with this law.</p> | <p>Add “, transparent and independent” after “decentralized”.</p> <p>In addition to creating the system, the state must conduct the monitoring and report the results, as well as providing support to local communities who are undertaking, or wish to undertake, environmental monitoring.</p> |
| <p>2. The monitoring process provided for in the previous paragraph shall comprise:</p> <ol style="list-style-type: none"> a. The periodic collection of samples of air, surface water, groundwater and sea water and soil for quality analysis; b. The periodic review of changes in the quantity and quality of renewable and nonrenewable natural resources; c. The periodic review of the management of all types of waste and its impact on the environment; d. The identification of transboundary environmental impacts in the country. | <p>In addition, there should be continuous monitoring of impacts to biodiversity of terrestrial and marine flora and fauna; cultural and archaeological resources; and socio-economic resources.</p> |
| <p>3. Mechanisms should be developed for monitoring the implementation of activities subject to environmental licensing during the various stages of construction and after completion, ensuring their compliance with the rules and regulations.</p> | <p>Monitoring needs to be robust and transparent, with results made public in official languages, subject to environmental audit, include community representatives and be adaptive to the specific situation.</p> <p>It should be allocated sufficient resources, and be measured against defined policies, regulations and standards.</p> |
| <p style="text-align: center;">CHAPTER IV: Natural Resources Management SECTION I: Renewable Resources</p> | <p>In addition to the categories listed in Articles 19-24, this chapter should have Articles on freshwater and riparian ecosystems, (not just the water but the ecosystem) which will be impacted by dams and hydroelectric projects (such as Iralalaro).</p> <p>The subsequent section (II: Extractive Industries) is more detailed and concrete than this one, and provides a better framework.</p> <p>In each Article in this section, the state must not only create the mechanisms, but must implement them through policy development, legislation, research, licensing, monitoring, enforcement and sanctions. Many of these articles lack comprehensiveness and specificity, and they are not consistent with each other.</p> |

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| <p style="text-align: center;">Article 18: Sustainable use</p> <p>1. The State recognizes the importance of sustainable use of renewable natural resources for the benefit of all citizens, and creates mechanisms and resources needed for their sustainability and regeneration.</p> | |
| <p>2. Rules for the use of renewable natural resources must be defined by statute, taking into account their individual characteristics and their integration in the social, economic and cultural environment and as outlined in the following articles.</p> | <p>Add "protection, conservation and sustainable" before "use."</p> <p>In addition to rules, there is a need to define policies, laws, standards and regulations, and international law must be considered. These statutes will require technical expertise and public consultation, yet this Chapter is ineffective until they are enacted. However, passage of this law repeals Indonesian laws currently in force, creating a legal vacuum.</p> |
| <p style="text-align: center;">Article 19: Air</p> <p>It is the duty of the State to create the mechanisms needed to maintain quality of air within the environmental quality standards defined to control air pollution and the production, use, import or export of substances that have harmful effects on the ozone layer.</p> | <p>Although we all wish that the atmosphere were a renewable resource, its modification by human-caused emission of greenhouse gases resulting in climate change puts that into question. See discussion under "climate change" in the narrative part of our submission.</p> <p>Heavy oil and diesel power generation, as well as construction- and transportation-generated dust, and poorly ventilated indoor cooking over open fires reduce air quality and impact on public health, especially of children and women. Respiratory diseases, including asthma, pneumonia and tuberculosis, are increased by outdoor and indoor air pollution and should be addressed by this legislation, through public education and prevention or mitigation of impacts of future projects.</p> |
| <p style="text-align: center;">Article 20: Surface and ground water</p> <p>1. Maintaining the quantity and quality of surface water and groundwater and optimizing their use must be guaranteed by an integrated management plan that regulates:</p> | <p>The plan should also address prevention of contamination of surface and groundwater, especially from urban storm water runoff and solid and sanitary waste disposal. Future mining, quarrying, construction or industrial activities will create runoff or pollution which will impact on water quality and management.</p> |
| <p>a. The management of watersheds;</p> | <p>It also needs to consider the consequences of dams or diversion of water for irrigation or power generation, which will affect people and environments downstream of the diversion.</p> |
| <p>b. The regulation of well drilling;</p> | |
| <p>c. The regulation of water use for agricultural, industrial and mining activities;</p> | |
| <p>d. The participation of women and the local community on water management;</p> | |
| <p>e. The mechanisms for conflict resolution;</p> | |
| <p>f. The incentives for capturing and storing rainwater.</p> | |

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| <p align="center">Article 21: Soil and subsoil</p> <p>The State through an adequate policy of territorial planning to ensure the use, conservation and recovery of soil and subsoil to ensure its productive capacity, conservation and regeneration preventing their loss and degradation.</p> | <p>Soil recovery/regeneration is a difficult, slow geological process, rarely achieved; perhaps soil should not be classified as a renewable resource.</p> <p>Address prevention of soil contamination or pollution, as well as depletion (through monocropping or chemical-based agriculture).</p> |
| <p align="center">Article 22: Conserving biodiversity</p> <p>1. It is the responsibility of the State to define a strategy and national program for conservation and sustainable use of biological diversity, which must ensure:</p> | <p>Timor-Leste is a party to the UN Convention on Biodiversity (UNCBD), which provides guidance in this area. We agree with this article in giving priority to conservation over use and suggest that other articles should follow it, rather than the minimalist approach of remediating damage or injuring the environmental component up to the limit set by a yet-to-be-defined standard. If conservation isn't applied to every component, it will be impossible to achieve it for biodiversity.</p> |
| <p>a. Biodiversity conservation inside and outside of natural ecosystems and habitats;</p> | <p>Add "and protection" after "conservation"</p> |
| <p>b. Reproduction in quality and quantity of species, especially endangered ones;</p> | <p>"Endangered species" should be defined in this law (see comment on Article 2 above). Add "threatened or" before "endangered." For this article and others about preserving biodiversity should have a broader concern, including rare, threatened, endangered, listed or non-listed, at local, national, regional and international levels.</p> |
| <p>c. The rehabilitation and restoration of degraded ecosystems and recovery of endangered species.</p> | <p>See previous paragraph.</p> |
| <p>d. The creation and maintenance of a national system of protected areas to ensure ecological coherence of the territory and continuity of the species.</p> | |
| <p>e. The access and equitable sharing of benefits arising from genetic resources.</p> | <p>Add (as in 23.1(b)): protection from threats or threatening processes such as invasive alien species, etc.</p> |
| <p>2. All appropriate measures must be taken to ensure the development, handling, transport, use, transfer and release of any modified living organism in order to prevent and reduce the risks to biological diversity and human health.</p> | <p>Does "modified living organism" ("<i>tipo de organismo vivo modificado</i>") refer to genetically modified organisms (GMOs) or to the results of selective breeding or bioprospecting? This article needs to be clear.</p> <p>Timor-Leste has had an informal policy on GMOs as relates to agriculture, but it is not consistently publicized, implemented, or enforced. This article, talking about "appropriate" measures to "reduce" risks is vague and unenforceable. Given Timor-Leste's lack of technical capacity to assess, debate or respond to GMOs in our ecosystems, and given widespread global concern about this, we suggest a ban on the importation of GMOs.</p> |

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| <p style="text-align: center;">Article 23: Species and ecosystems</p> <p>1. The protection and sustainable use of terrestrial, coastal, marine and other aquatic ecosystems is made, namely:</p> | <p>This article should commit the State to protect these ecosystems. The sentence has no subject, and therefore cannot be implemented.</p> <p>Add “conservation,” before “protection”.</p> <p>Since commercial fishing and scuba diving tourism are two of the sustainable economic activities a well-managed environment will allow Timor-Leste to increase, marine, coral reef and aquatic ecosystems are critical. Present surveillance and enforcement capabilities cannot prevent illegal deep-sea fishing; uncontrolled runoff and future acid rain (from burning heavy oil) will further threaten these ecosystems. It is important to improve our scientific, monitoring and enforcement capacity to achieve the objectives of this article.</p> |
| <p>a. Through the maintenance and regeneration of the species through the recovery of damaged habitats;</p> | <p>Protection of habitats is more effective (and easier) than restoring them after they have been damaged.</p> |
| <p>b. Through the control of exotic species and the activities or use of substances that can degrade and harm species and their habitats.</p> | |
| <p>2. The species of terrestrial, coastal, marine and other aquatic ecosystems that are endangered or have scientific and cultural value by their genetic potential, size, age or rarity, are in need of special protection, are subject to regulation itself.</p> | <p>Add words in red italics, so the paragraph reads:</p> <p>2. The species of terrestrial, coastal, marine and other aquatic ecosystems that are <i>rare, threatened or</i> endangered or have scientific and cultural value by their genetic potential, size, age, rarity <i>or other value</i>, are in need of special protection, are subject to regulation itself.</p> |
| <p style="text-align: center;">Article 24: Marine and coastal environment</p> | |
| <p>1. The planning and land in coastal areas should be done with respect for diversity of marine and coastal environment, with a view to sustainability, the need for prevention and waste discharges into the sea and creating an emergency response plan.</p> | <p>This article needs to include activities in the sea and interior (overfishing, acid rain, marine pollution and dumping, shipping, offshore oil operations, runoff from the interior) in addition to land use along coastal zones, as these can also impact on the marine environment.</p> |
| <p>2. It is strictly forbidden to use explosives, poisons or other substances, means or tools in the destructive exploitation of marine natural resources.</p> | <p>Does this include drift-netting? As written, it could include all fishing lines, nets, rods, etc.</p> |
| <p>3. Are defined by statute appropriate measures for the regulation:</p> | |
| <p>a. Aquaculture activities;</p> | |
| <p>b. Conservation of mangroves;</p> | <p>Add “and mangrove ecosystems;”</p> |
| <p>c. Conservation of corals.</p> | <p>Add “and coral reef ecosystems;”</p> |
| | <p>Add “d. Estuarine and brackish water ecosystems.”</p> <p>Are wetlands covered elsewhere?</p> |

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| <p style="text-align: center;">SECTION II: Non-renewable Natural Resources Article 25: Extractive industry</p> <p>1. The extraction of nonrenewable natural resources is subject to special legislation.</p> | <p>Timor-Leste's Petroleum Act (Law No. 2005/9 of 29 July) and model Production Sharing Contract (PSC) contains a number of references to minimizing environmental damage, protecting, and/or restoring the environment. In some areas it is stronger than this draft law (such as prison sentences for someone who "gravely endangers the environment") but in other areas it is much weaker.</p> <p>The provisions of this Article and of the older Petroleum Act should in no way be interpreted to exclude extractive industries from the other elements of the Law.</p> <p>At present, environmental activities supervised and enforced by the National Petroleum Authority (ANP) receive less transparency and public consultation than those under SEMA. This law should explicitly state that it applies to ANP-regulated activities, in both the TLEA and JPDA, subject to coordination with Australian authorities and legislation as required under the 2002 Timor Sea Treaty.</p> <p>As extractive industry activities can strongly impact renewable resources described in the previous Section, it might be useful to mandate the creation of an integrated framework, including law/regulation covering fisheries, mines, minerals, petroleum, forest, and other natural resources. Incorporating those into the overarching law will raise their importance, and help ensure that they conform to general principles.</p> |
| <p>2. Notwithstanding the preceding paragraph, the extraction of nonrenewable natural resources can only be done in areas specifically determined by law, in accordance and pursuant to the environmental license granted and upon the payment provided for by law.</p> | |
| <p>3. Under the regulation of the sector of the industry, taking into account the extent of extraction, measures must be adopted:</p> | |
| <p>a. Which ensure integrated management and monitoring of extractive activities;</p> | <p>Add "and enforcement" after "monitoring"</p> |
| <p>b. Which provide for the adoption of environmental measures required in contracts for the extraction of natural resources.</p> | <p>The environmental measures required by the TLEA and JPDA model PSCs are weak; this act could strengthen them for future contracts.</p> |
| <p>c. To establish environmental quality standards at all stages of extraction especially in its completion.</p> | <p>The standards should include allowing independent (non-state or scientific institution) review of the effects of pollution from the industry, especially where it involves wastewater or effluents, or potentially toxic substances.</p> |
| <p>d. To establish environmental management plans at all stages of extraction especially in its completion.</p> | |
| <p>e. To minimize environmental impacts when extractive activities take place near a protected area.</p> | |
| <p>f. Contingency to respond to accidents during the development of activities.</p> | |

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| <p>4. Household, micro or small-scale non-industrial uses are excluded from the scope of this Act.</p> | <p>These need to be much more precisely defined, as it could be a major loophole. It's possible for a small-scale activity (such as importation of an exotic species or releasing highly toxic materials into a river) to have major environmental consequences.</p> <p>Furthermore, the cumulative impact of many small-scale actions (imagine 100,000 homeowners using dioxin-containing herbicides to control weeds in their yard) can be very large.</p> <p>This Law should respect customary practices regarding natural resource usage, while providing sufficient environmental protections to ensure the sustainability of those resources.</p> |
| <p>Article 26: Extraction of sand and gravel</p> | |
| <p>1. The extraction of sand and gravel is subject to special legislation.</p> | <p>Sand and gravel should be treated like other mining activities, with attention to its environmental consequences, and with special legislation</p> |
| <p>2. Notwithstanding the preceding paragraph, the extraction of sand and gravel from rivers, the beds of rivers or any other area except the beaches, can be done only in areas specifically designated for the purpose, subject to compliance with the provisions in licensing and environmental matters in obtaining permission from the competent authorities for this purpose and may be subject to a fee.</p> | <p>Extraction of sand and gravel from beaches should not be exempted from this provision or any environmental processes.</p> |
| <p>3. The costs of rehabilitation of the area subject to environmental degradation or damage arising from the process of extraction of sand or gravel are the responsibility of the extractor.</p> | <p>As problems with bridges falling in because their foundations have been eroded by sand and gravel extraction graphically demonstrate, prevention is far better than rehabilitation.</p> |
| <p>SECTION III: Alternative Energy</p> | |
| <p>Article 27: Alternative Energy</p> | |
| <p>1. The State should implement a strategy to ensure national energy security through the promotion, production and consumption of clean and alternative energy from renewable natural resources, including:</p> | <p>Although we prefer alternative energy to fossil fuels, it can also have negative environmental impacts which need to be covered by this law. For example, consider agrofuel plantations, jatropha pellet processing, expropriation of land for wind farms, areas flooded and river systems disrupted by hydroelectric dams. Some negative impacts come from taking over land that could be used for more sustainable activities (such as growing food crops), while others are direct interference on existing ecosystems. Community management or involvement in management is a good mechanism to balance the impacts of such projects.</p> |
| <p>a. The conduct of research about the use of appropriate technologies for energy efficiency in urban and rural areas;</p> | |
| <p>b. The phased increased use of alternative energy in total consumption of energy produced;</p> | |
| <p>c. International cooperation and investment in generation and consumption of energy from alternative sources.</p> | <p>As with all such activities, the implications of alternative energy projects for sectors like health and agriculture should be thoroughly studied before such projects are licensed. This could be another clause in this article.</p> |

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| <p>2. The rules on the use, promotion and distribution of alternative energy should be integrated in the national strategy for the energy sector and in national development and poverty reduction.</p> | |
| <p style="text-align: center;">CHAPTER V: Urban environment, pollution and waste management Section I: Urban environment Article 28: Urban environment</p> <p>1. The planning and management of urban areas should consider the personal residential areas, including the creation of basic infrastructure, sanitation, waste disposal, toxic waste, water treatment, noise pollution control, light and vibration and preservation of green areas.</p> | <p>Urban planning and management should also address storm water management, including flood protection and control of pollutants in runoff.</p> |
| <p>2. In planning and building of industrial zones are taken into account the specific environmental needs of each area, ensuring the compliance of environmental standards for pollution control, noise, water and air, light and vibration especially the industrial, agricultural and domestic burning of fuels.</p> | |
| <p style="text-align: center;">Section II: Pollution Article 29: Pollution control</p> <p>1. The state must ensure that appropriate measures are taken to prevent environmental degradation, risk to public health, animal life and the sustainability of economic development caused by pollution.</p> | |
| <p>2. The release, discharge or introduction of any form of polluting substances into water, soil, air, underground, or in any other environmental component, is subject to quality standards and environmental legislation.</p> | |
| <p>3. Should be promoted measures to facilitate the adoption of alternatives to the use of agrochemicals and fertilizers in agricultural production.</p> | |
| <p style="text-align: center;">Article 30: Air pollution</p> <p>1. The release of pollutants into the atmosphere should be reduced, controlled and maintained within the limits set by environmental quality standards and the law in force.</p> | <p>As discussed in article 19 above and in the Climate Change part of our narrative submission this article needs to address GHG emissions consistent with Timor-Leste's obligations under UNFCCC and the Kyoto Protocol. It also needs to address the impact of air pollutants on public health.</p> |
| <p>2. All facilities, machinery, equipment, transportation or construction activity which may affect air quality, must be equipped with filters and devices that reduce and counteract pollutants in accordance with the limits defined by the standards of environmental quality.</p> | |
| <p>3. The import and production of controlled substances is banned.</p> | <p>Since this is the only reference in the Law to "controlled substances" defined in Article 2.29 as those listed in the Montreal Protocol on Substances that Deplete the Ozone Layer, it might be better to omit the definition and refer to them explicitly here.</p> |

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| <p style="text-align: center;">Article 31: Water Pollution</p> <p>1. The release or discharge, by sea or land, any pollutants to rivers, lakes, ponds, groundwater, sea or any other place of water storage must be reduced, controlled and maintained within the limits defined by environmental quality standards and other legislation in force.</p> | <p>This article should also address storm water management, including flood protection and control of pollutants in runoff.</p> |
| <p>2. The State should construct and maintain the necessary means to ensure the treatment of sewage and other effluents and control water pollution made in its exclusive economic zone.</p> | |
| <p style="text-align: center;">Article 32: Noise and vibration pollution</p> <p>The issue of noise and vibration arising from domestic, commercial, industrial and transportation activities, which adversely affect the health, human welfare, especially in residential areas should be kept within the limits set by the standards of environmental quality.</p> | |
| <p style="text-align: center;">Article 33: Visual pollution</p> <p>The existence of any fixed or intermittent light, which by its size, nature or location may disturb the peace, welfare and health of citizens and endangered species must be maintained within the limits set by the standards of environmental quality and in terms of regulation.</p> | <p>The impact of visual pollution on tourism should also be considered, as an economic impact. It includes not only light (i.e. gas flaring and fires) but also avoidable unsightly results of economic activities, such as litter, waste dumps, and unregulated advertising. [If this article could limit the rampant proliferation of Timor Telecom's graffiti, banners and billboards, it would accomplish much!]</p> <p>The article should also address visual impacts related to aesthetics, scenery and viewsheds. In particular, coastal and mountain views contribute to the scenic beauty of Timor-Leste and their degradation reduces economic benefits from tourism as well as the enjoyment of the environment by citizens.</p> |
| <p style="text-align: center;">Section III: Waste Management</p> <p style="text-align: center;">Article 34: Objectives</p> <p>The state's policy on waste management is based on the principles of reduce, recycling and reuse to ensure the preservation of natural resources, minimizing the negative impacts of these on public health and the environment.</p> | <p>When reduce/reuse/recycle is not feasible, this article should provide for safe, permanent disposal to further minimize the negative impacts on public health and the environment.</p> |
| <p style="text-align: center;">Article 35: Solid Waste Management</p> <p>1. Are defined by separate statute the ways of collecting, transporting, storing, processing, disposal, recycling or reuse of solid waste, in compliance with the provisions of this article.</p> | |
| <p>2. The management of solid waste from households and business are the responsibility of local authorities.</p> | <p>Does this mean that local authorities are responsible for collection and transport of solid waste? Article 36 gives the State responsibility for construction and operation of disposal (landfill) facilities.</p> <p>Is this at the district, sub-district, suco or Aldeia level? It is not mentioned in Community Leaders Law no. 3/2009. Do local authorities have the resources necessary to carry out this function?</p> |

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| 3. The management of hospital and industrial solid wastes, arising from construction activities or any others not foreseen in the previous paragraph are the responsibility of the producer who is responsible for their proper disposal in terms of the law. | |
| 4. Mechanisms and the necessary means should be established to ensure the use of solid waste as a source of alternative energy production. | |
| <p style="text-align: center;">Article 36: Landfills</p> 1. It is the responsibility of the state to construct and maintain landfill sites as specifically intended for the controlled storage, above or below the natural surface, of waste generated by human, commercial or industrial activity, constructed to prevent contamination of groundwater. | |
| 2. The discharge of waste can only be made in certain places determined specifically for that purpose by the competent authorities and under the conditions of approval granted under the law. | |
| <p style="text-align: center;">Article 37: Wastewater</p> 1. The state creates the mechanisms and means to ensure proper treatment of domestic, industrial, and commercial wastewater, in order to preserve the quality of freshwater, groundwater, surface and sea water. | This is also a vital public health issue, and requires public education and investment in rural water and sanitation infrastructure. |
| 2. Any establishment which evacuates waste water is required to ensure its decontamination. | |
| <p style="text-align: center;">Article 38: Hazardous waste</p> The identification, control, production, transportation, storage and use of hazardous waste is subject to special legislation. | |
| <p style="text-align: center;">VI: Financial measures and economic instruments SECTION I: Financial Measures Article 39: Budget</p> 1. The environment is considered in the preparation of plans and budget of the State, as a national priority. | This chapter is weak, and it will be difficult to implement these articles or to enforce compliance. |
| 2. The annually approved general State budget should provide appropriations for specific environmental management and protection activities. | |
| 3. For the purposes of the preceding paragraph, the amount to be allocated each year must be greater than the expenditures recorded in the previous year. | As the Appeals Court just advised the President on the 2011 State Budget, the budget law cannot be bound by another law, so this provision is legally ineffective. Every government function would like to legislate that its budget needs to be increased every year, but it seems unlikely. The budget allocation should be commensurate with the tasks to be performed and the total revenues available to the state. |

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| <p>4. Notwithstanding the preceding paragraph, the annual general state budget must provide specific budget allocations to finance the cost of environmental recovery due to natural disasters and emergencies.</p> | <p>Given the “polluter pays” principle and the unpredictability of accidents and spills, this is difficult to anticipate.</p> <p>How does it relate to the State Secretariat for Social Assistance and Natural Disasters in MSS? This is an example where “environmental mainstreaming” could enlist another ministry.</p> |
| <p style="text-align: center;">Article 40: Fees</p> <p>In addition to the fees provided for the licensing process, the state may establish specific rates for the provision of services related to the environment.</p> | |
| <p style="text-align: center;">Article 41: Environmental fund</p> <p>1. The State shall establish, by statute, an environment fund, managed jointly by the supervising Ministry and the Ministry of Finance, to finance environmental management activities.</p> | |
| <p>2. The Environmental Fund is established through a single budget allocation for this purpose.</p> | |
| <p>3. Beyond that provided in the preceding paragraph, environmental fund revenue includes:</p> | |
| <p>a. Contributions from national or international sources in agreement with respective conventions;</p> | |
| <p>b. The amount of offenses charged under environmental law.</p> | |
| <p style="text-align: center;">SECTION II: Economic instruments</p> <p style="text-align: center;">Article 42: Economic instruments</p> | |
| <p>1. The State shall ensure that appropriate measures are taken to:</p> | |
| <p>a. Determine the economic value of environmental components in the country and on that basis, to determine appropriate levels of fines and compensation for environmental degradation and the national system of environmental accounting;</p> | <p>This is a challenging, perhaps impossible task, which may not be meaningful. Not every valuable environmental component can be assigned a price in dollars – they have intrinsic value, cultural values, and values known traditionally that science has not measured or recorded.</p> |
| <p>b. Create a national system of environmental accounting that incorporates the assessment of environmental components and the depreciation of environmental components in gross domestic product;</p> | <p>It would be more appropriate to prevent depreciation of the environment than to measure it.</p> |
| <p>c. Promote the acquisition and development of investment in environmental sustainability services to be offered and produced in Timor-Leste with environmentally sustainable technologies;</p> | |
| <p>d. Promote investment in developing and using clean technologies and alternative energy from renewable sources;</p> | |

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| <p>e. Develop a system of carbon trading, emissions trading and other market mechanisms to allow the participation of national industry in the mechanisms created by international agreements.</p> | <p>Carbon trading and other similar market mechanisms provide economic benefits to traders but continue to destroy the environment. This law should prioritize preserving the environment, not providing profits for a few. This clause should be deleted.</p> <p>If it is not removed, any carbon trading system must follow Timor-Leste's geographic, socio-cultural and economic context.</p> |
| <p>2. Tax benefits and exemptions can be created to promote:</p> | <p>Industrial agriculture is a major contributor to greenhouse gas emissions. The tax and other incentives could be applied to strengthen local food systems, including processing, to support food sovereignty.</p> |
| <p>a. The transfer of clean and environmentally sustainable technologies;</p> | |
| <p>b. Imports of machinery and equipment and means of transport that use these technologies;</p> | <p>These could be locally produced as well as imported.</p> |
| <p>c. Domestic and foreign investment that uses these technologies;</p> | |
| <p>d. Imports of alternative goods to the use of chemical pesticides and fertilizers;</p> | <p>These should be locally produced. Importing organic inputs from far away harms the environment, and organic inputs are relatively straight forward to produce locally.</p> |
| <p>e. Investing in activities that contribute to economic environmental sustainability.</p> | |
| | <p>We suggest adding the following, which has both economic and environmental benefits:</p> <p>f. Establish a government environmental policy for procurement and construction: such as catering using local foods; construction using efficient design to minimize energy use (i.e. air vents, natural light etc.); first preference for sustainable and locally made goods.</p> |

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| <p style="text-align: center;">Article 43: Distribution of benefits</p> <p>The State will define the forms of equitable distribution of benefits from exploitation of natural resources to the communities located in the same area of exploration.</p> | <p>There should be a general ban on discrimination in distribution, although communities which experience the negative impacts of extractive industries or other environmental disruptions should receive benefits to offset these effects. The marginalization of populations impacted by extractive activities has led to alienation, conflict and repression all over the world -- in Timika, Ecuadorian Amazon, Big Mountain and the Niger Delta and many other places.</p> <p>We appreciate with the intention of this article, but the implementation is more complicated, starting with public consultation before a project is approved and continuing with transparency and ongoing free, informed consent. Local involvement, including employment, is also important, and respecting the communities' human, environmental and cultural rights is also essential. Money cannot solve all problems.</p> |
| <p style="text-align: center;">CHAPTER VII: Information, education, training and environmental research</p> <p style="text-align: center;">Article 44: Environmental Information System</p> <p>1. The environmental information system is designed to facilitate the systematization, access and distribution of environmental information and the exchange of information to support decision-making, management and environmental education.</p> | <p>This is a large task, requiring many resources and institutional structures, as well as skills, regulation and guidelines. It needs to respect community intellectual property rights, transparency rules, etc. This article needs more development to be achievable.</p> |
| <p>2. The environmental information system will be administered by an entity belonging to the indirect state administration, under tutelage of the Minister who oversees the environment, and will be responsible for collecting and processing of relevant information.</p> | <p>Why not a department of the Ministry, rather than an indirectly administered entity? This should be part of the normal state processes for personnel, budgeting, procurement, etc. Assigning information and research to a separate entity undercuts environmental mainstreaming and makes it more difficult to access experience, expertise and resources in other ministries, such as Agriculture (National Parks), Education and Finance (Statistics directorate).</p> |
| <p>3. Public institutions with environmental expertise, as well as judicial persons providing public services, either at national, regional and local level are required to cooperate with the entity mentioned above, providing all information obtained in carrying out its activities.</p> | <p>All public institutions (especially those lacking in environmental expertise) should be required to provide information, as should businesses and others engaged in activities which affect the environment.</p> |
| <p style="text-align: center;">Article 45: Access to environmental information</p> <p>The environmental information systematized in the preceding article shall be accessible to the general public in the official languages, to be referred to, without compromising confidential information in accordance with legal provisions in force.</p> | |
| <p style="text-align: center;">Article 46: Environmental Education and Training</p> <p>1. Environmental education and training of citizens is promoted, as a strategic factor for sustainable development of the country through the introduction of environmental conservation issues in formal and nonformal education system and the media.</p> | <p>This is an opportunity for environmental mainstreaming. Such education should automatically be everyone's responsibility and part of all laws, curricula, considerations etc.</p> |

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| <p>2. Environmental education and training programs are made jointly by the Ministry of Education, the Secretary of State for Professional Training and the Ministry with responsibility for the portfolio of the environment.</p> | <p>As in our comment on the previous paragraph, this could also include Infrastructure, Agriculture, MSS, SERN, MTCL, Health and other ministries whose activities relates to environmental issues. This improves quality and helps avoid the existing and future internal political problems that impact on this.</p> |
| <p style="text-align: center;">Article 47: Civic education</p> <p>Civic education on the environment should be organized on a permanent basis, in successive campaigns directed for civil society in general and state officials in particular in order to increase everyone's knowledge and awareness of the need for environmental conservation, special protection of certain natural resources, and sustainable use of environmental components.</p> | <p>Civic education should also include businesspeople, international agencies, farmers, fishers and others.</p> <p>It should also include informing people about their rights and duties under this law, and how they can bring a complaint (article 56) or a case to court.</p> |
| <p style="text-align: center;">Article 48: Scientific and technological research</p> <p>The State encourages, promotes and funds carrying out studies and scientific and technological research oriented towards optimization and sustainability of natural resources, biodiversity conservation and the prevention of degradation or environmental damage.</p> | <p>Other appropriate topics for Timorese and international researchers include monitoring and testing, fault-tree analysis, rights of communities, limits and boundaries, licensing systems, community intellectual property (to control bioprospecting). Timor-Leste can learn a lot from the experiences of other countries who have been wrestling with these issues for a long time.</p> |
| <p style="text-align: center;">CHAPTER VIII: Inspections, emergencies and communication</p> | |
| <p style="text-align: center;">Article 49: Inspections</p> <p>1. The necessary mechanisms and means for establishing a decentralized system of environmental supervision [<i>fiscalização ambiental</i>, we do not know the most accurate translation] will be created by separate instrument, in compliance with the provisions of this article.</p> | <p>Citizens of Timor-Leste should be able to take action to ensure that the entity responsible for environmental supervision is adequately and appropriately carrying out that supervision. A petition to the Provedor regarding the lack of EIA for the heavy oil power project was ineffective.</p> |
| <p>2. Public entities, citizens and legal persons are subject to the duty to cooperate with the authorities responsible for environmental supervision in accordance with law.</p> | |
| <p>3. Environmental supervision can be initiated at any time whenever there are indications of violations of this law.</p> | |
| <p>4. The government agency responsible for environmental supervision may issue an order to cease the polluting activity, clean and rehabilitate the location of environmental damage.</p> | |
| <p>5. Providing false information or attempting to interfere in the activities of environmental supervision is subject to administrative sanction or criminal prosecution.</p> | <p>This should apply to state employees and officials as well as to individual and legal persons outside the state.</p> |
| <p>6. Failure to follow the orders of the entity responsible for environmental supervision is subject to administrative sanction or criminal prosecution.</p> | |

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| <p>Article 50: Citizen Involvement in environmental supervision In view of paragraph two of the previous article, the government must promote the participation of citizens in environmental supervision, including, among others, reporting mechanisms for environmental offenses.</p> | <p>Needs to be more specific, as well as protection against retaliation for citizens and whistle-blowers.</p> <p>In addition, citizens and communities should have the right to bring a lawsuit or other action for injunctive relief or compensation, when other mechanisms are ineffective.</p> <p>As in other articles with the phrase "<i>governo deve...</i>," it should be clear that this is mandatory, not only a recommendation.</p> |
| <p>Article 51: Emergencies</p> <ol style="list-style-type: none"> 1. The state creates a system for preventing and responding to environmental emergencies caused by human intervention or natural disasters. 2. Notwithstanding the preceding paragraph, the entities responsible for activities causing potential environmental impacts must create and maintain a system of response to emergency situations. 3. The environmental management plans and environmental decommissioning plans, under the law, must contain provisions concerning the prevention of incidents and emergency response activities to avoid environmental degradation or damage. 4. In case of emergency, all citizens have a duty to notify local authorities of the event, to ensure public safety and minimize environmental degradation or damage. 5. Transitional environmental standards may be adopted applicable to specific emergency situations in order to facilitate the rehabilitation of affected areas, to prevent degradation or environmental damage and restore ecosystems and species. 6. The State shall promptly notify other States likely to be affected by an emergency situation occurring within the jurisdiction of Timor-Leste. | <p>The response component should be done in conjunction with or by the State Secretariat for Social Assistance and Natural Disasters in the Ministry of Social Solidarity, with support from PNTL and other emergency response mechanisms.</p> |
| <p>Article 52: Communication</p> <ol style="list-style-type: none"> 1. Government entities must annually submit to the Ministry responsible for environmental stewardship a report on activities that have environmental implications. | <p>These reports should be published in both national languages.</p> |
| <ol style="list-style-type: none"> 2. The Minister responsible for the protection of the environment submits, annually, to the Council of Ministers, a report on the state of the environment, taking into account the reports received under the preceding paragraph. | <p>The Annual Report should include all current and future planned activities with environmental implications to allow for the analysis of cumulative impacts to the environment.</p> <p>In order to involve local communities, we suggest adding</p> <ol style="list-style-type: none"> 3. This annual report on the State of the Environment must be published in local languages and the state must ensure that it is accessible to local communities. |

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| <p style="text-align: center;">CHAPTER IX: Civil liability and infractions and criminal</p> <p style="text-align: center;">Article 53: Strict liability</p> <p>1. There is an obligation to compensate the injured party, regardless of fault, where the agent has caused damage to the environment.</p> | <p>Can fines, penalties, and other sanctions be 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?</p> |
| <p>2. Assessment of the severity of the damage and setting of quantitative compensation for environmental degradation or damage is done by the courts under general law.</p> | |
| <p style="text-align: center;">Article 54: Public liability insurance</p> <p>1. Liability insurance for compensation is encouraged for environmental damage or degradation.</p> | <p>Why only "encouraged," not required?</p> |
| <p>2. Natural or legal persons engaged in activities that involve risk of environmental degradation or damage as determined by the environmental licensing system must hold liability insurance.</p> | |
| <p style="text-align: center;">Article 55: Responsibility for misdemeanors</p> <p>1. Infractions of this law are considered misdemeanors punishable by fine, in terms defined by complementary legislation, harmonizing the various levels of administration depending on the seriousness of the infraction.</p> | <p>See discussion of Enforcement in the narrative part of our submission.</p> |
| <p>2. The responsibility for infractions is independent of civil or criminal liability that might take place, under the law.</p> | |
| <p>3. If the same conduct is both a crime and an infraction, the offender shall always be punished as a crime, subject to the penalties provided for the offense.</p> | |
| <p>4. Depending on the severity of the offense and the culpability of the offender, the following additional sanctions may apply:</p> | |
| <p>a. Prohibition to conduct a profession or activity;</p> | <p>Can this also prevent or halt an activity or project already underway?</p> |
| <p>b. Deprivation of the right to subsidies granted by public bodies or services;</p> | |
| <p>c. Termination of licenses or permits relating to the conduct of his business;</p> | |
| <p>d. Seizure and confiscation by the state of objects made or used during the offense;</p> | |
| <p>e. Loss of tax benefits, credit benefits and financing lines of credit that were in place.</p> | |
| <p>5. Negligence and intent are always punishable.</p> | |
| <p>6. Without prejudice to criminal liability, legal and natural persons engaged in business without license or required legal authorization must:</p> | |
| <p>a. Repay the state an amount equal to the market value of exploited natural resources and verified environmental degradation or damage, plus interest set by the responsible Ministry, in an amount not exceeding the legal rate.</p> | <p>Repayment should not only be to the state, but also to affected people and communities, consistent with the objective of Article 43. Punitive damages (such as doubling fines) should also be applicable in cases of intention or negligence.</p> |

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| b. Lose the right to any infrastructure or equipment used in such activities or remove such infrastructure or equipment or pay for their removal. | |
| c. Clean all pollution resulting from activities or to pay for their removal. | |
| 7. The liability referred to in paragraph 8 may or may not be cumulative with a view to restoring the environment to the state it would have been if the activity had been carried out with the license. | |
| 8. A fine is applied for delays in complying with the legally applied infraction. | |
| <p style="text-align: center;">Article 56: Complaints</p> 1. Natural and legal persons have the right to submit complaints to the competent authority about activities that cause environmental damage or degradation, which may constitute breaches of this law. | If the competent authority fails to act, persons should be able to go to court or have other legal recourse, as discussed in the narrative part of our submission. Timor-Leste's ability to prevent environmental destruction and corruption, and improve transparency, would be enhanced if decisions by the competent authority are reviewable by the courts. |
| 2. For purposes of the previous section, a decentralized system is created to receive complaints of environmental offenses and to ensure a rapid response to them and create a system of disclosure about the handling of complaints received. | |
| <p style="text-align: center;">CHAPTER X: Dispute resolution, judicial protection, reparation and compensation</p> <p style="text-align: center;">Article 57: Alternative Dispute Resolution</p> 1. The State must promote the creation of a means of alternative resolution of environmental disputes, such as arbitration, conciliation, mediation, conciliation and, among others, and create the mechanisms and means to ensure their use, without prejudice to the following article. | |
| 2. Local communities can use local, legally recognized, institutions and mechanisms for alternative resolution of environmental disputes. | |
| 3. Resolution of environmental disputes shall not apply to environmental crimes. | |
| <p style="text-align: center;">Article 58: Jurisdictional Trusteeship</p> 1. The Prosecutor General and any natural or legal person who feels threatened or harmed in their rights can defend the values protected by this law, through an action before the competent court of law relevant to the cessation of the threatening conduct or affecting values and compensation for damages that it may have resulted. | The actions described in this article should not only allow lawsuits to recover damages and compensation, but to prevent an illegal project before it takes place (even if it has received a license) and to halt one already underway. |
| 2. It is also open to any person, regardless of personal interest to sue, as well as foundations and associations that defend the interests involved and the local communities, the right to propose and act, in the manner provided by law, procedures and protective measures to uphold the values protected by this law. | |

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| <p align="center">Article 59: Repair, rehabilitation and compensation</p> | |
| <p>1. The entities responsible for infringements of this law are obliged to restore to the prior situation, by rehabilitation of the degraded or affected ecosystem.</p> | |
| <p>2. If offenders do not meet the above obligations within the indicated period, the authorities will arrange for demolition, and necessary construction work to restore the situation prior to the violation and rehabilitation at the expense of the offenders.</p> | |
| <p>3. If it is impossible to restore the situation preceding the offense, offenders are required to pay special compensation to be determined by law and to the works required to minimize the consequences caused.</p> | |
| <p>4. The compensation provided in the preceding paragraph shall be distributed equitably among the affected communities.</p> | <p>Compensation should be distributed according to the level of impact on each community member.</p> |
| <p align="center">CHAPTER XI: Final and Transitional Provisions</p> | |
| <p align="center">Article 60: International cooperation</p> | |
| <p>The State must, under the principle of international cooperation, cooperate with other States for the shared management of transboundary components and environmental risks to achieve the objects set out in international conventions and agreements to which Timor-Leste is a party.</p> | |
| <p align="center">Article 61: International conventions and agreements</p> | <p>We suggest adding a clause:</p> |
| <p>The regulations, standards and, generally, all matters included in the special legislation governing the implementation of this law takes into account the international agreements and conventions accepted and ratified by Timor-Leste which have to do with the matter in question, as well as the standards and criteria approved multi-or bilaterally between Timor-Leste and other countries.</p> | <p>The Government must hold wide consultations, including with civil society, scientists, academics, and vulnerable groups, before deciding to sign an international environmental agreement or convention.</p> |
| <p align="center">Article 62: Environmental quality standards</p> | |
| <p>To define environmental quality standards by law, the standards approved by the World Health Organization are applied.</p> | <p>This should reference a particular WHO document or documents. Does WHO have standards relating to all environmental issues, including those which are not health-related?</p> <p>Presumably this is temporary until the standards described in article 12 are developed. How does the Indonesian/UNTAET legal regime currently in force compare with the WHO standards?</p> <p>The WHO standards are absolute minimum global standards, not strict enough to ensure sustainable development of Timor-Leste. The do not incorporate the Precautionary Principle in Article 4(d) of this law, that if an action or policy has a suspected risk but there is no scientific consensus that it is harmful, the burden of proof that it is not harmful falls on those taking the action.</p> |

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| <p style="text-align: center;">Article 63: Environmental Audits</p> <p>1. All activities at the date of entry into force of this Act which are in operation without application of environmental and social protection measures, resulting in known damage to the environment, are subject to environmental audits.</p> | <p>This must include activities undertaken by government institutions and under contract with government.</p> <p>Audits should be conducted jointly by the SEMA and the responsible ministry, and the results should be made public.</p> |
| <p>2. The costs of repairing the environmental damages eventually found by the audit are the responsibility of the person conducting the activity.</p> | <p>The principal purpose of these audits should be to identify preventive measures which can be undertaken before environmental damage is caused, and the person conducting the activity should be responsible to implement and pay for such measures.</p> |
| <p style="text-align: center;">Article 64: Complementary legislation</p> <p>The bases contained in this law are developed at the initiative of the Government, through the adoption of complementary legislation.</p> | <p>See comments on "Complementary legislation" in the narrative part of our submission.</p> |
| <p style="text-align: center;">Article 65: Entry into force</p> <p>This law enters into force the day following its publication.</p> <p>Approved on __ of _____ 2011.</p> <p>The President of the National Parliament</p> <p>Promulgated on __/__/201__</p> <p>To be published.</p> <p>The President of the Republic,</p> | |