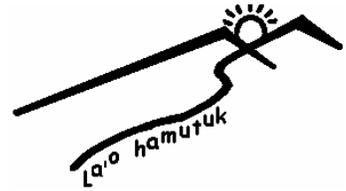


# **La'o Hamutuk**

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**Submission to the**  
**Ministry of Natural Resources, Minerals and Energy Policy**  
**Democratic Republic of Timor-Leste**

**from**  
**La'o Hamutuk**

**regarding the**  
**Legislative Package on Reorganizing Petroleum**  
**Industry Activities in Timor-Leste**

**5 April 2007**

## Summary

- This submission discusses general issues, as time is too short to provide detailed analysis.
- The time, notice, language and media used for this public consultation make it impossible to get meaningful input from Timor-Leste's population, and the consultation should be extended or re-opened.
- Major legislation should not be enacted during a social and political crisis or just before a national election. There is no reason these decree-laws need to be passed in such a rushed manner.
- These draft laws prioritize money for "economic agents" above the needs and rights of our population, and benefit businesses and people in rich countries more than Timor-Leste's citizens.
- If enacted, these draft laws will endanger our environment and discourage Timor-Leste from exploring options for clean, renewable energy.
- These draft laws excessively concentrate power in one ministry, thereby risking corruption, abuse of power and maladministration.
- These draft laws totally fail to implement the Government's stated commitment to transparency and accountability, and could undermine existing steps toward these principles.
- These draft laws allow conflicts of interest and contain almost no safeguards against corruption.
- The ANRP violates the Petroleum Fund Act's requirement that all Government revenues from petroleum activities be deposited directly into the Petroleum Fund.
- National oil companies bring risks as well as benefits; the proposed PETROTIL statutes do not protect against the dangers.

## **Introduction**

As a Timorese non-governmental organization (NGO), La'o Hamutuk is grateful for the opportunity given by the Ministry for this public consultation. This proposed legislation is essential to the future of our nation. At this point in the process, it is important for the Government to listen to public opinion and to encourage public participation to help develop Timor-Leste as a democratic nation. Therefore, the public consultation should not be done only to meet legal requirements, but to effectively stimulate and understand the views of people across our nation, and to synthesize input from a variety of perspectives and bases of knowledge.

La'o Hamutuk has worked for many years on issues relating to natural resource development in Timor-Leste, together with other organizations. La'o Hamutuk has provided many submissions to Government and Parliament, particularly regarding the laws establishing our petroleum regime and Petroleum Fund. We have campaigned to build support for the Government of Timor-Leste in the negotiations with Australia over the Timor Sea. Over the last seven years, we have developed relationships with experts around the world who have given their skills to help Timor-Leste develop a world-class system to manage petroleum development and revenues.

We would like to continue to support Timor-Leste's Government and legislators in creating a petroleum activities system which will ensure that Timor-Leste's petroleum resources benefit our population, rather than inflicting the "resource curse" that condemns most oil-rich, cash-poor countries like ours to economic, environmental and social disaster.

Consequently, we would like to use this opportunity to share our perspectives and offer some comments about the draft decree-laws regarding petroleum activities in Timor-Leste, in response to the announcement on 22 March. We have not been given enough time to submit an article-by-article review as we have in the past. Therefore, we will respond to this consultation as if it was like the first Petroleum Fund public consultation on a discussion paper, and offer general comments on basic concepts.

We understand that many people from civil society and elsewhere have requested more time for this public consultation. If the Ministry listens to these requests and extends or re-opens the process, La'o Hamutuk will provide more detailed, better-informed suggestions.

## **This public consultation is too short and designed to discourage popular participation.**

In principle, we do not question the power of the Government to write laws and regulations for Timor-Leste. As a government based on democratic processes, this Government has the legal authority to regulate development activities in this country, including in the petroleum sector.

In a democratic nation, public consultations are an important way for people can participate in the development process, helping to create laws which will affect the lives of all our citizens. The right to public participation is underlined in the RDTL Constitution, as a necessary component of Article 46.1: "Every citizen has the right to

participate in the political life and in the public affairs of the country, either directly or through democratically elected representatives.”

Public consultation must be a mechanism which encourages people to participate in this process, not only for one-way communication from the Government. The Government can learn alternative ideas to improve its laws and decisions. We hope that the Government does not view the process of public consultation only as an exercise to meet a legal requirement, but that you conduct it with good intentions, as a way to implement the spirit and letter of democracy.

In this public consultation process, the Ministry does not appear interested in obtaining input from civil society in Timor-Leste or elsewhere. The Government announced it on 22 March, and allowed only fifteen days for comments. Although some of the draft laws are from nearly five months ago, they were not released to public view until 15 days before the deadline. Other documents indicate that the Government plans to implement the new regulatory authority by 1 April, or to have the decree-laws promulgated by President Xanana Gusmão, whose term of office ends in less than two months. We believe that some involved in this process see it as a mere formality which, as one government advisor wrote, should not “impose unnecessary or undesirable delay” in bringing the proposed legislation into force as quickly as possible.

La'ó Hamutuk is a local organization with limited experience, resources and knowledge, although we expand our expertise by consulting with experts from around the world. We feel that fifteen days is insufficient, and that the Government will not receive good ideas from civil society or others. We share concerns expressed by Petroleum Fund Consultative Council and the Core Group that a meaningful consultation on such complex issues requires more time, and hope that the Ministry will decide to re-open or extend the process to receive more complete participation from civil society.

The mechanisms for communication with the public to maximize participation in this process, including organizations like La'ó Hamutuk which have long engaged with officials involved in petroleum development in Timor-Leste, were far from sufficient. The Government only published in the *Timor Post* once, which reaches hardly anyone outside Dili, and which the even majority of people in our capital city would not see. To examine the documents, the consulted public is required to use the internet and e-mail. Although these communications media are not an obstacle for La'ó Hamutuk, they are inaccessible to approximately 99% of Timor-Leste's population. We do not agree that a consultation which relies on these tools can be considered open to the public, or implements the consultation's stated objective of giving “publicity, legitimacy and transparency” to the Ministry's reorganization of Timor-Leste's petroleum sector.

The Ministry also showed bad faith in seeking public participation by providing the draft laws only in Portuguese. Our Constitution says that the official languages of Timor-Leste are Tetum and Portuguese; the Government has adopted English and Indonesian as working languages. Particularly in the petroleum sector, many documents are circulated in English to involve knowledgeable people, especially those working at international oil companies with financial interests in our resources. In the last bidding round, companies were directed to submit their bid materials in Portuguese or English. Although the Government's function is to serve Timor-Leste's people, it seems to prioritize the interests of these companies over its own citizenry.

Fewer than five percent of Timor-Leste's people understand Portuguese. When La'ó Hamutuk enquired about availability of the draft decree-laws in English, an international advisor to the Government said that the Government should not spend money on language translations, and that he was afraid somebody would ask for "versions in Italian, French, Norwegian, Hindi, Chinese, etc."

Drafts of the Petroleum Fund Act and petroleum regime laws were circulated in English as well as Tetum, Portuguese and sometimes Bahasa Indonesia. Of the dozens of submissions made to public consultations on those documents, one was in Tetum, two in both Portuguese and English, and all the rest in English with a few also provided in Bahasa Indonesia. Although La'ó Hamutuk has raised concerns about those laws not incorporating all the good ideas which arose during public consultation, we appreciate the adequate time and flexibility of language that enabled many knowledgeable people to analyze and comment on the draft documents.

La'ó Hamutuk making this submission in Tetum, the official language of Timor-Leste which is spoken by a large majority of our population. In order that international advisors to the government may understand it, we are providing an English translation.

## **Now is not the time to make major changes in government structure.**

We appreciate the effort by the Government to improve and regulate petroleum development activities in Timor-Leste, including the creation of these decree-laws. But the current political and social context makes this the wrong time to enact such major changes.

The Timor Sea Treaty requires the Government to transform the TSDA into the Regulatory Authority within three years of April 2003, but it has already been extended by one year and then for three months. It could easily be extended for another nine months until April 2008, when our new Parliament and Government will have had time to establish themselves. The creation of PETROTIL and the National Council on Energy Policy have even less time pressure – there is no reason for them to be enacted this year.

Timor-Leste is in the midst of a crisis, with approximately 10% of our population displaced from their homes and many more living with daily fear of violence. In addition, we are about to have Presidential and Parliamentary elections, with the possibility of changing the structure and policies of our Government. Most people interested in public policy are busy with campaigns, which prevents them from giving attention to this public consultation. Because these decree-laws are not being submitted for Parliamentary approval, there will not be another opportunity for elected Members of Parliament to provide input, making it even more important that this public consultation be conducted at a time when political leaders from all parties can participate.

There is no urgency for Timor-Leste to create these new petroleum administrative structures rapidly, especially when our government is in the midst of a political transition. Likely changes in the structure of our Government later this year will impact on today's policy decisions. Because of this, even if these laws were rushed through and in force before the Parliamentary election, there is no guarantee that the new government will accept them, as it may have different policies.

During the current security crisis, many people are unable to give attention to this consultation at this time, which reduces public participation. Because of this, we ask the government not to exploit the instability and insecurity to enact laws or policies which could impact on the lives of our entire nation for decades to come.

It appears that our Government and Parliament are the political and social crisis as a smokescreen so that they can make major decisions while people's attentions are distracted. In the last two months, Parliament has enacted pension laws for ex-parliamentarians and ex-office-holders, ratified the CMATS Treaty, and is about to pass Clemency and Military Service Laws. We hope that what has happened already is not because the organs of sovereignty are taking advantage of the situation to make decisions which will have a negative impact on the future of our nation. But even if it is not intentional, enacting major legislation just before an election and in the midst of a crisis undermines democratic principles and will not produce optimal results for our people.

### **These laws prioritize money for companies above the needs of our people.**

As a nation which won independence through a popular struggle, Timor-Leste's government has the responsibility to protect and serve the people of Timor-Leste for the future. All laws and regulations enacted by the Government should reflect this.

Unfortunately, these three proposed decree-laws appear to ignore the lives of our people. These laws respond to the needs of the market, which is dominated by money and international oil companies. Indeed, the invitation to this public consultation is directed to "consumers and economic agents" in the oil sector, rather than to our citizenry. Although the Government has the authority to regulate the entire development process (including energy policies), this process must be based on the interests of Timor-Leste's people, not the oil companies or oil consumers, who are mainly from rich countries.

The people of Timor-Leste use much less energy than the USA, Japan, or other rich, industrial countries. Today, the production from the JPDA is all exported to Japan and elsewhere, but our people must import fuel from Indonesia.

We hope that the new agencies and policies envisioned in these decree-laws will oversee production and distribution to ensure energy security in Timor-Leste. But they must also protect our environment, preserve our communities and safeguard the land rights of our people. In addition to providing revenues for suppliers and the Government, energy must be available throughout Timor-Leste at affordable prices without damaging our environment. The structure of the public consultation and the proposed agencies appear to neglect the majority of our population. For example, article 27 of the National Petroleum Regulatory Authority (ARNP) draft decree-law requires a public hearing for actions which would affect the rights of economic actors or consumers, but nothing in any of the laws provides for public hearings regarding activities which affect the rights of our citizens.

Although the mandates of the new agencies established by the draft decree-laws include clauses about environmental protection, the laws contain no articles explaining how this is to be done. Furthermore, the National Council on Energy Policy does not include a representative from the Environment Ministry or anyone with knowledge about

anything other than “energy matters” or business. This reflects the priority of the government to place petroleum economics above all other concerns.

Our nation’s energy policy must include renewable sources and alternative energy, not only fuels which are burned to create waste and pollution. Except for biofuels, these are non-renewable and exacerbate global climate change. The world is increasingly relying on energy resources Timor-Leste has in abundance – sun, wind, waves, tides, rain, and deep seas. If our energy policies are designed by people whose focus is maximizing petroleum revenues and burning fuels, these cleaner, forward-looking alternatives will be ignored, and Timor-Leste will inevitably take the path of hard energy which has led many countries to ruin.

### **The draft laws centralize too much power in one Ministry.**

The proposed structure centralizes all petroleum-related decisions in the Government, especially in the Ministry of Natural Resources, Minerals and Energy Policy. La’o Hamutuk raised this concern in our submissions on the Petroleum Regime; it is unfortunate that the Ministry would like to continue along the path of centralization. We would have hoped that the undemocratic changes of our governmental leaders last July would have reinforced our message that the people’s interests must be protected by laws, rather than relying on the good intentions of individual, temporary holders of the public trust.

Such centralization of power can result in corruption, abuse of power, and maladministration. Already, Timor-Leste confronts many problems because of few checks and balances among our public institutions. When institutions with the function of controlling other public institutions are weak, this gives more possibilities for corruption.

The National Council on Energy Policy is responsible to set energy policies for our country, according to concepts proposed from above by the Ministry, which presides over it. However, we are not clear on the regulatory authority embodied in this Council. The diagrams and explanatory documents provided for this consultation say that the Council will “supervise” the ARNP with powers analogous to those of the Joint Commission with regard to the TSDA, but this regulatory and oversight responsibility appears not to be included in the draft decree-laws, which we read as describing the Council as a consultative or advisory body only, with the power to propose policies and directions but not to enforce them.

This structure gives little power to the Council, and we therefore expect that the Council will be unable to change energy policies set by the Ministry.

The proposed laws combine regulation, production and distribution under one Ministry, which is also responsible for regulating activities which will provide more than 90% of government revenues. It is inevitable that keeping the revenue stream flowing will take top priority. Like a Timorese river during a monsoon rain, anything in its path will be washed away. But just as our people need bridges, buildings, roads and ports, we need independent structures which will receive as much attention as petroleum exploitation projects. This can be achieved only if the various functions – production, distribution, regulation and oversight – are independent. In that way, they can check each other and tendencies toward corruption can be prevented before they become endemic.

We are also concerned that PETROTIL – the proposed national oil company, is under the same Ministry responsible for regulating petroleum activities. A valuable opportunity for independent participation in joint ventures with international oil companies is lost if PETROTIL is not independent of the Ministry. An independent publicly owned company, with democratic oversight provided by another part of the Government, could help protect against collusion between companies and the Ministry while preserving whatever confidentiality is necessary.

The draft laws are unclear about regulations which will implement the regulation of the petroleum industry, the development of energy policy, or the management of energy resources. How will these regulations be developed? Who will write them, and what level of transparency, public input, and oversight will be provided?

### **These laws fail to provide for transparency or accountability.**

Although Timor-Leste's Government has committed to follow the principles of the Extractive Industry Transparency Initiative, these draft laws appear to undermine that commitment. Except for vague generalities about "transparency and good corporate governance" in relation to PETROTIL, this concept is totally absent from the proposed decree-laws.

In recent months, the Timor Sea Designated Authority has begun to implement the spirit of "publish what you pay", which is the title of a page on its website. We hope that these moves toward transparency will be continued and expanded by the ARNP, but there is nothing in the proposed laws which gives substance to our hopes.

At present, the laws of Australian and other stock exchanges require companies to publish information about revenues and production; such information from Santos' and Woodside's quarterly filings in Australia is essential to the public's ability to validate information published by the Government and the BPA about petroleum receipts. Unfortunately, PETROTIL would not be subject to any publication requirements under the proposed legislation, thereby undermining the Government's formerly laudable commitment to transparency.

It is a well-established international principle that conflicts of interest should be avoided in situations like petroleum industry regulation, a principle that is acknowledged in Articles 7.4 and 7.6 of the draft ARNP decree-law, which prohibit members of the Administrative Council from having financial interests in the activities they are responsible to regulate while they are on the Council and for one year after they leave their positions. (If such a rule were applied to international advisors to RDTL in the petroleum sector, at least two former advisors would be in violation today.)

We are disappointed that these laws do not go much further, protecting against conflicts of interest in all organs and responsibilities they define. Furthermore, they should require all people in responsible positions in petroleum regulation to publicly declare their assets, income and potential conflicts of interest before beginning their service and at the end of their service, as a fundamental safeguard against corruption.

However, such a provision in the Petroleum Fund Act for the Petroleum Fund Consultative Council has already been problematic to implement; since Timor-Leste does not yet have an overall law regarding asset declaration for holders of the public

trust, it has been difficult for the PFCC members alone to meet the legal requirements of Petroleum Fund Act article 27.6. Once again, this illustrates a problem from rushing to enact these decree-laws before Timor-Leste has established strong foundations of good governance and accountability throughout our government. A house built without a foundation will be washed away by the first big rain.

## **The ANRP violates the principles of the Petroleum Fund Act.**

The proposed law for ANRP violates the spirit (and perhaps the letter) of the Petroleum Fund Act. Article 6.1(a) of that act specifies that all “the gross revenue, including Tax Revenue, of Timor-Leste from any Petroleum Operations, including prospecting or exploration for, and development, exploitation, transportation, sale or export of petroleum, and other activities relating thereto” will be deposited directly into an account for the Petroleum Fund, managed by the Central Bank. Although an exception is made in Article 6.1(b) for the TSDA as a bi-national agency established pursuant to the Timor Sea Treaty, there is no reason for that exception to continue after the TSDA has been transformed into ARNP, an agency of the Government of RDTL.

## **National oil companies are a risky business.**

In submissions on the draft petroleum regime two years ago, La'o Hamutuk and others proposed that Timor-Leste establish a national oil company, a concept which was left out by the authors of that draft law. We were gratified that the final Petroleum Act incorporated this suggestion that emerged during the public consultation.

Although we continue to support the concept, a national oil company is not without risk. As the experiences of Ecuador and Nigeria vividly demonstrate, it can be used to shield foreign companies from responsibility for their misdeeds, or to enable opacity and anti-democratic activities which would not be dared by an international corporation regulated by well-established democratic governments in rich countries. We are concerned that the proposed PETROTIL decree-law contains nothing to protect against these sorts of abuses.

Given Timor-Leste's inexperience in the petroleum sector, and our lack of strong laws to regulate businesses or protect the public interest, it is even more critical that the law establishing and governing our national oil company enforce principles of transparency, accountability, good governance, independent oversight, democratic control and respect for environmental and community rights. Unfortunately, the manner in which this public consultation is being conducted does not allow us to do a more extensive analysis of the draft PETROTIL statutes, or to propose specific improvements and amendments. If this consultation is extended, we look forward to learning from the extensive experiences of other countries with national oil companies, both good and bad, and to helping Timor-Leste emulate the best and avoid the worst.