

# La'ó Hamutuk

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**To:** S.E. Guilhermino da Silva, President of Tribunal de Recurso  
S.E. Vicente Guterres, President of Parliament  
S.E. Carmelita Caetano Moniz, President of Parliament Committee A  
S.E. Virgílio Maria Dias Marçal, President of Parliament Committee C  
S.E. Jacinta Abu Cau Pereira, President of Parliament Committee D  
S.E. Adérito Tilman, Anti-Corruption Commissioner  
S.E. Sebastião Dias Ximenes, Provedor for Human Rights and Justice

**Cc:** S.E. Francisco da Costa Monteiro, President of TimorGAP, E.P.  
S.E. Alfredo Pires, Minister of Petroleum and Mineral Resources  
Media and public<sup>1</sup>

**Re:** Open letter asking for an audit and investigation of TimorGAP, E.P.

**Date:** 5 August 2014

Dear Excellencies:

We are writing to encourage your agencies to use their legal and Constitutional powers<sup>2</sup> and investigative capabilities to discover whether an indirect state-owned entity is managing and spending Timor-Leste's resources for the benefit of our people. We believe that Timor GAP, E.P. may have committed legal violations, maladministration, poor management, and possible corruption, as well as ignoring legal obligations for accountability and transparency.

Three years ago, the RDTL Council of Ministers enacted Decreto-Lei N.º 31/2011 of 27 July,<sup>3</sup> creating TimorGAP - Timor Gás & Petróleo, E.P. as a state-owned company. Less than three months later, the Council of Ministers approved Resolução do Governo N.º 29/2011 of 5 October,<sup>4</sup> appointing the President of TimorGAP, and the company began operation.

According to Article 27 of Decree-Law 31/2011, TimorGAP is required to present and publish an Annual Report within six months after the end of each year. By now, they should have presented reports for 2011, 2012 and 2013. However, TimorGAP has never submitted an annual report. La'ó Hamutuk has asked them about this many times, and TimorGAP said that problems with the internal audit of their GAP-MHS subsidiary prevented publication of these reports for more a year.

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<sup>1</sup> This letter is at <http://www.laohamutuk.org/Oil/TimorGAP/14LHTRTimorGAPaudit5Aug14.htm> in English and Tetum, including links to referenced and footnoted documents. Some documents have been re-posted to La'ó Hamutuk's website because government websites often change or are inaccessible.

<sup>2</sup> Articles 95.3(e), 129.3 and 145.3 of the RDTL Constitution assign Parliament and the Tribunal da Contas responsibility to monitor the execution of the State Budget and the lawfulness of public expenditure.

<sup>3</sup> [http://www.jornal.gov.tl/public/docs/2011/serie\\_1/serie1\\_no28.pdf](http://www.jornal.gov.tl/public/docs/2011/serie_1/serie1_no28.pdf)

<sup>4</sup> [http://www.jornal.gov.tl/public/docs/2011/serie\\_1/serie1\\_no37.pdf](http://www.jornal.gov.tl/public/docs/2011/serie_1/serie1_no37.pdf)

Because TimorGAP has been unable to conduct its own audits, we recommend that the Câmara de Contas should conduct an external audit, either on its own initiative or in response to a Parliamentary request. However, a thorough investigation will take time, as Timor GAP's records may not be complete or well-organized. Therefore we suggest that the Provedoria and/or Anti-Corruption Commission should also explore whether there is *prima facie* evidence of maladministration or corruption. If they find such indications, they should look into them more deeply.

TimorGAP's finances are largely hidden and are "excluded from the consolidated financial statements [the General State Accounts], as they are incorporated under different laws."<sup>5</sup> However, TimorGAP has already received \$13.3 million in public transfers from the State Budget.<sup>6</sup> They themselves have been awarded \$8.4 million worth of contracts from the Infrastructure Fund, and they are entrusted with managing the Tasi Mane project,<sup>7</sup> which involves hundreds of millions of Timor-Leste's dollars. We have no information on what they have received or borrowed for the commercial activities of themselves and their subsidiaries, or on any of their expenditures.

It is important to get TimorGAP's house in order now, before weaknesses in its internal control and accounting systems have more serious consequences for Timor-Leste. In the near future, TimorGAP will become involved with the new CPLP Petroleum Consortium, begin construction of the Suai Supply Base<sup>8</sup> and contracting for the Betano Refinery and South Coast Highway,<sup>9</sup> and incur significant expenses for petroleum exploration under Production-Sharing Contract JPDA 11-106.<sup>10</sup>

In order to help this investigation get started, we are listing a few areas which should be explored, and we are eager to share what we know with investigating authorities.

### **Use and accountability of public transfers**

A few months ago, the Tribunal de Recurso issued Audit Report No. 2/2014 on the National Petroleum Authority (ANP),<sup>11</sup> which points out that the transfers to ANP from the Ministry of Petroleum and Mineral Resources (MPRM) are neither transparent nor accountable, a situation which should be rectified (Observation 2.8.3, Conclusion 2.8.2). The same applies to TimorGAP.

TimorGAP receives nearly twice as much in transfers from the State Budget as ANP gets, but these are also concealed in the budget law and supporting documents within public transfers from MPRM, and are not visible in Budget Execution Reports, the Transparency Portal<sup>12</sup> or the General State Accounts.<sup>13</sup> The money is considered 'executed' when MPRM transfers it to TimorGAP, and

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<sup>5</sup> Note 1 in Deloitte's audit, page 18 of the Ministry of Finance's Consolidated Declaration on the 2012 Consolidated State Accounts. Available at

<http://www.laohamutuk.org/Oil/TimorGAP/CGE12excludeTimorGAPpt.gif>

<sup>6</sup> State budget documents since 2010 are linked from <http://www.laohamutuk.org/DVD/DVDIndexEn.htm>. Infrastructure Fund appropriations and spending are in Budget Book 6.

<sup>7</sup> <http://www.laohamutuk.org/Oil/TasiMane/11TasiMane.htm>

<sup>8</sup> <http://www.laohamutuk.org/Oil/TasiMane/13SSBen.htm>

<sup>9</sup> <http://www.laohamutuk.org/Oil/TasiMane/11TasiMane.htm#hwytender>

<sup>10</sup> <http://www.laohamutuk.org/Oil/PSCs/2013/JPDA11-106.pdf>

<sup>11</sup> [http://www.tribunais.tl/files/relatorios\\_auditoria/RELATORIO\\_2\\_2014\\_ANP.pdf](http://www.tribunais.tl/files/relatorios_auditoria/RELATORIO_2_2014_ANP.pdf). Unofficial English translation at <http://www.laohamutuk.org/Oil/PetRegime/ANP2014/TRANP2010-2012en.pdf>

<sup>12</sup> <http://www.budgettransparency.gov.tl/public/index?&lang=en>

<sup>13</sup> <http://www.laohamutuk.org/Oil/TimorGAP/CGE12excludeTimorGAPpt.gif>

disaggregated information on allocation or spending is not available. However, we understand that SERN and MPRM have already provided \$13.3 million to TimorGAP as public grants:

- \$2.0 million in December 2011<sup>14</sup>
- \$2.3 million in 2012
- \$4.0 million in 2013
- \$5.0 million in 2014.

The lack of transparency for the allocation and use of this money violates Article 145.2 of the RDTL Constitution, which prohibits the existence of secret appropriations and funds.

### **Tasi Mane Project financing, planning and carryovers**

According to the Procurement Portal,<sup>15</sup> whose information is often incomplete, Timor-Leste has awarded two contracts to TimorGAP which will be paid out of the Infrastructure Fund:

- Contract RDTL 12004523 for \$4.9 million, signed 30 May 2011: Detailed geotechnical and marine survey and Front End Engineering Design for the Betano refinery. (This contract was signed before TimorGAP existed as a legal entity.)<sup>16</sup>
- Contract RDTL 12005429 for \$3.5 million, signed 1 June 2012: Front End Engineering Design for the LNG Marine facility in Beacu.<sup>17</sup>

TimorGAP has spent or managed much more on Tasi Mane from the Infrastructure Fund, according to the Budget Execution Portal<sup>18</sup> and Book 6 of the 2014 General State Budget.<sup>19</sup>

- 2011: \$ 8.7 million executed.
- 2012: \$ 9.7 million executed.
- 2013: \$ 5.7 million executed.
- 2014: \$21.1 million executed or obligated to date. \$25.2 million more is allocated for 2014.
- 2015-2018: \$319 million expected. However, this does not include many components of the Tasi Mane Project and could increase to several billion dollars if the following, some of which are already out for tender, are carried out.
  - Construction of the South Coast highway
  - Detailed design and construction of the Betano Refinery
  - Detailed design and construction of the Beacu LNG plant
  - Design and construction of the Sunrise gas pipeline

Although some of these expenses may be paid by foreign investors, doubts about the profitability of these facilities could oblige Timor-Leste to guarantee or finance a large portion of their costs.

Implementation of the TimorGAP-managed Tasi Mane project is also problematic:

- More than a year ago, TimorGAP and MPRM told local residents near the Suai Supply Base to 'liberate' their land, but no construction contract has been awarded, although five companies were prequalified last November. Communities are confused about compensation and relocation.

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<sup>14</sup> <http://www.laohamutuk.org/Oil/TimorGAP/SERNtransfers2011.pdf>

<sup>15</sup> <http://www.eprocurement.gov.tl/public/indexeprt!/?&lang=en>

<sup>16</sup> <http://www.laohamutuk.org/Oil/TimorGAP/TimorGAPContractBetanoFEEDMay2011.pdf>

<sup>17</sup> <http://www.laohamutuk.org/Oil/TimorGAP/TimorGAPContractBeacuFEEDMay2012.pdf>

<sup>18</sup> <http://www.budgettransparency.gov.tl/public/index?&lang=en>

<sup>19</sup> <http://www.laohamutuk.org/econ/OGE14/final/BB6en.pdf>

- Suai airport construction has already begun, provoking anger and controversy in the local community as their expectations for compensation and jobs have not been met. Timor-Leste's highest officials have had to intervene, and the Indonesian contractor has been unable to work. Last week, an extraordinary meeting of the Council of Ministers on 29 July approved an emergency resolution to 'unblock' the development of the Suai Supply Base and airport by settling disagreements with the local population about land use, in an effort to untangle problems created by TimorGAP's mishandling of these issues.
- The National Procurement Commission invited bids in April 2013 for the first segment of the South Coast Highway,<sup>20</sup> but no contract has yet been awarded.
- Two weeks ago, the National Procurement Commission issued RFP/ICB/045/MPRM-2014 for a pre-Front End Engineering Design for the LNG Plant in Beaçu.<sup>21</sup> Given the uncertainty about when and whether Greater Sunrise gas will be piped to Timor-Leste, this seems premature.
- Last year, Environmental License No 02/C:A-1/SSE-MCIE/VI/2013<sup>22</sup> for the Suai Supply Base was granted in violation of Articles 8(a-b), 9.1(h), 10.1(a-b), 11 and other provisions of Environmental Licensing Decree-Law 5/2011,<sup>23</sup> as no Environmental Management Plan was presented and no public consultations took place.<sup>24</sup> Political pressures overrode legal obligations, and we hope that these irregularities will be investigated and reversed.

### Financial management

Although TimorGAP occasionally publishes tender notices in local newspapers, such as the one for cleaners and security published last week,<sup>25</sup> most of its larger purchases and hiring are done without public announcement or open bidding. Perhaps because TimorGAP is outside the State's normal procurement regime, its contract announcements and awards do not appear on the Procurement Portal. It would be important to have a better understanding of how such items as consultants, travel and purchases are procured, to see whether TimorGAP is averting collusion and getting good value for the people's money.

Little information is available on how much TimorGAP pays its nearly 100 personnel, who do not follow civil service rules, or on how they are recruited. Last November, TimorGAP told Parliament that it spends about \$150,000/month on salaries.<sup>26</sup> TimorGAP pays much more for advisors and consultants than it does on salaries, and also calls some of its expenditures 'overhead,' so we cannot determine the cost of the compensation their people receive. The Tribunal Recurso audit of ANP found many irregularities in this area, and we fear that the 'entitled petroleum elite' mindset it exposed may also exist in TimorGAP.

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<sup>20</sup> <http://www.laohamutuk.org/Oil/TasiMane/Hwy/Tender/HwyITB16Apr2013.pdf>

<sup>21</sup> <http://www.laohamutuk.org/Oil/TimorGAP/LOI-RFP-ICB-045-2014-LNG-Plant.pdf> The detailed TOR is at <http://www.laohamutuk.org/Oil/TimorGAP/RFP-045-MPRM-2014.pdf>

<sup>22</sup> <http://www.laohamutuk.org/Oil/TasiMane/SSB/EIA/SSBEnvLic12Jun2013.pdf>

<sup>23</sup> <http://www.laohamutuk.org/Agri/EnvLaw/DL5-2011.htm>

<sup>24</sup> <http://www.laohamutuk.org/Oil/TasiMane/13SSBen.htm#EIA> and <http://laohamutuk.blogspot.com/2014/05/environmental-licensing-who-needs-it.html>

<sup>25</sup> <http://www.laohamutuk.org/Oil/TimorGAP/TGCleanerTender29Jul2014.gif>

<sup>26</sup> <http://www.laohamutuk.org/econ/OGE14/TimorGAPKomD11Nov2013.pdf>

## Supplying fuel to EDTL

According to Resolução do Governo N.º 11/2013 of 13 March,<sup>27</sup> TimorGAP was to supply fuel for the Hera Power plant, and on 23 April 2013 the Council of Ministers referred a contract with them to the Tribunal Recurso.<sup>28</sup> On 8 May, TimorGAP announced the opening of a temporary fuel terminal and delivery of the first shipment.<sup>29</sup> However, the process did not work out as expected, and the Ministry of Public Works had to purchase \$40 million worth of generator fuel from Esperança Timor Oan on an emergency, single-source basis.<sup>30</sup>

We have been told that the principal obstacle to TimorGAP's supplying fuel for EDTL was that TimorGAP wanted to use its status as a State-owned institution as an implicit guarantee to foreign suppliers so that they would extend credit, rather than the normal practice of requiring cash on delivery. TimorGAP preferred a brief interagency MOU with EDTL for this transaction worth more than \$50 million, rather than a normal contract which would protect Timor-Leste's interests by spelling out who is responsible for what. After several months of negotiations, TimorGAP and other State agencies failed to reach agreement, and the effort was dropped. We believe that TimorGAP sold the fuel it had already brought to Hera to ETO, and never had financial transactions with EDTL, but this was not mentioned in TimorGAP's report to Parliament six months later.

This experience indicates that TimorGAP may not give adequate attention to proper contracting procedures, and thereby may fail to sufficiently safeguard Timor-Leste's rights. The Court of Appeals has done preventive review of some Tasi Mane Project contracts and required revisions before they could be submitted to the Council of Ministers. An audit report on TimorGAP should ensure that the company does not shortcut good practice in its governance and, more importantly, in arrangements with foreign entities who may try to obtain more than their fair share of Timor-Leste's wealth.

## Relations and obligations with other institutions

TimorGAP is involved with a variety of international businesses, all of whom place their own interests before those of the people of Timor-Leste. The history of the global petroleum industry is filled with examples of greed, corruption, human rights violations and outright theft. We are concerned that TimorGAP's inexperience, haste or eagerness to be accepted as a major international player could place Timor-Leste's assets and credibility at needless risk. We encourage auditors and investigators to look into such arrangements, including the following:

- **The CPLP petroleum consortium** which is about to be created. This will include Equatorial Guinea, one of the most corrupt, dictatorial and petroleum-stealing regimes in the world, as well as national oil companies with a long record of malfeasance, like Sonangol. TimorGAP's decision-making and management processes must protect Timor-Leste from being infected by such bad practices.
- **Malaysian Helicopter Services (MHS)** has been in a joint venture with TimorGAP for several years, and we have heard reports of undue pressure on oil companies to use them as a supplier, as well as a total opacity about their finances and operations. TimorGAP told La'o

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<sup>27</sup> [http://www.jornal.gov.tl/public/docs/2013/serie\\_1/serie1\\_no9.pdf](http://www.jornal.gov.tl/public/docs/2013/serie_1/serie1_no9.pdf) or <http://www.laohamutuk.org/Oil/TimorGAP/Fuel/Res11-2013TimorGAPEDTL13Mar2013en.pdf>

<sup>28</sup> <http://www.laohamutuk.org/Oil/TimorGAP/Fuel/GovPRCom23Apr2013en.pdf>

<sup>29</sup> <http://www.laohamutuk.org/Oil/TimorGAP/Fuel/TGHera8May2013en.pdf>

<sup>30</sup> <http://www.laohamutuk.org/Oil/Power/2013/ETOContractOct13.pdf>. Although TimorGAP's EDTL fuel supply activities ended in mid-2013, page 2 of their January 2014 newsletter <http://www.laohamutuk.org/Oil/TimorGAP/TGNewsletterJan2014.pdf> describes them as ongoing.

Hamutuk that poor accounting by their GAP-MHS subsidiary has been the main obstacle to completing their audits and annual reports.

- **PTT, Thailand's National Oil Company**, has had unpublished arrangements with SERN since 2009 regarding the proposed oil refinery in Betano, including a 'Joint Trading Agreement and Joint Cooperation Agreement' signed with TimorGAP early in 2013. This is the same company that operated the Montara oil rig in the Timor Sea, where a disastrous spill a few years ago contaminated West Timor's coastline, probably including Oecusse. PTT has a history of violating local community and environmental rights in Thailand. According to the 'SDP Matrix' presented to the Development Partners Meeting last month, a Final Investment Decision will be made on this project by the end of 2014.<sup>31</sup>
- **The JPDA PSC 11-106 joint venture**, of which TimorGAP is a 24% shareholder, is about to begin an offshore drilling campaign.<sup>32</sup> TimorGAP's share of the costs could be tens of millions of dollars. If TimorGAP borrows from its JV partners or other financiers and the project turns out to be non-commercial (as the great majority of exploratory oil and gas projects do), who will be responsible for the debt?

Finally, we encourage you to look into TimorGAP's intention to spend \$3 million for onshore oil and gas exploration this year.<sup>33</sup> This would be an extralegal project, since neither the Mining Law nor the ANP Onshore regulations or model onshore PSC have yet been adopted. TimorGAP created many problems by their rush to 'liberate' land in Suai before legal expropriation regimes were in force, and we hope that similar illegal haste does not commence onshore exploration without proper laws, regulations and guidelines. Potential environmental and community disruption from oil and gas drilling is far more serious than that from Suai's port, warehouses and airport.

La'ó Hamutuk appreciates your attention to these concerns, and we would be pleased to collaborate in whatever ways we can. Unfortunately, we do not have the capacity to compel evidence or examine internal records or practices that Parliament, the Tribunal Recurso, Provedoria and Anti-Corruption Commission have. We wish you well as you undertake this technically and politically challenging investigation, and are confident that your work will protect and improve the financial, governance and economic well-being of the people of Timor-Leste.

Obrigado barak,

  
Juvinal Dias      Adilson da Costa      Celestino Gusmão      Charles Scheiner      Cristiana Ximenes Belo  
Natural Resources and Economy Team, La'ó Hamutuk

<sup>31</sup> Item 2.3.4 in the Economic Strategic Sector,

<http://www.laohamutuk.org/econ/14TLDPM/SDPMatrixAllEn.xlsx>

<sup>32</sup> <http://www.laohamutuk.org/Oil/TimorGAP/ENlannounc11-106.gif>. The PSC is at <http://www.laohamutuk.org/Oil/PSCs/2013/JPDA11-106.pdf>

<sup>33</sup> <http://www.laohamutuk.org/econ/OGE14/TimorGAPKomD11Nov2013.pdf>