

La'o Hamutuk

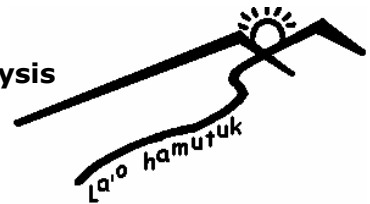
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Extractive Industry Transparency in Timor-Leste: Limitations in Practice

Presentation to the World Bank's Extractive Industries Transparency Initiative
Implementation Meeting, Paris, France

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**By the East Timor Institute for Reconstruction Monitoring and Analysis
(La'o Hamutuk)**

Introduction

This paper is being prepared by the East Timor Institute for Reconstruction Monitoring and Analysis, more commonly known as La'o Hamutuk, Tetum for "walking together." We are a Timor-Leste NGO established in 2000 which studies and reports on critical issues relating to our country, including oil and gas development¹ and the roles of international institutions in Timor-Leste.

Although the World Bank invited a representative from La'o Hamutuk to attend this seminar, we decided not to, partly because of time and staff limitations, and partly because we are not persuaded that the World Bank and EITI decision-makers are sincerely interested in perspectives from civil society which differ from their prevailing views. In our experience with World Bank meetings, we have observed that the Bank often uses civil society to legitimize its own policies, with little concern for genuine participation.

We share the analysis of participants in this seminar that the "resource curse" is a widespread and tragic consequence of mineral resource exploitation. This is especially true when the resource is oil or natural gas, the country is impoverished, and the government does not have strong traditions of democracy, integrity and accountability. Our new nation, Timor-Leste, has all the preconditions for the curse, and has devoted many hours to discussing it. However, we fear that current and proposed principles and regulations for EITI

¹ La'o Hamutuk publishes OilWeb, a CD-ROM reference to oil and gas issues in Timor-Leste, with extensive background information, documents and analysis. We have also covered these issues in numerous papers and publications available on OilWeb or our website.

and Timor-Leste will not ensure that future generations of our citizens will not regret the day oil and gas was drilled from our seas and land.

In this paper, we would like to share our fears and ideas about the impending resource curse in our country, and some of the problems with the measures being discussed by our government. We hope that you will consider our ideas seriously, even though we are not present in person, and we look forward to continuing dialogue on these matters.

EITI is not enough

Both in Timor-Leste and on a global scale, the voluntary, part-way measures in the Extractive Industries Transparency Initiative fall far short of what is needed. Of course transparency is important, but it should be mandatory. Governments should publish revenues they receive, but companies must also be held accountable. Democracy is essential at a national level, but involvement and revenue sharing at the local and community levels are also necessary.

According to the June 2003 EITI founding conference, “The objective of the EITI is to increase transparency over payments and revenues in the extractives sector in countries heavily dependent on these resources.” We would argue that the countries most dependent on these resources are not those like Timor-Leste, who receive proportionally large revenues from them, but rather the rich, industrialized nations whose residents’ daily lives depend on large quantities of oil and gas, and on petrochemical products.

In Timor-Leste, very few people have automobiles, almost no farmers use fertilizer, and electricity does not reach most of the population. We do not go to war or build global empires to ensure high profits and access to cheap energy. We do not resist efforts to limit global climate change caused by burning fossil fuels. We do not manipulate governments and control international financial institutions to protect the interests of privately-owned translational corporations and wealthy individuals.

The petroleum industry is one of the world’s most widespread, lucrative and powerful. Many industrialized nations, especially the United States and Australia, are addicted to virtually unlimited, inexpensive energy. This addiction, magnified by huge profits available to transnational oil companies, motivates decision-makers so forcefully that it will take extraordinary, unified efforts to protect the citizens of poor, oil-producing countries. Our own government is not immune to this manipulation, but neither are the governments of rich nations.

Transparency and accountability are necessary not only for poor countries’ governments, but for rich ones and large corporations as well. Some of the most publicized financial crimes in recent years have involved top officials of European and U.S. oil companies, as well as the United Nations. Repression and corruption in Third World oil-producing countries is often initiated, facilitated, or exploited by oil companies based in rich countries. We ask for a binding, global regime which requires not only transparency and accountability, but respect for democracy, the local and global environment, community needs and human rights.

At EITI’s founding conference, British Prime Minister Tony Blair stated that “good governance and transparency serve the interests of the business community wherever it operates.” His government, as well as the IMF, highlights poor governance in resource-rich countries as a cause of conflict, corruption and poverty. While good governance is worthwhile in poor countries, it is also necessary in rich countries, who have the mechanisms, power and avarice to extract large profits from resource revenues. The EITI/UK/IFI focus

on good governance for impoverished countries allows those most responsible for the resource curse – the governments, companies and institutions in oil-consuming nations, to extract, sell and consume petroleum resources, reaping huge financial benefits while exacerbating poverty, debt and war.

One of EITI's principles "recognize[s] that achievement of greater transparency must be set in the context of respect for contracts and laws." We are concerned that this could allow existing, secretive contracts and outmoded, anti-democratic laws to conceal information from the public. If EITI is to be effective, it must override current practices that tolerate an opaque environment where corruption and misuse of money flourish.

The EITI is a very small step in the right direction. But if it becomes a substitute for meaningful measures, an excuse to avoid truly effective policies which might be uncomfortable for mining companies or oil-consuming countries, it will be one more curse against people like the citizens of Timor-Leste.

This week's discussion of EITI implementation is useful, but we must also move beyond the baby steps of EITI to implement mandatory controls on petroleum companies and petroleum-consuming economies to protect current and future generations of people in petroleum-producing countries, as well as the future habitability of our planet.

Timor-Leste and the EITI

Like the government of Timor-Leste, La'o Hamutuk supports EITI's goals of transparency and accountability. We share your understanding that they are necessary to ensure that the resource wealth of a nation benefits its people and to prevent money from being stolen by corrupt company or government officials. The EITI goals require involvement of civil society, as well as informed, democratic decision-making.

Nearly two years ago, our Prime Minister Mari Alkatiri told the EITI founding conference:

"We recognise that success will only come with good governance and that is why we have been focusing in the last year on creating an institutional culture, by setting up structures and institutions which can manage decision making processes in all arms of government in a responsible manner.

"Strong institutional culture and good governance can only be achieved through accountability and transparency in all levels of Government and the public sector." ²

We agree with our Prime Minister's goals, and encourage those present at this conference to help enact them not only for Timor-Leste, but for all governments and all extractive industries through the world. As we discuss below, the Government he leads does not reliably implement these goals, and we in civil society continue to urge them to do so.

Timor-Leste is young as an independent nation, and as an oil and gas producer. This gives us the opportunity to observe the disasters oil and gas development has brought to similar nations. By learning from their experiences, we hope to avoid many of the pitfalls, and to emulate and improve on the rare best practices in the industry. The EITI is being developed in a similar historical context, although we hope our nation takes these lessons to heart better than EITI has to date.

² The text of Dr. Alkatiri's address is at <http://www2.dfid.gov.uk/pubs/files/eitidraftreporttimor.pdf>

As a newborn nation, we are creating our laws, agencies and revenue management systems from scratch, without the burden of replacing existing inadequate or misguided practices. Oil money has not yet corrupted our public officials or established entrenched interests.

In the areas of petroleum development and revenue, it is essential that transparency be legally presumed, establishing that all information is public except for specific, narrowly-defined exceptions. This presumption should override “commercial confidentiality” and other excuses for keeping secrets. In addition to the presumption, Timor-Leste’s legislation should enumerate specific reports, documents and contracts that must be published.

La’o Hamutuk has detailed our recommendations in two extensive submissions to our government in late 2004. Although our submissions mention the EITI, we recommend many stricter and more specific measures to ensure transparency and accountability. We believe that the EITI principles fall short of the minimum required, and encourage Timor-Leste and other nations to set the bar higher. As international standards and practices in this area will grow stricter over time, policies enacted today should set minimum limits, encouraging improvement as governments and industry catch up with the needs and understanding of the true owners of the resources, the citizenry.

In Timor-Leste’s case, we do not know if our Government will enact adequate transparency and accountability for the petroleum industry. If they do, it could provide a model for other parts of our Government, and perhaps for other nations.

Timor-Leste has all the preconditions for the resource curse. In a few years, more than half our GDP and three-fourths of our national budget will come from oil and gas revenues. After decades of undemocratic rule by Portugal, Indonesia and the United Nations, we have not had time to establish a tradition of integrity and professionalism in government. Our politicians, administrators, political parties and media are just learning to implement and analyze policies, administer funds and programs, and relate to the population. Our Constitutionally-mandated Provedor (Ombudsman) and Supreme Court of Justice, necessary to protect against abuses of power, have not yet been established. Our Banking and Payments Authority (Central Bank) operates in violation of its organic statute; our Petroleum Ministry has not yet been defined.

We are a small nation, in a weak geopolitical position, vulnerable to pressure or domination from much larger neighbors, donors and oil companies. For a decade before our independence, and continuing today, Australia is extracting oil and gas from our rightful maritime territory, stealing the majority of our petroleum reserves.

By any measure of poverty, education, infrastructure or public health, Timor-Leste is the poorest country in Asia. Yet our people’s high expectations of rapid recovery from poverty and Indonesian devastation could cause our Government to make ill-conceived, short-term spending decisions.

Practice falls short of principle

Timor-Leste’s Prime Minister would like to issue petroleum licenses in ten months, on the 30th anniversary of Timor-Leste’s declaration of independence. As a result, the Government is rushing legislation through without adequate public consultation or debate. They are contracting and conducting seismic exploration before the relevant laws have been enacted.

One of the EITI principles is that “an informed public understanding of government revenues over time could help public debate and inform choice of appropriate and realistic options for sustainable development.” We believe in this principle, and are working to put it

into practice. Unfortunately, our Government is also heavily influenced by oil companies, immediate revenue desires, foreign governments and IFIs, and those powerful pressures often outweigh public wishes, rights and best interests, especially for the long term. We encourage EITI to be a mechanism to strengthen governments' accountability to their own people, also known as democracy, requiring our and other governments to engage in thorough and meaningful public consultation.

Our Government claims that a "thorough public consultation"³ was conducted last September on draft legislation to manage and tax petroleum development. Although this consultation was more extensive than most others on pending Timor-Leste legislation, it was far from thorough, consisting primarily of explanations by the drafters of the legislation why they made certain decisions, and arguing against suggested revisions. The draft petroleum laws reflect a priority of facilitating petroleum development, unfettered by significant environmental protection, community consultation, mandatory open and competitive bidding, checks and balances, transparency, oversight, accountability or democratic practice.

Following a three-day public meeting and submissions from civil society, oil companies and the World Bank,⁴ the draft laws were revised, and our Council of Ministers approved them in mid-December. However, neither the public nor the parliament has been allowed to see the revised versions, even though parliament will be asked to "endorse" them in a few short weeks. After repeated requests by La'o Hamutuk to see the revised laws, interim Petroleum Minister José Teixeira told us last week that "Once a draft law has been sent to parliament, the release thereof or otherwise to the public is a matter for them." Our Government appears to believe that "transparency" and "public consultation" are implemented by repeating the words as mantras, rather than by actual practice.

Regarding petroleum revenues, leaders of Timor-Leste repeatedly say that they will engage in public consultation and transparency. Prime Minister Alkatiri told your founding meeting in 2003:

"A Petroleum Fund is no substitute for sound fiscal management if it has wide political and popular support, clear rules and stores genuine savings by the Government.

"Our Fund will be integrated into the budget process. Fund assets will be prudently managed and invested offshore. The rules and operations of the fund will be transparent with stringent mechanisms to ensure accountability and prevent misuse. At the same time our Fund will maintain the sovereignty of Parliament over revenue-raising and spending decisions."

Unfortunately, practice again does not match promise. Although Timor-Leste has already received tens of millions of dollars in petroleum revenues, the Government refuses to disclose where that money is invested. A policy paper on Petroleum Revenue Management was circulated for public discussion last November,⁵ but draft legislation has not yet been released. We are concerned that this process too is heavily influenced by international experts from rich countries, often with limited or biased experience.

Timor-Leste is modeling its revenue management policy on Norway, and many Norwegian advisors are working in our oil sector. But Norway, a rich country with a long history of democratic and professional government, has little in common with Timor-Leste. São Tomé

³ Petroleum Fund Discussion paper (see note 5), page 14.

⁴ The draft laws and all the submissions are posted on our website at <http://www.etan.org/lh/misc/PetRegSub/04submission.html>

⁵ The Petroleum Fund Discussion paper, as well as submissions from La'o Hamutuk and many others, are at <http://www.etan.org/lh/misc/PetFundSub/04FundConsult.html>

e Príncipe, a small, Third World, ex-colonial nation beginning to develop its oil, is much closer to our situation. São Tomé's new, far-seeing petroleum management law would be a far better basis for Timor-Leste to build upon.

Even so, Timor-Leste's proposed policies are weaker than Norway's regarding transparency, ethical investment and protection against borrowing or overspending. In addition to knowing the numbers of dollars taken in and out, transparency should reveal where the money is invested, and how the companies are operating.

Timor-Leste's "Norway Plus" plan gives Parliament full authority to spend or save all petroleum revenues from current and past years. This is problematic as Parliament is subject to political and popular pressures for short-term spending, and may not adequately consider sustainability guidelines, which are not legally binding. We are concerned that our present and future Governments will not protect the resource inheritance of our children's grandchildren unless such protection is given the force of law.

We need your help

The Government of Timor-Leste is having difficulties implementing its stated goals of transparency and accountability for many reasons discussed above. And even if those goals were implemented, Timor-Leste's current citizens and future generations would not be adequately protected. We ask you, participants in this seminar, to support the Timorese people by strengthening our government's resolve and ability in this area.

Please pay attention to ensure that good practices are observed in Timor-Leste, and not just pronounced in speeches at international meetings. Many of you have expertise and experience more appropriate to our situation than the advisors currently working there. We hope you will learn about our situation, and engage with our leaders and citizens to incorporate transparency, accountability and democracy into Timor-Leste law.

Citizens of oil-producing countries throughout the developing world have sadly learned that voluntary compliance by companies and government officials, both rich and poor, is not enough to prevent the resource curse. Good practice, including transparency must be required by laws binding on governments and companies all over the world. As members of civil society in Timor-Leste, we join with civil society around the globe in demanding that our people not be injured and our resources not be exploited for the benefit of foreign oil companies, people in oil-consuming nations and a few corrupt officials.

These are long-term issues, not only to preserve revenue for future generations, but to shift our planet to an ecologically and economically sustainable, petroleum-free future. Timor-Leste's people struggled for a quarter-century against brutal foreign military occupation before achieving independence. We realize that this new struggle will take much longer, and we hope you will join us.

Last August, interim Timor-Leste Petroleum Minister José Teixeira announced that the World Bank had "recently recognised that Timor-Leste's management of its petroleum industry constitutes international best practice."⁶ If that is true, international practice has a long way to go. Please do what you can to improve both our own and international best practice, and to help our insufficient efforts to tame the petroleum monster.

Thank you.

⁶ "Statement on Oil and Gas Development in Timor-Leste: Aims of the Petroleum Regime" by José Teixeira at Public Consultation on the Petroleum Regime, Dili, 23 August 2004.