

# The La'ó Hamutuk Bulletin

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## Screening PNTL Back Into Service

**A**s part of restoring public confidence in Timor-Leste's public institutions after the 2006 crisis, a screening process is underway to evaluate every member of the National Police of Timor-Leste (PNTL). This process will decide whether each former PNTL member can return to police duty. The process is based on Resolution No. 3, issued by the Council of Ministers on 22 August 2006.

In Dili District, the process is already complete. More than 800 PNTL members have resumed police work under the supervision of the United Nations Police (UNPOL), while over 150 have been suspended pending further investigation. As of June, 44 PNTL have completed the entire process and are fully certified. This article will discuss the screening process of the PNTL in Dili.

### Goals of the PNTL screening process

The Dili leadership of Timor-Leste's National Police force (PNTL) disintegrated during the crisis that struck Timor-Leste in April and May 2006. Some PNTL officials and members in Dili were reported to have been involved in the crisis, taking sides and exchanging fire. There was fighting between members of the Falintil/Timor-Leste Defense Force (F-FDTL) and PNTL, and some PNTL members were killed. This gravely damaged the morale, effectiveness, credibility and

reputation of PNTL, making it impossible for PNTL to continue its work.

The collapse of this institution was the climax of many problems that plagued PNTL at both individual and institutional levels. As the UN Independent Commission of Inquiry observed in 2006, the institution of PNTL was often politicized by its leaders. The police force was fragmented by its mixture of members with different political, educational and historical backgrounds (some are former Indonesian police, while others were in the resistance). Moreover, this institution is structurally under the Interior Ministry, so then-Interior Minister Rogerio Tiago Lobato found it easy to politicize the institution and interfere in various operations.

The past behavior of some PNTL members while on duty also reduced public confidence in the institution. For example, some PNTL members were involved in sexual harassment, black market activities, human rights violations, illegal weapons distribution and other disciplinary problems. These weaknesses became obvious as its headquarters collapsed during the crisis.

*La'ó Hamutuk* found that a contributing factor to these problems was the formation and development of the institution itself. PNTL was created by the UN Transitional Administration (UNTAET) in March 2000 as a part of preparations for Timorese self-government. Through various bilateral assistance projects, the international community played an important role in the institution's development, and also

*(Continued on page 2)*



PNTL and UNPOL officers providing security on Election Day, 9 April 2007

### *Inside . . .*

<b>Restructuring petroleum regulation .....</b>	<b>6</b>
<b>Alliance for International Tribunal plans strategy .....</b>	<b>9</b>
<b>Unfulfilled promises for justice .....</b>	<b>9</b>
<b>Timor-Leste's 50 year loss of sovereignty .....</b>	<b>10</b>
<b>Parties debate oil revenue management .....</b>	<b>12</b>
<b>Editorial: Amnesty law perpetuates impunity ..</b>	<b>16</b>

trained PNTL personnel. Therefore the collapse of PNTL provides a lesson for everyone who assisted in its formation.

After the PNTL fell apart, the Government and UN Missions in Timor-Leste (UNOTIL and UNMIT) began a screening process to re-evaluate all PNTL members throughout Timor-Leste. Although UNMIT (through UNPOL) plays an important role in the screening, the concept was initiated before UNMIT started. The idea originated in mid-2006 from police from Australia, Portugal, New Zealand and Malaysia who were assisting Timor-Leste in restoring order, in consultation with the Government of Timor-Leste, international military forces, UNOTIL police and international advisers. Several technical and coordination meetings were held, and, in August, the Government issued Resolution No. 3/2006 as the legal basis and description of the screening process.

In addition to helping restore public confidence in PNTL, the screening process is designed to make PNTL a transparent and responsible institution, honoring existing laws as well as current international standards of criminal law, accountability and human rights.

On 1 December 2006, UNMIT and the Timor-Leste Government signed a Supplemental Agreement to define the roles of UNPOL and the Government, especially the Interior Ministry.

This agreement also gave the legal basis for further processes, which are the reform, restructuring and redevelopment of PNTL.

### How is this screening process conducted?

The Screening Commission was created to determine who is eligible to return as a member of PNTL and who is not. The screening process is carried out in coordination with multinational military force (ISF), advisers in the Interior Ministry, UNPOL and the Timor-Leste Government.

Resolution 3/2006 created three teams with specific functions and responsibilities. The Evaluation Team includes representatives from various sectors. The Technical Team's ten members (see table below) were chosen through the Prime Minister's Decree No.11/2006, issued on 11 September 2006. The Secretariat Team is composed of three people appointed by the Interior Ministry.

According to the Timor-Leste Government, the priority of the screening process is PNTL personnel from Dili District and the PNTL headquarters. That this been finished, and PNTL from other districts are now undergoing screening, with about 30% of the PNTL officers in the districts having been screened by mid-June.

Team Name	Members	Team Duties
<b>Evaluation Team</b>	<ol style="list-style-type: none"> <li>1. Deputy Interior Minister José Agostinho Sequeira</li> <li>2. Representative of the UNPOL</li> <li>3. Representative of the Prosecutor General: Ivo Valente.</li> <li>4. Member of the Supreme Council for Defence and Security: Gustavo Mota</li> <li>5. Representative of the Church: Elda Baptista Gomes H C</li> </ol>	Has authority to determine whether each PNTL officer can return to the institution, based on information received from the Technical Team. These five members have voting powers.
<b>Observers</b>	<ol style="list-style-type: none"> <li>1. Representative of the Prime Human Rights Advisor to the Prime Minister</li> <li>2. Representative of the UNMIT Human Rights Unit</li> <li>3. Non-governmental representative</li> </ol>	Observers participate in the Evaluation Team, but do not have voting powers.
<b>Inspection Office</b>		This Office is under the Interior Ministry, and is responsible for investigating PNTL members the Technical Team has found to have violated disciplinary standards.
<b>Technical Team</b>	<ol style="list-style-type: none"> <li>1. Advisor to the President: Carmelita Moniz</li> <li>2. Four representatives of the Prosecutor General: Manuel Sarmentu, Sergio Hornay, Olga Bareto Nunes and Vicente Britos.</li> <li>3. Delegate of the Inspector General's Office: Francisco Pinto Carvalho</li> <li>4. Three NGO representatives: Aniceto Neves, Rogério Viegas Vicente and Maria Agnes</li> <li>5. Two academics: Miguel Maia dos Santos and José Antonio da Costa</li> <li>6. 20 UNPOL members</li> </ol>	This team is assigned to examine the CVs of each PNTL officer who registers for the screening process, to study and analyze information from various sources, gather information from community leaders, interview PNTL members being evaluated, question witnesses, prepare reports on PNTL members' involvement in criminal activities and violations of disciplinary standards. All the information they collect is given to the Evaluation Team
<b>Secretariat Team</b>	<ol style="list-style-type: none"> <li>1. Alípio José Vieira (Bombeiros)</li> <li>2. Cândido Gusmão (PNTL)</li> <li>3. Lidia Lopes de Carvalho (Ministry of Interior)</li> </ol>	This team was assigned to announce the screening, solicit information from the Attorney General's office, Provedor's office, the Human Rights advisor for the PM, UN Human Rights Unit, international police and the courts and support the Evaluation Team through these solicitations. It also provides information to the media.

PNTL personnel in Dili were told to register by 7 April 2007. Those who did not register on time are considered to have resigned. For those who registered, the Technical Team is interviewing each individual and checking information from various sources to determine whether the individual has been involved in criminal activity.

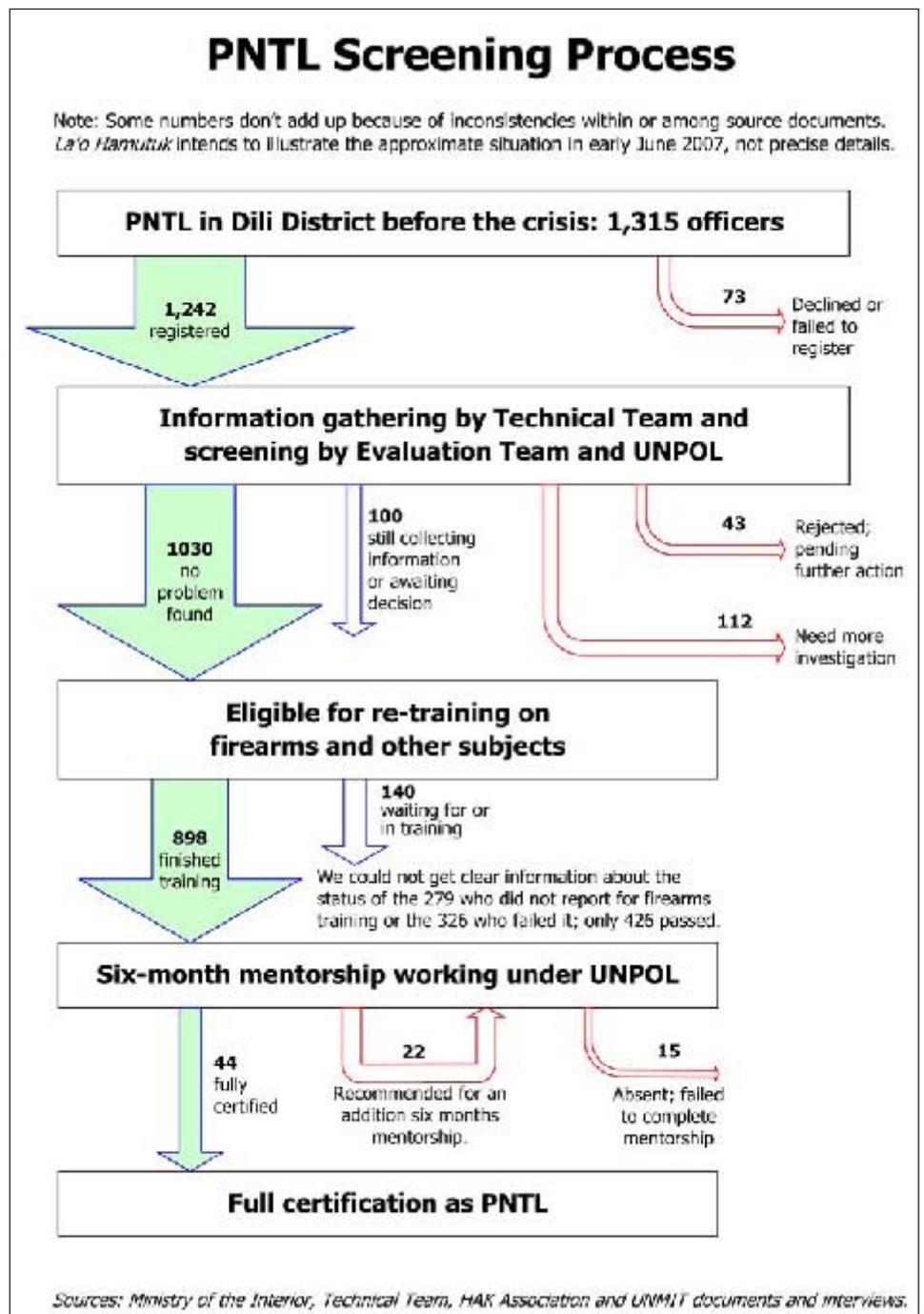
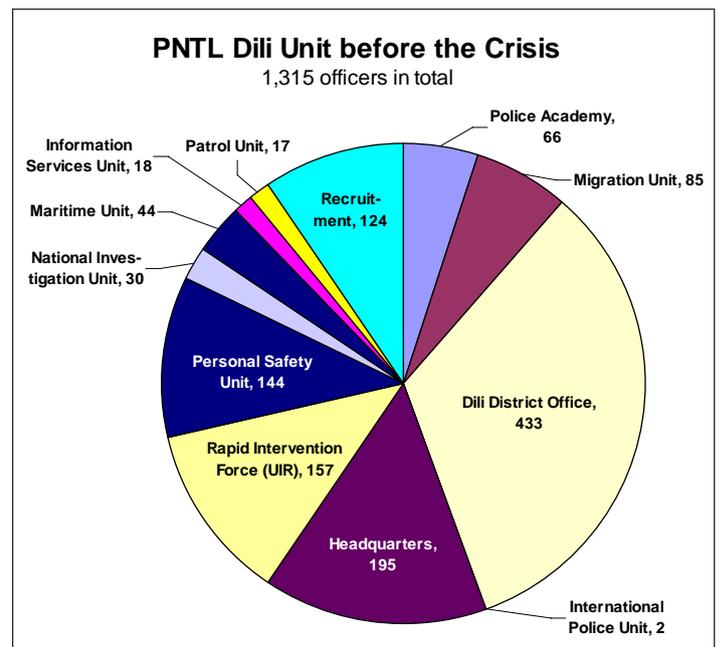
Information gathered by the Technical Team is analyzed before being given to the Evaluation Team. Based on the information collected, the Technical Team provides a recommendation to the Evaluation team, which will make a decision on each PNTL member.

The evaluation process gives particular attention to the performance of the PNTL officer before the crisis, the officer's actions during the crisis and the disciplinary record of the PNTL officer before the crisis. If there are allegations that a PNTL member was involved in criminal activity before or during the crisis, the team recommends further criminal investigation and a formal legal process. For those found to have violated disciplinary codes, the Interior Ministry will form an Inspection Team to further investigate and decide on disciplinary sanctions.

For PNTL members with no past discipline problems and who were not involved in criminal activity, the technical team recommends that they complete five days of Academy training before returning to duty. After that, these PNTL members receive temporary certificates from the Interior Ministry and identity cards from UNPOL for the next stage, mentoring under UNPOL supervision.

For the next six months, each PNTL member will be directed and mentored by UNPOL. During this phase of assistance and control, the UNPOL Commissioner will identify police officers who fail to meet the determined standards, and the Interior Ministry will not issue them permanent certificates. If an officer is found to meet the standards, then at the discretion of the UNPOL Commissioner, the Interior Ministry can issue a permanent certificate showing that the officer has finished the entire process and is a full member of PNTL.

According to the Secretariat Team, 1,242 PNTL members registered for screening. Before the crisis, there were 1,315 PNTL members in Dili District, so about 70 resigned or failed to register, including some who had already changed their profession. As of the beginning of April, 18 had gone to other countries, seven were in prison, and seven were fugitives with Major Alfredo Reinaldo. Three, including former Commander Paulo Martins, resigned from PNTL rather than go through screening. (All the



**UNMIT mandate for policing in Security Council resolution 1704**

(c) To ensure, through the presence of United Nations police, the restoration and maintenance of public security in Timor-Leste through the provision of support to the Timorese national police (PNTL), ... which includes interim law enforcement and public security until PNTL is reconstituted, and to assist with the further training, institutional development and strengthening of the PNTL as well as the Ministry of Interior...;

(e) To assist the Government of the Democratic Republic of Timor-Leste in conducting a comprehensive review of the future role and needs of the security sector, including the Falintil-Forças Armadas de Defesa Timor-Leste, the Ministry of Defence, the PNTL and the Ministry of Interior with a view to supporting the Government, through the provision of advisers and in cooperation and coordination with other partners, in strengthening institutional capacity-building, as appropriate;

statistics in this article are the best estimates we could make combining data from multiple, often contradictory, sources. They may not be exactly right, and change over time or depending on who is doing the counting.)

Of the 1,242 PNTL members who registered for the screening process, 44 have been fully certified, more than 800 are provisionally certified and working as PNTL under UNPOL mentorship, about 140 are in various stages of the training process, about 160 are under further investigation because of possible problems which have emerged, while about 100 have been evaluated and are awaiting decision.

**UNPOL involvement in the PNTL screening process**

UN Police provided useful information to the screening process even before UNMIT started its mission. When UNMIT began in September 2006, UNMIT assigned an UNPOL representative to join the Evaluation Team and 20 UNPOL members support the Technical Team. UNPOL also gave technical support, advice and information to launch the screening process. PNTL members who pass the screening process are under UNPOL control and mentoring.

Looking further ahead, based on the December 2006 Supplemental Agreement between the Government and UNMIT, UN police involvement is not limited to screening. UNPOL will play a larger role, commanding PNTL in every district and assisting PNTL members who have passed the screening. Later, tasks and responsibilities will be transferred from the UN police to PNTL (see table below).

This is a large mandate for reform, restructuring and re-developing PNTL, based on the UN view of PNTL's institutional problems.

**Some Observations**

Although the government took the initiative to begin the PNTL screening process with advice from the International Police and UNPOL, Resolution No. 3/2006 is limited to screening individual PNTL members, and does not address PNTL institutional problems. According to the 2006 UN Independent Commission of Inquiry and others, PNTL has institutional problems in addition to personnel and discipline problems. These are in areas such as recruitment and training, weapons and ammunition control, factionalism, politicization, and integrity of the command structure.

During the screening process, the Technical Team relied on information from the community, but as there was no effective mechanism for public participation, community involvement was very limited. In addition, several victims and witnesses fear for their own security, and therefore didn't provide information to the team. Because of the weakness of Timor-Leste's judiciary, several cases have yet to be brought to court.

Empowered by Security Council Resolution 1704, UNPOL has taken over command responsibility and is making all operational decisions about PNTL, with the Interior Ministry only responsible for administration and management of PNTL. This is necessary because the PNTL headquarters disintegrated, but only as a temporary measure, and it must be explained so that the public can understand. From UNMIT's perspective, PNTL and UNPOL are a single force, but the public does not understand who commands the entire PNTL operation.

**Phased process to transfer command from UNMIT to PNTL**

Phase	Description
Initial Phase	<ol style="list-style-type: none"> <li>1. UNMIT has primary responsibility for the conduct of police operations throughout Timor-Leste.</li> <li>2. Police operations conducted by the UNPOL officers and certified PNTL officers.</li> <li>3. UNPOL commissioner has overall command and control throughout Timor-Leste, including all districts and units.</li> <li>4. UNMIT will prepare PNTL commanding officers to assume command positions in the ensuing Consolidation and Full Reconstitution phases.</li> </ol>
Consolidation Phase	<ol style="list-style-type: none"> <li>1. UNMIT gradually hands over responsibility for the conduct of police operations within districts and units to PNTL, in consultation with the SRSG and close collaboration with the Government.</li> <li>2. Following the handover of responsibility, PNTL has primary responsibility for the conduct of police operations, while UNPOL continues to provide advice, support and assistance.</li> <li>3. Overall command remains under the UNPOL commissioner, including districts and units that have been handed over to PNTL.</li> <li>4. If certified PNTL officers in units which have been handed over fail to carry out their responsibilities, UNPOL can intervene.</li> </ol>
Full Reconstitution Phase	<ol style="list-style-type: none"> <li>1. UNMIT will handover all command to the PNTL, with arrangements for continuing UN cooperation to PNTL to be worked out in the future.</li> </ol>

## From the August 2006 report of the UN Secretary-General to the Security Council

59. The national and Dili district headquarters of PNTL disintegrated following the violent events in April and May, as did the special police units stationed in Bobonaro, Aileu and Baucau districts. A significant number of PNTL headquarters and other command staff as well as members of special police units were involved in the violence. The assessment mission conducted a comprehensive review of the structure and performance of PNTL throughout the country with a view to identifying the causes of the breakdown of law enforcement, particularly in Dili, and areas of poor service delivery.

60. The review clearly indicated that, while real progress has been made in certain areas of Timorese policing capacity since 2002, particularly the operational policing aspects, the institutional framework of PNTL remains weak. The Ministry of the Interior not only neglected the institutional development of PNTL but failed to build the Ministry's own capacity, particularly in the areas of policy development, planning, budget development and legislative affairs, and regularly interfered in policing activities at all levels, including in police operations and personnel decisions. The Ministry often intervened arbitrarily in disciplinary, recruitment and promotion proceedings. The misuse of the promotion system has resulted in a top-heavy organization that lacks critical capacities at the middle and lower management levels. Further, the Ministry procured weapons, in particular long-barreled weapons, without strict regard to actual policing needs and did not adequately manage their safe and secure distribution.

61. The administrative and organizational weaknesses of PNTL, combined with repeated political interference by the Ministry of the Interior, have seriously affected the overall effectiveness, professionalism and credibility of the national police force. The provision of international assistance to PNTL since 1999, although substantial, was insufficiently coordinated and not tailored to adequately support its institutional development in the longer term. Further developmental assistance is required in the areas of finance, budget planning and execution, procurement, supply and maintenance, communication systems and fleet management. In addition, the organizational structure of the police headquarters has become overly complex while the creation of several special police units has reduced the allocation of much-needed resources to support general and community-oriented policing activities.

The multiple agencies involved in various elements of this process have led to some problems. *La' o Hamutuk* had difficulty obtaining consistent, up to date or complete information; often it appeared that different actors had different understandings of how the process works or of their own roles in it. It seems clear that UNPOL and the Government do not coordinate well; at times, UNPOL has run a separate process to that run by the Ministry of Interior. Although both sides say that they have now reconciled the inconsistencies, we and the public remain confused, because of the lack of clear, non-contradictory information. *La' o Hamutuk* and other researchers have been surprised at the unwillingness to disclose information regarding certain aspects of the process from both UN and Government people; it leads us to wonder if they are hiding something, or why people who should understand the whole picture are reluctant to explain it fully or accurately.

The screening process itself is challenged by absenteeism; many PNTL members do not report for their training courses or do not turn up for duty at the designated place and time. Although PNTL regulations do not allow an officer to be discharged for absenteeism, UNPOL cannot certify officers who have not completed training.

Furthermore, the standards followed by both the screening and mentoring phases of the process are often unclear, inconsistent and not transparent, both in the Ministry and UNPOL. This makes it difficult for the individual police officers, those involved in the screening, and for the institutions themselves. It also increases the difficulty in getting the public to accept the legitimacy of the process or the reconstituted police force.

Moreover, good information should be provided to the public

in order to regain the community's confidence in PNTL. Although Resolution No. 3 emphasizes community participation, this was given little implementation. Several community leaders told *La' o Hamutuk* that they only heard about the screening process through the mass media. Consequently, the leaders and the public have not been involved in the process very much.

The training, requalification and mentoring processes have brought some additional problems to light. For example, 27% of those required to attend firearms recertification training did not show up; of those who did, 44% failed the course, even after UNPOL trainers lowered the standards "by as much as possible to meet pass level."

The latest information we could obtain is that 81 PNTL officers have completed six months mentoring with UNPOL. Of these, 15 were rejected for absenteeism, while 22 were directed to undergo an additional six-month mentorship. Only 44 have been fully certified as PNTL officers. Considering that all of these were serving PNTL officers before April 2006, it is clear that both individual and institutional development of PNTL is not where it should be.

If Timor-Leste is to return to a peaceful democracy, based on objective and effective application of the rule of law, the integrity of the individuals and institutions involved in law enforcement is essential. The screening process and phased transition from UNPOL to PNTL are important steps, but even more critical is the community's confidence that the law will be applied equally and fairly to all citizens. *La' o Hamutuk* encourages those involved in this process to continue to improve public awareness and involvement, and to address institutional weaknesses with the same seriousness that has been applied to screening individual police officers. ❖

# Restructuring Petroleum Regulation in Timor-Leste

As *La'o Hamutuk* has often written, petroleum development is one of the most important elements of Timor-Leste's future. If done well, it can bring revenues and development to our country, but if done poorly it will inflict a "resource curse" on current and future generations. The amounts of money involved and potential for corruption, collusion and nepotism are so large that transparency and accountability are essential if the people of Timor-Leste are to benefit from our petroleum resources.

Unfortunately, recent draft laws contain many loopholes and avenues for corruption and other curses, and contradict the Government's often-stated support for transparency and accountability. If passed as proposed, these laws would make it easy for a small number of people to get rich off Timor-Leste's oil and gas resources, leaving the rest of our population in poverty.

The Timor-Leste government is restructuring its regulation of the petroleum sector, including creation of the PETROTIL national oil company of Timor-Leste. In addition, the Timor Sea Designated Authority (TSDA) will merge with the National Directorate of Oil and Gas (Direcção Nacional do Petróleo e Gás - DNPG) to become a single agency of the Timor-Leste government. A National Council on Energy Policy will oversee the new regulatory agency, as well as establishing Timor-Leste's national energy policy (generation, import and distribution to domestic consumers and international customers). The laws also implement other changes involving regulation and policy-making for the petroleum sector. All agencies and functions established by the new legislation remain under the Ministry of Natural Resources, Minerals and Energy Policy (MNRMEP).

The Government has held many closed meetings on these proposed changes, including in the Council of Ministers, since September 2006. Internal disagreements, especially concerning whether Brazilian models are appropriate for Timor-Leste, delayed their adoption. Some officials said there should be studies by independent experts, as well as public information and consultation before such far-reaching legislation is adopted, and that these laws should not be enacted without Parliamentary approval.

In late March 2007, the Ministry (MNRMEP) circulated three proposed decree-laws for a 15-day public consultation. They cover the entire energy sector, from exploration and production (upstream) to transportation, storage, refining, distribution and commercialization (downstream). They have much broader scope than the 2005 Timor-Leste Petroleum Act and JPDA Petroleum Mining Code, which

cover upstream activities only. The construction of downstream projects and the operation of a national oil company will involve billions of dollars in investment, revenues and expenditures. Without special attention to transparency, independent oversight, and checks and balances, such activities are particularly vulnerable to corruption and cronyism.

Such fundamental new laws should require Parliamentary authorization under RDTL Constitution articles 95 and 96, and the legality of implementing them by decree-law, without Parliament, is questionable.

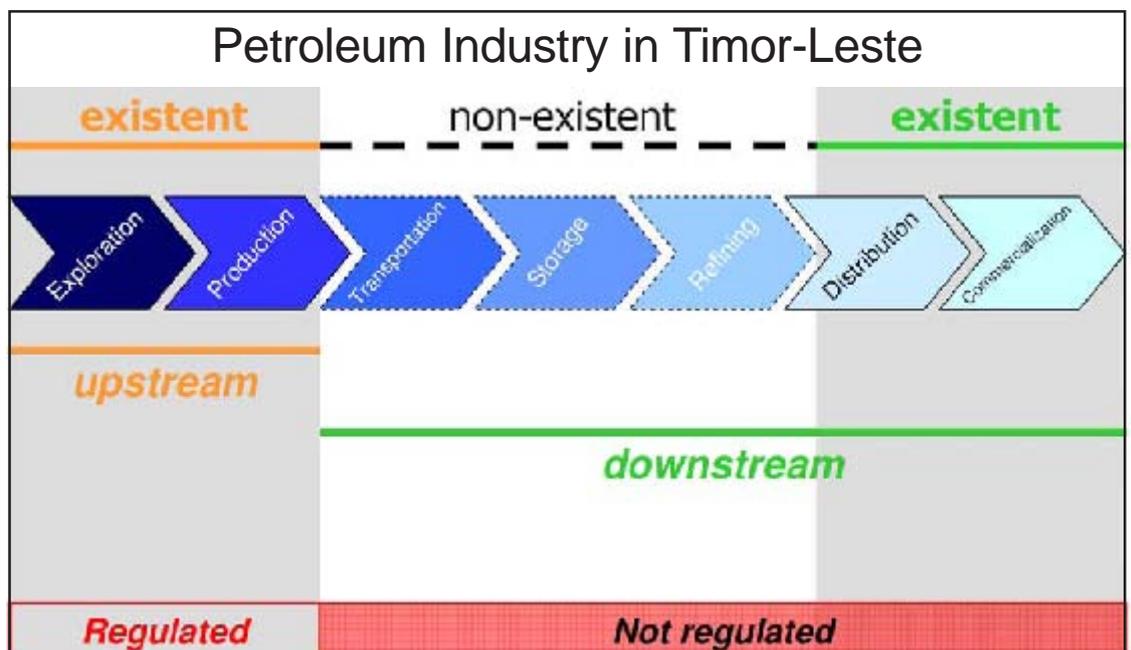
The Ministry posted the draft decree-laws and explanatory information on the internet and asked for comments by 5 April 2007. *La'o Hamutuk* submitted our initial analysis, and we were later told unofficially that the deadline had been extended. However, some in the current government still hope to enact these laws prior to the upcoming Parliamentary election.

In summary, the three decree-laws will:

- ◆ **Combine the TSDA and DNPG into a new National Petroleum Regulatory Authority** (Autoridade Reguladora Nacional do Petróleo, Gás Natural e Biocombustíveis - ARNP)

The TSDA was created by the 2002 Timor Sea Treaty between Australia and Timor-Leste as a bi-national agency to oversee upstream oil and gas projects in the Joint Petroleum Development Area (JPDA), including Bayu-Undan, Elang-Kakatua and part of Greater Sunrise. The treaty specified that the TSDA would become part of the RDTL Government by April 2006. Both countries agreed to delay this until 2 July 2007, and it could be extended further, so there is no need to hastily enact new legislation.

The proposed laws replace the TSDA with a National Petroleum Regulatory Authority (ARNP) which will be responsible for administering and managing upstream and downstream projects in both the joint development area (JPDA) and Timor-Leste's exclusive offshore and onshore territory.



The new Authority would also absorb the functions of Timor-Leste's National Directorate of Oil and Gas (DNPG).

The ARNP would be an administrative-type *instituto publico*, operating under the Ministry (MNRMEP), the National Council on Energy Policy (see below), and the JPDA Joint Commission (which includes one member each from Australia and Timor-Leste). All members of the ARNP are appointed by the MNRMEP.

In addition to contracting for and regulating upstream and downstream petroleum operations, the ARNP would regulate and supervise all activities relating to the national fuel supply, including bio-diesel and other

bio-fuels as well as petroleum and natural gas. According to the position paper, all legislative measures necessary to implement the ARNP were to be in place by 1 April 2007.

◆ **Create a National Council on Energy Policy**  
(Conselho Nacional de Política Energética - CNPE)

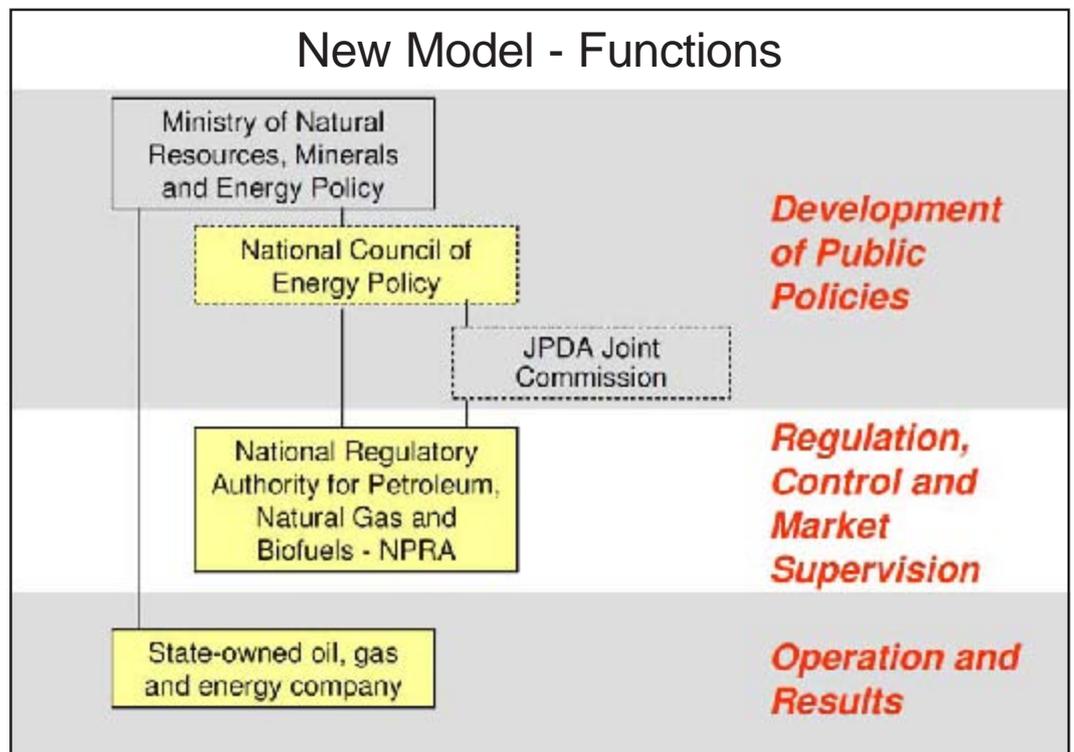
A new National Council on Energy Policy is created by this legislative package. It will be an advisory body, with oversight responsibilities over the ARNP, including approval of its budget. Like the ARNP, the CNPE is under the MNRMEP. The CNPE will establish policies for Timor-Leste regarding energy production, consumption and distribution. It normally meets twice a year and has nine members, including four Ministers and representatives from civil society and the Petroleum Fund Consultative Council. People with petroleum expertise from universities and the private sector are also included.

◆ **Create a Timor-Leste National Oil Company**  
(Empresa Nacional de Petróleo, Gás e Energia de Timor-Leste - PETROTIL)

This statute implements the creation of a state-owned (national) oil company as envisioned in the final version of the 2005 Petroleum Act. Also under the MNRMEP, PETROTIL could participate in all aspects of upstream and downstream exploration, onshore and offshore, as well as production and domestic and international and distribution.

**Public consultation**

The three draft decree-laws were available only in Portuguese and the time was very short. *La'o Hamutuk* and others protested that the "consultation" was not designed to receive public input. The Petroleum Fund Consultative Council wrote to the Ministry, and the Core Group on Transparency (a coalition of NGOs) held a press conference objecting to the process. *La'o Hamutuk* submitted nine pages of testimony to the government; attorney Joseph Bell from Revenue Watch wrote the only other substantive submission. The



main points of *La'o Hamutuk's* submission include:

- ◆ This initial submission only discusses general issues. The time, notice, language and media used for this public consultation make it impossible to get meaningful input from Timor-Leste's population or outside experts, and the consultation should be extended or re-opened. *La'o Hamutuk*, after seeking advice from international experts, will provide a section-by-section analysis of the draft laws if more time is available. The topics covered by these laws are crucial to determining whether Timor-Leste will suffer or escape the "resource curse," and they need more careful consideration and two-way communication to implement the Constitutionally-guaranteed right that "every citizen has the right to participate in the political life and public affairs of the country."
- ◆ 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, and a newly-elected government could decide to change them. Their adoption should be delayed until people have the time and information to focus on them. Many important laws – about pensions, CMATS ratification, clemency/amnesty and military service – are being passed while people are distracted by the crisis, undermining democratic principles.
- ◆ This legislation covers topics which have never been discussed in Parliament. It should not be enacted as decree-laws, which are not submitted to Parliament. Both legally and ethically, the National Oil Company and the regulation of downstream activities must be based on laws enacted by our elected Parliament Members in open session, not by the Council of Ministers in secret meetings.
- ◆ These draft laws prioritize money for the oil industry ahead of the needs and rights of our population, and appear designed to benefit businesses and people in rich countries, such as the shareholders of international oil companies,

more than Timor-Leste's citizens. Several provisions protect economic actors, but no public hearings would protect our people.

- ◆ These draft laws endanger our environment. The National Council on Energy Policy is dominated by people with petroleum expertise, which will make it difficult for Timor-Leste to explore options for alternate energy. The draft laws contain no environmental safeguards, and the CNPE will prioritize burning fuels, rather than using clean, renewable, sustainable resources like wind, solar energy, tides, waves and deep seas.
- ◆ These draft laws excessively concentrate power in the Ministry of Natural Resources, Minerals and Energy Policy. This increases the risk of corruption, abuse of power and maladministration. The oversight powers of the National Council on Energy Policy are ambiguously defined. Placing energy policy and the national oil company under the direction of the same people responsible for ensuring the flow of oil revenues (more than 90% of government income) is a structural conflict of interest which will reduce attention given to non-revenue concerns. No provisions exist for checks and balances, independent oversight, or enforcing consideration of critical issues which might interfere with revenue flows.
- ◆ These draft laws totally fail to implement the Government's stated commitment to transparency and accountability (including the Extractive Industries Transparency Initiative), and could undermine existing steps toward adopting these principles. These draft laws allow conflicts of interest and contain almost no safeguards against corruption.
- ◆ The National Petroleum Regulatory Authority (ARNP) draft law violates the 2005 Petroleum Fund Act's requirement that all Government revenues from petroleum activities be deposited directly into the Petroleum Fund.
- ◆ National oil companies, which *La' o Hamutuk* supports in principle, bring risks as well as benefits, since they are not accountable to outside investors, other governments, or stock exchange rules. The proposed national oil company (PETROTIL) statutes contain no requirements for transparency or protection against these dangers. In places like Ecuador and Nigeria, national oil companies have proven

far less accountable than foreign private companies, and even those often violate human and environmental rights, or engage in corruption.

In mid-April, *La' o Hamutuk* was informed unofficially that the Government accepted our recommendation for more time for discussion, and that further submissions would be continue to be received. Many Timorese government officials and advisors told *La' o Hamutuk* that they appreciate our input, as it help them advocate for a more open process during internal discussions.

*La' o Hamutuk* is continuing to analyze the draft laws and will make a more detailed submission. During the same period, economist Martin Sandbu, the World Bank and others have echoed many of our concerns, which were also raised by several civil society members at a public meeting with Minister Jose Teixeira organized by *Luta Hamutuk* on 1 June.

As we proceed with our analysis, *La' o Hamutuk* has become concerned about the PETROTIL statute which allows its staff and board to divide PETROTIL profits among themselves. In addition to violating the Petroleum Fund Act, this unlocks the door to stealing public resources for private gain. If PETROTIL belongs to the State and People of Timor-Leste, its income should go to the public treasury, not to a few individuals selected by the Minister for Natural Resources.

Following Fretilin's loss in the second round of the Presidential election, some in Government tried to get the Council of Ministers to try to pass these decree-laws right away. Fortunately, this did not happen, and the Ministry's drafting team is revising the laws based on input received so far, and new versions are expected to be available in July.

With support from Oxfam and the Revenue Watch Institute, *La' o Hamutuk* has translated the March versions of the laws into English and Bahasa Indonesia to widen public awareness, and we encourage the Timor-Leste public and their international supporters to submit their views to the Ministry of Natural Resources, Minerals and Energy Policy in their office in the Fomento Building or by email to [mnrmp@bigpond.com](mailto:mnrmp@bigpond.com) as soon as possible.

Further information, translations and commentary are available from *La' o Hamutuk* at [www.laohamutuk.org/Oil/PetRegime/Restruc/07RestructIndex.htm](http://www.laohamutuk.org/Oil/PetRegime/Restruc/07RestructIndex.htm). ❖

## Who is La' o Hamutuk?

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# Alliance for an International Tribunal Plans Strategy

The Timor-Leste National Alliance for an International Tribunal (ANTI) is a network of student groups, NGOs, victims' families and individuals who focus on justice for human rights violations committed in Timor-Leste during the Indonesian occupation. The Alliance was established in July 2002, and has critiqued judicial processes implemented by UN Transitional Government (such as the Serious Crimes Unit) and the Indonesian Ad Hoc Tribunal in Jakarta. So far, there has been no effective response to the demand for justice from the Timorese people, and especially from victims.

For almost five years, ANTI has been advocating for justice in Timor-Leste. However the road to justice is long, and still requires struggle. On 20-22 March 2007, ANTI held a strategic planning conference at the NGO Forum Secretariat, attended by 52 people. ANTI evaluated its activities over the last two years and created a two-year strategic plan to strengthen the movement to achieve justice, with a work plan

to make it effective.

The activities reviewed included discussions, trainings and dialogues, seminars and other activities throughout Timor-Leste. ANTI invited resource persons from General Prosecutor, STP-CAVR, JSMP and HAK Association, as well as Australian expert James Dunn. There were opportunities for victims' representatives from the districts to share their questions and comments.

All participants committed themselves to continue to struggle for justice for Timor-Leste victims and people everywhere. The planning session elected a seven-person board to guide ANTI for the next two years, including three people representing victim's families, two student representatives, and two from national NGOs. *La' o Hamutuk* is on the board, and has accepted responsibility for relations with international human rights, justice and solidarity organizations. The ANTI secretariat remains at the NGO Forum. ❖

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## Reviewing Unfulfilled Promises for Justice

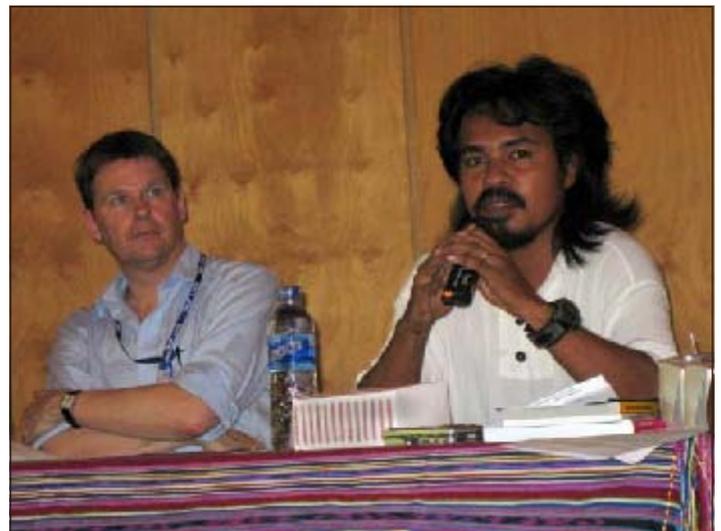
On 29 March 2007, *La' o Hamutuk* organized a public meeting in the UNTL Conference room in Dili. Speakers included UNMIT Deputy Special Representative of the Secretary-General Eric Tan; Deputy General Prosecutor Ivo Valente; National Parliamentarian Elizario Ferreira (FRETILIN), Edio Saldanha of the Timor-Leste National Alliance for an International Tribunal, and UNMIT Political Affairs Director Colin Stewart. The speakers discussed efforts to provide justice for 24 years of Crimes Against Humanity committed in Timor-Leste.

*La' o Hamutuk* hosted this program to reawaken public attention to the unfulfilled need to justice for Indonesian-era crimes, which had declined since last year's crisis. The meeting discussed obstacles facing various institutions to prosecute perpetrators who so far enjoy impunity.

From 2000 until today, many mechanisms have tried to achieve responsibility and accountability, including the Special Panels and Serious Crimes Unit in Dili, the Ad Hoc Human Rights Court in Jakarta and the Commission of Experts established by UN Security Council. Many commissions have issued recommendations. However, none of those processes have succeeded in satisfying the demand for justice from the victims, their families and the Timorese people.

In his presentation, Ivo Valente stated the Prosecutor General of Timor-Leste is not capable of trying the masterminds and perpetrators in Indonesia or Timor-Leste, because there is still no extradition agreement between the two countries.

Meanwhile, UN representative Eric Tan said that the UN recognizes that the work of the Serious Crimes Unit was not finished, and UNMIT has been supporting the Prosecutor General to continue to investigate serious crimes. The Serious Crimes Unit is being re-established to investigate (but not prosecute) crimes committed in 1999 alone. Colin Stewart,



Colin Stewart and Edio Saldanha

who had been part of UNAMET and UNTAET, described the UN's inability to prevent Indonesian-government-supported crimes in Timor-Leste in 1999, even though the UN knew what was happening. Parliament member Elizario Ferreira explained that Parliament established the Eventual Commission to analyze the UN Independent Commission of Inquiry report about the crisis in April-May 2006. The Eventual Commission submitted its report to Parliament in December.

Edio Saldanha, representing civil society organizations, presented his perspective about the UN Commission of Experts Report and the CAVR Final Report, both of which have had no follow up. He also asked the National Parliament to review the proposed Amnesty Law (see editorial, back page) and recommended that perpetrators receive amnesty only after judicial processes have taken place. ❖

# Timor-Leste's 50 Year Loss of Sovereignty

Early this year the legislatures of Australia and Timor-Leste ratified two agreements on the Timor Sea – the Certain Maritime Arrangement of the Timor Sea (CMATS) and the International Unitization Agreement (IUA) for Greater Sunrise. CMATS was signed by the foreign ministers of both countries on 12 January 2006, but was only brought to their Parliaments in 2007. Meanwhile, the International Unitization Agreement was signed in 2003, but the Government of Timor-Leste never submitted it to Parliament, forcing the two parties to begin new negotiations in 2005.

## In Timor-Leste

Dili's ratification of these agreements took place behind closed doors, without public consultation on this critical national issue. *La'õ Hamutuk* wrote to the National Parliament of Timor-Leste in March 2006 and again in January 2007, suggesting that the two countries should improve the agreements before they were ratified. However, our submissions were not addressed, and on 20 February 2007 Timor-Leste's Parliament damaged our national interest by ratifying these agreements. (See *La'õ Hamutuk Bulletin* Vol. 7, No. 1, April 2006, for a detailed analysis of the CMATS agreements.)

Parliament has stated that it will not surrender a drop of Timor's sea to foreign powers, but Parliament's ratification of CMATS contradicts Parliament's position, especially the law on Maritime Boundaries they passed in October 2002.

The ratification process for these agreements received little public attention because of the crisis that has beset Timor-Leste for the past year. This has meant that an issue that is

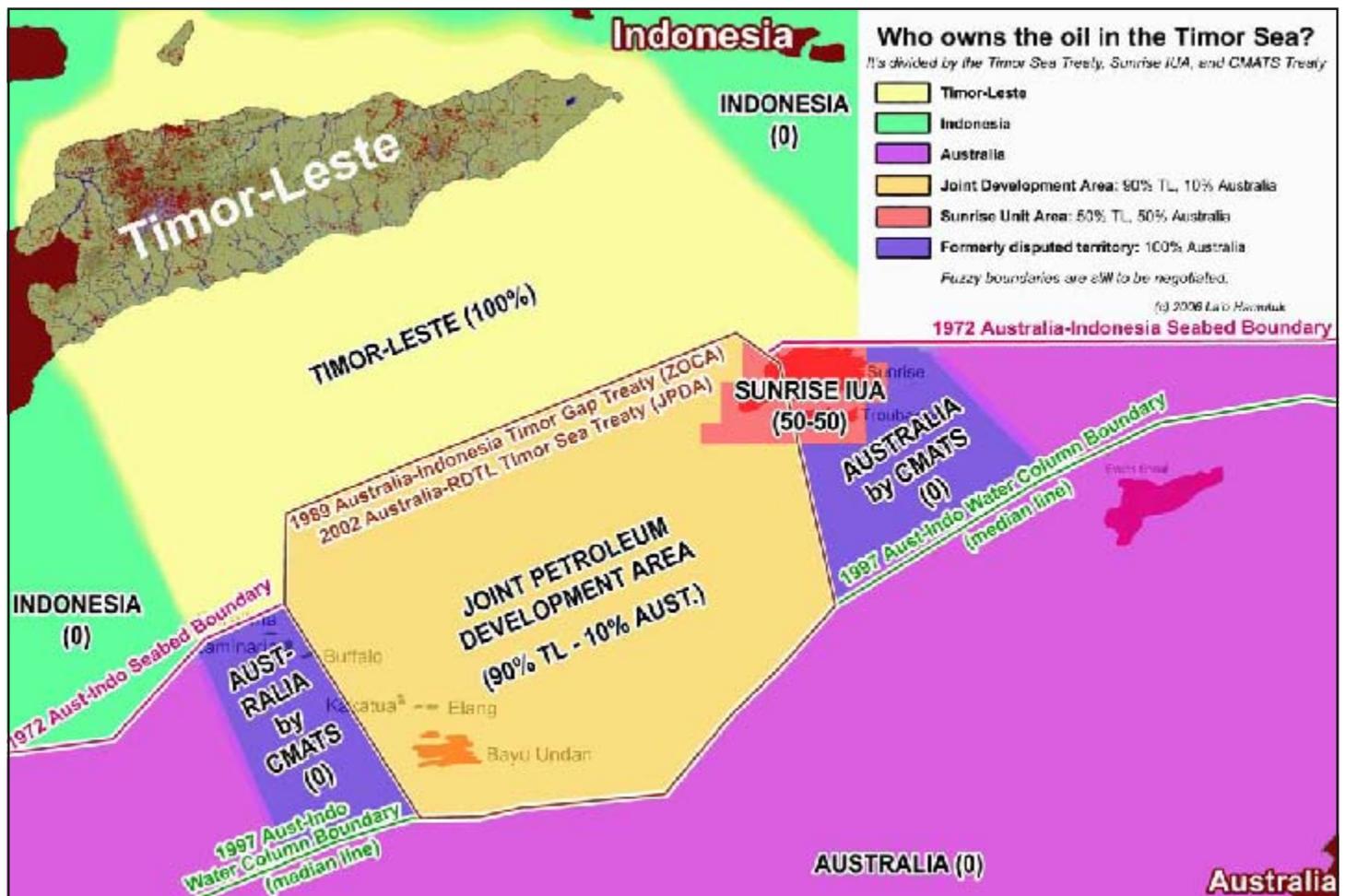
key to our struggle for complete independence has passed by without the public discussion which should take place in a democratic country.

## In Australia

On 7 February 2007 the Government of Australia forwarded this agreement to its Parliament and their Joint Standing Committee on Treaties for study. The Government also forwarded a National Interest Analysis, which includes incorrect data and faulty logic.

Although the Australian Parliament accepted oral and written submissions, this process was merely a formality. On 23 February 2007, Australian Foreign Minister Alexander Downer announced that this agreement was being put into effect without Parliamentary ratification, invoking Australia's "National Interest Exception" to normal legislative process. Mr. Downer wrote the Parliament's Treaties Committee that "this is an opportunity to ratify CMATS and IUA before presidential and parliamentary elections in upcoming months." Australia is clearly exploiting the crisis in Timor-Leste, seeing elections here not as a positive mechanism for peaceful democratic change, but as a threat to its ambitions in the Timor Sea. In a country that claims to be a modern democracy, it is shocking that Australia's elected Parliament is so readily ignored.

*La'õ Hamutuk*, together with the *East Timor and Indonesia Action Network* (ETAN/USA), *Timor Sea Justice Campaign* (TSJC/Australia), and other interested organizations and individuals filed submissions with the Australian Par-



liament. *La' o Hamutuk* recognized that Parliament must protect Australia's national interests, but we encouraged them to listen to the voices of other people and to consider legal and moral perspectives which reinforce Australia's interests. This is important for Australia to keep its credibility as a democratic nation which respects the rule of law and the sovereignty of neighboring states.

The CMATS Treaty is better than Australia had offered in 2004, increasing Timor-Leste's share of upstream (extraction) revenues from 42% to 60% from oil and gas fields it should own under international legal principles. Australia continues to occupy other

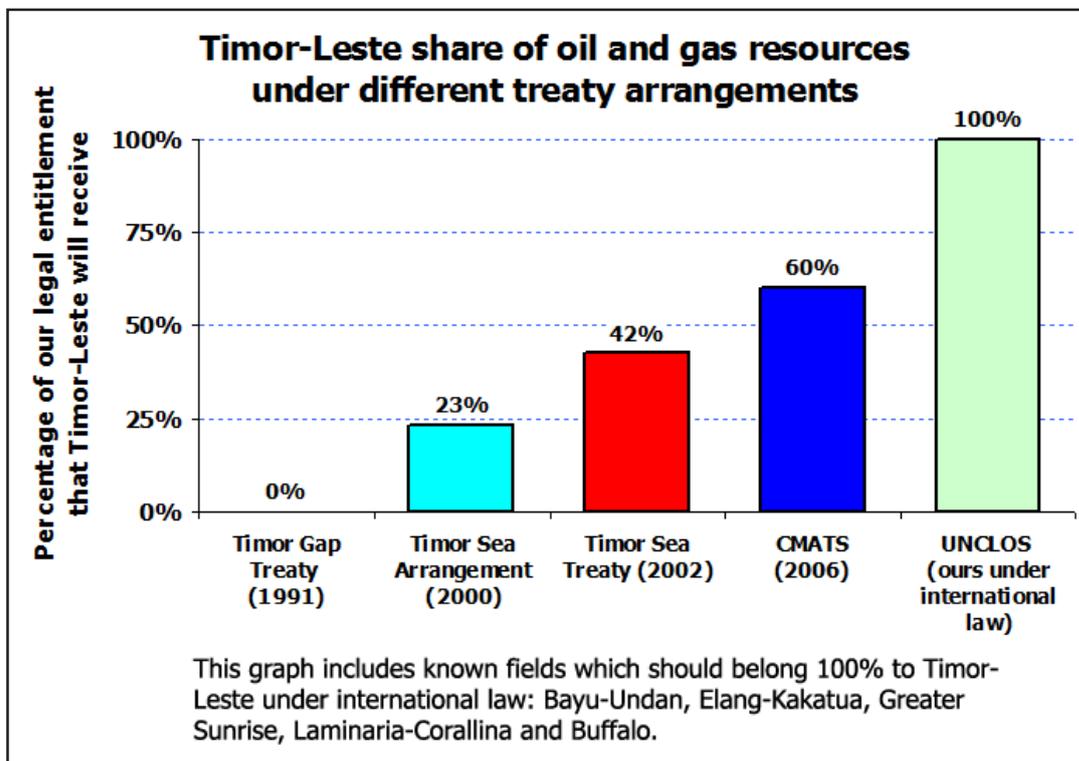
oil fields in Timor-Leste's part of the Timor Sea, including Laminaria-Corallina and Buffalo, as well as future discoveries in the area.

Although the improvement of sharing upstream revenues is important, the treaty could have been made less unfavorable to Timor-Leste through further negotiations. It should not have been rushed into force during a crisis, just prior to elections in both countries.

Under CMATS, Australia retains great power to determine the development plan for the Greater Sunrise field, which must be approved within six years for the treaty to remain in effect. If the Government of Timor-Leste fails to convince Woodside Petroleum Company and the Government of Australia to bring the gas pipeline and liquefaction (LNG) plant to Timor-Leste, it will lose even more. An LNG plant in Timor-Leste would be a major industrial project, providing tax income from the downstream process and the opportunity to jump-start other parts of our economy. Such a project would help integrate our country into regional oil and gas development, including future fields in Timor-Leste, Indonesian and Australian waters.

CMATS results from an unfair process, and responds to the interests of international oil companies and the Australian Government. The deferral of maritime borders for 50 years is based on commercial considerations, because the oil and gas will be exhausted by then. And this agreement provides fiscal and legal stability demanded by Woodside Petroleum to quickly develop the Sunrise project, although it not clear that immediate development of this project is in Timor-Leste's national interest.

Although people from around the world have supported Timor-Leste's people's demand for a maritime boundary to complete our independence struggle, Australia refused to respond to this concern. Rather than recognize our sovereignty, the Australian Government will only negotiate about revenue sharing. Australia's lack of good will to negotiate fairly with



its new neighbor ignores voices of civil society on both sides of the Timor Sea, raising questions about Australia's democracy.

### Australia's National Interests

The Australian Government provided an analysis to its Parliament about its national interests regarding CMATS. According to their analysis "It is in Australia's interest to create a long-term stable legal environment for the exploration and exploitation of petroleum resources in the Timor Sea between Australia and East Timor, without prejudicing either country's maritime claims in the Timor Sea." We agree, but emphasize that legal stability must also include a maritime boundary based on median lines, according to current international legal principles.

*La' o Hamutuk* also agrees with their analysis that economic stability in Timor-Leste is in Australian's best interest. But by taking 50% of Greater Sunrise and occupying other areas in Timor Sea, Australia's actions contradict both countries' interests. Economic stability in Timor-Leste can best be achieved by respecting our sovereignty and enabling us to benefit from all phases of developing our resources, rather than simply receiving cash. This is essential to the future sustainability of Timor-Leste's economy.

Australia justifies its position by saying that Australia has helped Timor-Leste since 1999, but Australian aid during that period totals less than the \$1,400 million the Australian government has taken from the Laminaria-Corallina fields.

### Conclusion

CMATS is a product of an unfair process, and that Australia has demonstrated its disrespect for democracy in both countries and for our national independence. Under this treaty, Australia has 50 years to explore for future fields in the Timor Sea, while we are forbidden from seeking maritime boundaries or using impartial third-party arbitration. Timor-Leste surrenders our sovereignty for 50 years, until all the oil and gas in the Timor Sea has been extracted and sold. ❖

# Political Parties Debate How to Manage Petroleum Revenues

On 21 June 2007, *La'ó Hamutuk* organized a debate among the fourteen political parties and coalitions contesting the 30 June parliamentary election. Ten parties (Undertim, CNRT, PR, PDC, UDT, PD, PST, PSD/ASDT, FRETILIN and PUN) attended, as well as more than 200 members of the audience.

Each party was asked to describe its plans for managing petroleum income if they are elected to Parliament. Some had clear, detailed policies, while others stated generalities and platitudes. A few appeared to be intentionally evasive.

This was followed by questions from a panel of NGO experts regarding such issues as planning for the post-petroleum era, petroleum dependency, transparency, corruption prevention, sustainable levels of spending and diversifying Timor-

Leste's economy. These issues are crucial for a government which receives 94% of its revenues from oil and gas, resources which will be exhausted within two generations. Although some parties had obviously considered them carefully, others needed the occasion of this debate to encourage them to consider ways to avoid the "resource curse."

After the election, *La'ó Hamutuk* will publish written and video materials describing the commitments of the parties which are elected into Government, so that they can be held accountable to their promises.

The debate was organized by *La'ó Hamutuk* in collaboration with the Timor-Leste NGO Forum and the National University Student Solidarity Council (KSUTL). Oxfam Australia provided financial support. ❖



Panelists Julino Ximenes (HAK Association) and Santina Soares (La'ó Hamutuk) ask questions of the party representatives.



Lita Sarmento from the NGO Forum and National Elections Commission opened the program.



Fernanda Borges, Partido Unidade Nacional



Jose Teixeira, FRETILIN



Estanislau Saldanha, Partidu Republikanu, and Alfredo Pires, CNRT

## Crimes which would receive amnesty under the proposed law

*(See editorial, back page)*

Legal statute	Description	Conditions and exceptions
KUHP* 55	Amnesty can be given both for direct personal commission of crimes and for inciting others to conduct criminal behavior.	Within 90 days, the offender must pay reparations to the victim, unless the victim(s) withdraw the complaint or give a pardon to any of the co-perpetrators.
KUHP 351-361	Assault, cruel treatment, negligent homicide, torture (including resulting in death)	Premeditated murder is not included.
KUHP 362-395	Theft, extortion, robbery, burglary, embezzlement, fraud	The offender must pay reparations to the victim, unless the victim withdraws the complaint or gives a pardon.  If the value of the property stolen or destroyed is more than \$10,000, amnesty is not allowed.
KUHP 104-129	Sedition, attempted murder of head of state, treason, subversion, rebellion, conspiracy to commit any of these, collusion with or aiding the enemy, importing weapons to support revolution, espionage	
KUHP 154-177	Expressing hostility against the government, violating national symbols, inciting ethnic hatred, incitement to violence or disobedience, conspiracy to commit any of the above, trespass, breaking and entering, criminal association, riot, menacing, disturbing the peace, ridiculing a religious service	No amnesty when the crime was committed <u>through</u> the news media.
KUHP 207-241	Insulting public authority, bribery, threatening a public official, coercion, rebelliousness, disobeying an official order, false reporting of a crime, harboring a fugitive, assisting in a prison escape, disobeying a court request, violating a court order, impersonation	No amnesty when the crime was committed <u>through</u> the news media.
KUHP 310-321	Defamation, slander, libel	No amnesty when committed <u>by</u> the news media.
UNTAET Reg. 2001/12 (Code of Military Discipline) articles 4-12	Ill-treatment of an F-FDTL member, disorderly behavior, insubordination, disobeying an order, absent without leave	Applies to F-FDTL members only.
UNTAET Reg. 2001/5 articles 1-7	Possession, importing, manufacturing, use, purchase or sale of unlicensed firearms, ammunition or explosives.	The weapon must be turned in within one month after the Amnesty Law comes into effect. PNTL and FDTL members are already exempt from these laws when acting in the course of their duties and in accordance with their command policies and instructions
KUHP 187-206	Arson, possession of explosives, preventing a fire or flood from being controlled, damaging or sabotaging water works, electrical systems, ships, buildings or roads	Provided that there is not material, personal and direct authorship of homicide, and that stolen or destroyed property or illicit benefits is less than \$10,000
KUHP 155	Expressing hatred to the government	

\* KUHP is the 1999 Indonesian criminal code, which still applies in Timor-Leste as the RDTL has not yet enacted its own criminal code.

*(Continued on page 14)*

## Crimes which would receive amnesty *(continued from page 13)*

Legal statute	Description	Conditions and exceptions
	All crimes committed by negligence or indirectly (by encouraging others to commit them) not otherwise covered in this law	It's unclear whether this overrides the \$10,000 limitation above.
	All crimes committed by negligence against family members, or where the victim grants a pardon	
RDTL Decree-Law 6/2003	Traffic and parking infractions, moving violations	Except for drunk driving or leaving the scene of an accident.
	Breaches punishable by a fine of less than \$500 or countermandings with a fine of up to \$2,000	Except for certain customs, fiscal and banking violations
RDTL laws, decree-laws and decrees	Disciplinary offences with a maximum penalty not higher than suspension	Except where facts imply a criminal offense or the accused has already been given a more serious penalty
	Police and military breaches of discipline	Except if punishable by a penalty higher than disciplinary imprisonment
Post-conviction pardon	For all crimes committed between 20 April 2006 and 30 April 2007, all fines shall be cancelled, except that fines of more than 180 days applied in lieu of imprisonment shall be reduced by 180 days. All prison sentences shall be reduced by one year, except that sentences of eight years or more shall be reduced by one-sixth.	Except where falsification of documents is involved; or sexual crimes against a victim younger than 14 years old. Those with sentences longer than ten years or who have already received a prior pardon are not eligible.
Ineligible		Habitual alcoholics and delinquents are not eligible for amnesty.
Reduction of penalties	Sentences for offenses committed before 31 July 2006, punishable by less than three years imprisonment, shall be converted to a fine.	Only applies to offenders under 18 or over 59 years of age who have not committed another crime.
Repeat offenders	The amnesty or pardon is cancelled if the perpetrator commits another malicious offense within three years of this law coming into force.	

## Editorial: Amnesty Law Perpetuates Impunity

*(continued from page 16)*

should provide public defenders for those who have no money, so that they and all people are held accountable for crimes they commit. The judicial process should run properly and efficiently, so that the state itself does not commit human rights violations by indefinitely imprisoning alleged perpetrators before they are brought to trial.

Within days of this law's passage by Parliament, attorneys for former Interior Minister Rogerio Lobato (now serving seven years in prison), asked the General Prosecutor to grant him amnesty. This shows that this law not only protects small criminals, but can provide impunity for those who led this

nation into crisis.

The proposed law implements an unjust view of society. Someone who burns a rich person's house (that is, one worth more than \$10,000) must face justice, but someone who burns down an average home will receive amnesty. This contradicts the State's fundamental Constitutional objective "To promote the building of a society based on social justice," as well as the Constitutional principle that "No one shall be discriminated against on grounds of . . . social or economic status . . ." For centuries, Timor-Leste has been victimized by a global political and economic order where rich countries vio-

late the rights and property of poor countries with impunity. We should not carry out such policies against our own citizens.

*La'o Hamutuk* and others in civil society have often asked Parliament not to make laws to criminalize nonviolent actions which should be protected by international or Constitutional human rights guarantees. We objected to parts of the defamation law, the immigration law, the demonstration law and other legislation which would burden the courts and prison system with unnecessary cases, as well as violating human and constitutional rights. Parliament and Government approved many of them anyway. But now, Parliament has decided that some of these laws, and others for violent crimes, should not be applied to certain people during a certain time period.

A society based on the rule of law requires consistent practices and universal application, a fundamental objective defined in Timor-Leste's Constitution: "To guarantee and promote fundamental rights and freedoms of the citizens and the respect for the principles of the democratic State based on the rule of law." Enacting excessive laws, and then selectively deciding not to enforce them, is no way to demonstrate this respect.

Our national crisis will only end when people are confident that the rule of law will be applied fairly and equally, providing stability, confidence and justice for all. If perpetrators are not held accountable for their actions, we will continue to be afraid, and to lose our lives and property. In a country where the law is weak, human rights violations and violence prevent stability and development, condemning us to poverty, criminality and lawlessness. Lack of accountability for past crimes will lead to even more crimes in the future.

### **Giving license to criminals to repeat their crimes**

It is ironic and sad that our leaders who asked the United Nations to send an Independent Commission of Inquiry last year are now unwilling to follow up on the Commission's recommendations, which include prosecution of 68 named individuals and further investigation of more than 70 others. As the Commission concluded: "The Commission is cognizant of the overwhelming desire on the part of the community for justice, which must be fulfilled by an impartial, efficient and credible judicial system. The Commission is of the view that justice, peace and democracy are mutually reinforcing imperatives. If peace and democracy are to be advanced, justice must be both effective and visible."

This law allows perpetrators who are under 18 years old or over 59 to pay a fine rather than serve time in prison. This encourages young criminals to repeat their past crimes, since a fine is much easier than going to jail. We know that many crimes committed by children and youth result from unemployment, and that some jobless youths were recruited by political actors. Children and youth are vulnerable to such manipulation, and we agree that they should not be sent to jail. However, it is not appropriate to make them pay a fine,

without educating them to respect other people's rights to safety, security and life. Moreover, the fine makes them susceptible to people who have money and will pay them to commit further crimes.

So far, Timor-Leste has no special court or legal mechanism to process youthful offenders, and we encourage the National Parliament and Government to create one. We also recommend that the government establish a rehabilitation center for youth and children, to facilitate their education so they can improve their behavior. It will also help to heal the victims; otherwise, pain and hatred between people will continue, creating cycles of revenge and making justice in Timor-Leste even harder to achieve.

### **Parliament is inconsistent and unrepresentative**

The National Parliament should represent all our people. Article 92 of our Constitution says that "the National Parliament is the organ of sovereignty of the Democratic Republic of East Timor that represents all Timorese citizens and is vested with legislative supervisory and political decision making powers." However, this Amnesty law shows that Parliament sometimes represents criminals, rather than everyone.

A law which subverts justice is never appropriate, but this is a particularly bad time for a law which undercuts the hopes of many who have worked for justice. In the middle of an election season most people, including Parliamentarians, are focused on the campaign and not paying attention to their jobs or to people's wishes. Furthermore, Parliament passed this law less than one month before they will leave office, undermining Timor-Leste's democracy and leading us to believe that they do not want to allow newly elected Parliamentarians to strengthen justice.

Unfortunately, some of our Parliament Members have short memories. On 9 December 2006, the Ad Hoc Parliamentary Commission ("Commissaun Eventual") to Study the Report of the UN Independent Special Commission of Inquiry for Timor-Leste, which included some of the authors of this Amnesty Law, reported that:

*"The Ad Hoc Commission is convinced that Timor-Leste shares the prevailing universal thought according to which 'justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives.' The Ad Hoc Commission is also of the opinion that the Timorese society defends and fights so that there is an end to impunity.*

*"The Ad Hoc Commission is of the opinion that, it being indispensable and urgent to pursue the path of reconciliation in political, social, and moral terms, and to support all initiatives in that regard, reconciliation cannot inhibit nor hinder the course of justice and the combat against impunity. The authors of criminal acts must be held accountable and be brought to justice."*

*La'o Hamutuk* hopes that the President will heed these wise words, even if Parliament has forgotten them. ❖

# Editorial: Amnesty Law Perpetuates Impunity

On 4 June 2007, Timor-Leste's National Parliament passed law no. 30/I/5a entitled "Truth and Measures of Clemency for Diverse Offences." As of this writing, it is on the desk of President José Ramos-Horta, waiting for his promulgation or veto. The law is bad for justice and for our people, and will prolong impunity and exacerbate political and societal divisions that have led to the current crisis. *La'ó Hamutuk* urges the new President to veto this law.

This law will apply to crimes committed over the past year, which took many people's lives and caused others to lose their homes. Many women were widowed and children became fatherless. This law as passed still contains many drafting errors and omissions, which shows that Parliament did not examine this law in depth to make it workable or complete. The FRETILIN Parliament wanted to enact this in a hurry before the newly elected Parliament comes in. *La'ó Hamutuk* and others are concerned that if this law comes into force, it will set back the judicial system in Timor-Leste.

The Law provides amnesty to people who committed serious crimes in Timor-Leste between 20 April 2006 and 30 April 2007, without them going to trial or entering into any justice process. The law enumerates more than 180 specific crimes which will be subject to amnesty (see table, page 13). For a few of them, victims of crimes could receive reparations and must give permission for the amnesty.

Today, many Timorese are dead because of these crimes. Tens of thousands of others have lived in refugee camps for more than a year, and even more children have had their education interrupted, jeopardizing their future. This law cares for those who committed the crimes, but does not consider the suffering their behavior has caused for innocent civilians.

Although the law is entitled "Truth and Measures of Clemency," we cannot find any truth in it. The preamble mentions the importance of searching for truth, but the law does not include processes for research, testimony, public hearings or any other mechanism which could uncover the truth. Perhaps this is the logical successor to the Truth and Friendship Commission, whose "truth" processes have served only to publicize Indonesian perpetrators' self-serving, inaccurate accounts of their actions during 1999.

## Against the Constitution, for impunity

The first article of Timor-Leste's Constitution says that Timor-Leste is a state "based on the rule of law, the will of the people and the respect for the dignity of the human person." However this proposed law violates that article, providing amnesty and pardon without any basis in justice. Constitution Article 16 says that "All citizens are equal before the law, shall exercise the same rights and shall be subject to the same duties." So this Amnesty law should not protect perpetrators without considering the rights of victims.

Timor-Leste is caught in a cycle of perpetual impunity, which weakens the rule of law in providing justice and deterring future crimes. There has been almost no justice for more than a thousand killings here during 1999, let alone the hun-

dred thousand since 1975. This climate of impunity was a significant factor in the security problems that began last year and continue to today. We are still waiting for justice for the killings of 4 December 2002, for the 37 people killed in April and May 2006, and for the more than 100 who have died from violence since then. When will it stop?

Members of Parliament who defend this law say the law is intended to lighten the court system's caseload. With this kind of law, they argue, the courts can focus on major cases. According to Mr. Elizario Ferreira, a member of National Parliament, a good leader should have the capacity to give amnesty to citizens who commit petty crimes. He says this amnesty law will give freedom to poor people who cannot afford to pay lawyers, and will allow the courts to focus on serious crimes.

However, *La'ó Hamutuk* does not see this as a reason to pass this law. Rather, Parliament and other state institutions should strengthen and improve the judicial system. The state

*(Continued on page 14)*

## What is La'ó Hamutuk?

*La'ó Hamutuk* (*Walking Together* in English) is an East Timorese non-governmental organization that monitors, analyzes, and reports on the principal international institutions present in Timor-Leste as they relate to the physical, economic, and social reconstruction and development of the country. *La'ó Hamutuk* believes that the people of Timor-Leste must be the ultimate decision-makers in this process and that this process should be democratic and transparent. *La'ó Hamutuk* is an independent organization and works to facilitate effective Timorese participation. In addition, *La'ó Hamutuk* works to improve communication between the international community and Timor-Leste society. *La'ó Hamutuk's* Timorese and international staff have equal responsibilities, and receive equal pay. Finally, *La'ó Hamutuk* is a resource center, providing literature on development models, experiences, and practices, as well as facilitating solidarity links between Timorese groups and groups abroad with the aim of creating alternative development models.

*La'ó Hamutuk* welcomes reprinting articles or graphics from our *Bulletin* without charge, but we would like to be notified and given credit for our work.

In the spirit of encouraging greater transparency, *La'ó Hamutuk* would like you to contact us if you have documents and/or information that should be brought to the attention of the Timorese people and the international community.