



REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE
CONSELHO PARA A DELIMITAÇÃO DEFINITIVA DAS FRONTEIRAS MARÍTIMAS

[REDACTED]

28 February 2018

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Dear Commissioners,

Thank you for the final package of documents from the Conciliation Commission relating to the development concept for Greater Sunrise. We are grateful to the Commission for extending your mandate to assist the States and Sunrise Joint Venture (SJV) with the process on the development concept.

I must confess, my Dear Chair, that I was somewhat surprised with the amount of documents that were delivered to us on the last day of the Kuala Lumpur meetings.

I

During that week, my perception of the progression of the process led by the Commission was that, on 1 March, it would not be possible to approve any Development Concept.

This perception was created by the progress in the engagement with the Commission, during which we became aware that:

- The SJV wished to manipulate the engagement process to ensure that the prior regime remained in force; and this was corroborated by the Commission. Although the SJV and the Commission would prefer to call such regime the 'baseline' to try and justify the 'terms or conditions equivalent' obligation under the Treaty, the truth is that this 'baseline' corresponds to the 20.1% JPDA, 79.9% Australian claimed waters Greater Sunrise split;
- Australia's true justification to try and maintain the 'confidentiality' of the Treaty terms was, as I explained in the second session with the Commission I attended in Kuala Lumpur, to try and maintain the 20.1% - 79.9% split, despite the Treaty dividing the Greater Sunrise resources approximately 80% - 20% in Timor-Leste's favour;

- The Commission refused to consider Timor-Leste's insistence that we could not discuss the new PSC without first determining and agreeing on the Fiscal Regime, irrespective of the development concept chosen; and
- Equally important, the fact that the SJV wanted that the term of the Framework Agreement would be in force for the life of the Greater Sunrise project, which is totally unacceptable to Timor-Leste.

As we became aware that the process was not leading the States and the SJV to a clear path that we could walk down together, the third option – which was initially misunderstood by Timor-Leste – was prepared as an acknowledgement that, on 1 March, it would not be realistic to reach a decision on any development concept. (I now understand that the third option was always Floating in the minds of the Commission, the SJV, and Australia).

However, I must honestly say that after reading the documents I was not in the least surprised by the 'solution' imposed upon us, although I must say that if we were to come to this 'conclusion' of the process, we could have arranged for a meeting with all interested parties. Unfortunately that was not what happened... The Commission instead opted for the easiest way out, which is a shame as in my perception it reveals a lack of impartiality on your behalf!

II

Dear Chair and Commissioners, my team has studied the Commission's package of documents very carefully. We see that you have been working hard with your expert, in the time available, to understand the technical issues and draw conclusions based on the available information.

However, we have significant concerns regarding both the approach that was taken in considering the development concepts as well as the technical and commercial assumptions and conclusions which the expert arrived at. As such, Timor-Leste rejects, for all relevant purposes, both the "Commission Paper on the Comparative Benefits of Timor LNG and Darwin LNG", and the "Condensed Comparative Analysis of Alternative Development Concepts".

First, we are disappointed to see the direction that the Commission has been taking in its analysis. Rather than working on both development concepts in an equal and balanced way, the Commission's efforts have been focused on building up the DLNG concept, to the neglect of TLNG.

For DLNG, it is apparent that the Commission has been engaging in detailed discussions with Australia and SJV to extract commitments on local content and related terms. While we acknowledge the effort to secure the best possible socio-economic outcomes for Timor-Leste, it is unfortunate that Timor-Leste was not invited to contribute to these discussions in a meaningful way and respond to the particular initiatives proposed. No party is better placed than Timor-Leste to understand the local context in which such initiatives would be implemented.

As we raised on 12 January 2018 before he was formally appointed, the Commission's chosen technical expert does not have appropriate experience or understanding from working in Timor-Leste or similar developing country contexts. This kind of specific local understanding is critical to ensuring that resource development will bring real and tangible benefits to the people of Timor-Leste.

In our previous meetings, Timor-Leste made clear that we were prepared to work with the Commission and its expert to build up both options. We showed that we were willing to engage with DLNG and explore how it could bring the equivalent level of benefits to Timor-Leste as the TLNG option. Unfortunately, our contribution was not deemed relevant when preparing the documents we have now been provided.

The Commission revealed an uncommon generosity in allowing itself to think on behalf of the people of Timor-Leste. Unfortunately, the Commission's abstract assumptions of what would be in the best interests of our people show a shockingly superficial assessment of the potential benefits to the Timor-Leste population.

I must commend this audacious and magnanimous attitude by the Commission!!! I must say that this is a show of the capitalist mind-set which is so common of developed countries: Timor-Leste must learn that such policies and behaviours are the motor of the world economy!

From where we stand now, the TLNG concept remains as the only option on the table that will bring transformative socio-economic benefits to our nation.

III

We appreciate that the local content offers may appear more attractive than the minimal commitments previously put forward during our discussions. At first glance, Australia's offer of \$100 million towards a domestic gas pipeline to Timor-Leste may appear generous. However, it is of course insignificant relative to the billions of dollars that Australia has already taken from resource fields that lie 100% in Timor-Leste's maritime area under the new Maritime Boundary Treaty. Australia's offer also pales in comparison to the total revenues that will flow to Australia from downstream operations if the DLNG option were chosen. It amounts to around a week's worth of gas revenues. We are wary that this proposal from Australia is a defensive public relations exercise to provide political cover. It is not about helping the Timorese people, but about securing the pipeline to Darwin and the windfall gains it brings to Australian companies.

Despite the statement made by a senior member of the Australian government on the genuine and absolute neutrality of the government of Australia throughout the Conciliation process, the USD100 million commitment and other offers made only reveals the discrepancies of position in Canberra. And overall, it really demonstrates that Australia is, in fact, actively supporting the pipeline to the Darwin LNG.

But, on the other hand, the civil society from both countries could also potentially perceive this as a "form" of collusion between the Government of Australia and Darwin LNG partners and/or the Sunrise JV, with the support of the Commission, to secure the pipeline and LNG plant from Greater Sunrise to Darwin. And, worst still, these offers could also be perceived by international transparency organisations as a form of bribery to the Government of Timor-Leste, insofar as it appears to be an unjustified payment to secure an unfair and unacceptable business advantage for the Sunrise JV and the DLNG JV.

IV

Also as to the matter of “benefits” to Timor-Leste should the Greater Sunrise gas be processed in Australia, corresponding to the 10% that Australia will ‘give up’ in this scenario (and which would amount to US\$ 3 billion), I would like to inform you of the following.

I visited the Northern Territory of Australia for the first time in 1968, and returned in 1974. 25 years later, in September 1999, I landed in Darwin for the third time. I can say without much doubt that the living conditions of the Aboriginal People – the true land owners – did not change substantially in two and a half decades. I have confirmed this over the years in subsequent visits.

In Copenhagen, once both countries’ positions on the maritime boundary delimitation had been harmonized, we all turned our attention to the Transitional Arrangements and respective Annexes. Those documents included express references to ‘local content’ that, in my understanding, was more oriented towards TLNG.

I am certain that you recall that I said, during one of our meetings in your home city, that the DLNG Development Concept presented by the SJV was rubbish! We also showed you our own TLNG work so you could easily compare how developed it was when compared to the SJV’s meagre effort, to the point of the Commission asking us to also hand over a copy for your review.

I believe, Dear Chair, that you also recall that during a break in the negotiations you called me to express your surprise and ask if it was true that I had offered 10% to Australia should the pipeline go to Timor-Leste. I must confess that the surprise was all mine, with the fact that Australia immediately accepted the offer without further reflection and proceeded to immediately convey the information to you. You will also recall that I explained to you that Sir Daniel Bethlehem, in front of Australia’s Co-Agent Katrina Cooper, had stated that the SJV’s ‘DLNG Development Concept’ was not a true development concept, but instead a mere ‘expression of interest’.

It was due to Sir Daniel and Katrina’s frustration with a document incapable of convincing any one, and considering that our TLNG development concept was better structured and grounded, that I came up with the idea of offering Australia 10% more revenue in exchange for the TLNG development. The idea was that this additional 10% could be used by Australia as a local content contribution to improve the standard of living of the Northern Territory’s indigenous population.

As you will see, Dear Chair, I speak with knowledge of the underlying dynamics, and ‘history’ has proven that I was more than 79.9% (of the Commission, Australia, and the SJV’s baseline) right!

Please find in Appendix 1 a paper on the Northern Territory Development needs, with credible information that explains the need for US\$ 3 billion in Northern Territory local content.

My prior knowledge of the dire situation of the native population in the Northern Territory was further complemented a couple of weeks ago, when I watched an Australian TV documentary on the overcrowded prisons in Darwin. This documentary showed images of the poor Aboriginal men and women under the control of the social (in)justice system.

For this reason, Dear Chair and Commissioners, I firmly believe that the TLNG option not only provides greater benefits to the people of Timor-Leste when considered on the ‘same footing’ and in true ‘terms or conditions equivalent’, but also allows Australia to receive the US\$ 3 billion more

revenue generously offered by myself to Australia in Copenhagen, which Prime-Minister Malcolm Turnbull can then use to solve the Northern Territory's problems and improve the quality of life of the Aboriginal population.

V

Our review of the expert's comparative analysis of the alternative development concepts also raises significant serious technical concerns, which are better outlined in the attached review of this document.

Further, the economic modelling work undertaken by the expert is also fundamentally flawed for the reasons also outlined in the attached review.

While it is expected that various technical experts may reach different conclusions based on differences in assumptions, it is disappointing that Timor-Leste has not had the full opportunity to engage with the expert's methodology and respond to his analysis.

The above concerns with the approach and assessment, and the obvious need for further work on both concepts, make it difficult for Timor-Leste to make a decision on the three draft Framework Agreements (DLNG, TLNG, No Decision) presented by the Commission.

When Timor-Leste initiated these conciliation proceedings, it was with a view to seeking the Commission's assistance in settling its long-protracted maritime boundary dispute with Australia. This was made clear in Timor-Leste's notice to initiate the conciliation, in which we stated that:

"Timor-Leste's goals in these proceedings is to conclude, with the assistance of the Conciliation Commission and in accordance with UNCLOS, an agreement with Australia that delimits Timor-Leste and Australia's permanent maritime boundaries in the Timor Sea."

Besides this main fundamental goal, Timor-Leste also referred that it was *"also prepared to agree upon and establish appropriate transitional arrangements in consequence of the agreement."*

Exactly what these "appropriate transitional arrangements" was further elaborated on in Timor-Leste's opening statement in the hearing on Competence, as quoted by the respective decision from the Commission:

"In its opening statement, Timor-Leste set out the matters with which it hoped the Commission would assist the Parties as follows:

First, we hope that the Commission can assist the Parties to reach an agreement on the delimitation of permanent maritime boundaries

. . . .

In addition to the issue of permanent maritime boundaries, a second task for the Commission is to assist Australia and Timor-Leste to agree on appropriate transitional arrangements in the disputed maritime areas, to bring the Parties from their current temporary arrangements to the full implementation of their newly agreed permanent maritime boundary.

*Finally, a third task for the Commission, and one related to the issue of transitional arrangements, concerns the **post-CMATS arrangements**. With the expected termination of CMATS, and with it the Timor Sea Treaty, the Parties will benefit from the assistance of the Commission in **finding the optimal way to come to a mutual position on dissolving the joint institutions and arrangements found in those provisional arrangements, and moving on.**"*

Although this was the Commission's initial mandate, Timor-Leste acknowledges that the Commission's scope was later broadened (on the request of Australia) to also cover issues relating to Greater Sunrise development and, in particular, discussions on the Greater Sunrise development concept. However, in Timor-Leste's humble opinion, and with all due respect, the broadening of the scope of engagement of the Commission cannot equate to a change of its fundamental nature: it is still a conciliation procedure, i.e., an alternative dispute resolution mechanism through which a neutral party (the conciliator, or in this case the conciliation commission), meets openly with both parties to hear their views and propose a recommended non-binding settlement for their dispute. This is also confirmed by Article 6 of UNCLOS Annex V, which sets as the Commission's functions hearing the parties, examining their claims and objections, and making proposals to the parties with a view to reaching an amicable settlement.

The Commission is entitled, under UNCLOS Annex V and the Commission's Rules of Procedure to provide documents to the Parties and make **proposals** with a view to reaching an amicable settlement. However, it was never Timor-Leste's expectation that the Commission would attempt to circumvent the fundamental nature of its mandate by presenting a "formal recommendation" on a highly complex technical and economical matter such as the Greater Sunrise Development Concept. No matter how we frame it, in Timor-Leste's opinion, the "Commission Paper on the Comparative Benefits of Timor-LNG and Darwin-LNG", and the "Condensed Comparative Analysis of Alternative Development Concepts", besides containing serious and fundamental technical and economic flaws and errors (as better described in the attachments to this letter) are not a simple *recommendation* but instead a clearly one-sided position paper, drafted to pressure Timor-Leste into deciding in favour of the DLNG development concept.

Dear Chair, Dear Commissioners,

I would like to remind that the timeline created by the Commission for the agreement on the Development Concept selection for the Greater Sunrise fields was also driven by the so called "Window of Opportunity for DLNG Backfill", fabricated by the Sunrise Joint Venturers. The Commission, in various engagements with Timor-Leste, consistently argued that unless working towards the agreement on a single Development Concept within the window of opportunity, Timor-Leste would never have a chance to develop the resources as the DLNG facility would be utilised for the Caldita/Barossa gas field. This statement was also repeatedly reinforced by the Joint Venturers in various occasions, especially in our second Trilateral Meeting in Singapore where it was said that if the decision is not made now, the greater Sunrise fields would never be developed. From the beginning of the process, we knew that it was a false deadline to force us to open the window. But, surprisingly, the Commission's expert came with a golden key to open the window. For Timor-Leste, that window never exist.

VI

Timor-Leste is now faced with three draft “framework agreements”, and the date of 1 March 2018 to decide whether it wishes to accept any of the said three drafts or, in line with the non-binding nature of the conciliation proceedings, make a fourth decision: to reject them all.

Firstly, the Framework Agreement based on the DLNG concept is untenable while there remain valid concerns about both the technical and commercial assessments of this option, as outlined above and in the attached documents. As we have raised previously with the Commission, the SJV’s DLNG concept is based on outdated studies with inappropriate scaling. In accordance with best international oilfield practices, the SJV needs to complete around 15 months of further engineering studies in order to reach the concept decision stage for DLNG.

Secondly, the Framework Agreement based on the TLNG concept imposes unreasonable conditions and deadlines on Timor-Leste, failing which, the agreement would lapse. Notwithstanding that this Framework Agreement needs further refinement in order to be acceptable to Timor-Leste, we understand from your letter that it is not acceptable to the SJV in any case.

That leaves only the third option, the no-decision Framework Agreement which allows for discussions to continue on the two tolling Development Concepts known as 'TLNG' and 'DLNG', with a view to agreeing on a Development Concept as soon as possible.

VII

Dear Chair, Dear Commissioners,

During our recent Kuala Lumpur meetings, I and my team presented a number of comments, objections and concerns to the draft framework agreements which, unfortunately, were not considered to be sufficiently important or relevant to include in your proposal. We also made clear that, in Timor-Leste’s opinion, although information is still missing from all concepts, the only development concept that currently meets the development concept approval criteria, is the TLNG concept. This view has not been changed by any of the documents provided by Your Excellencies on the last day of our meetings.

I also sent you an open and honest letter on Friday 23 February with Timor-Leste’s position on the process for the choice of a development concept for Greater Sunrise, to which was attached Timor-Leste’s draft proposal of a “3rd option” for future engagement on Greater Sunrise after the end of the mandate. Timor-Leste’s proposal, in our opinion, contains a simple, clear, and actionable framework and road map for future engagement, which should be acceptable to both States and the SJV, as it does not cross any party’s “red lines”, and is, in Timor-Leste’s view, the path forward for defining the future Greater Sunrise development concept. As I believe you may have missed my letter and respective annex in the excitement of the final day of the Kuala Lumpur meetings, I respectfully hereby attach them to this letter, in the hope that this (slightly revised) agreement can be signed by the other parties. In a sign of good faith, Timor-Leste has already initialled this agreement.

Should this unfortunately not be the case, Timor-Leste looks forward to continuing to engage with Australia and the SJV under a framework to be agreed in the near future.

From the beginning we expressed concern that the timeline previously presented was unrealistic and, as expected, while we have undertaken this process in good faith, that has proved to be the case. The reasons for this include the technical immaturity of both concepts. The only option is to commit to addressing the gaps and undertaking the further necessary work to be able to build up the two options to such a level that allows one development concept to be chosen in accordance with best international oilfield practices, as soon as possible.

On behalf of Timor-Leste, I thank the Conciliation Commission for your continued engagement to facilitate a decision on a development concept, which unfortunately could not happen during the mandate of the Commission. As we prepare for the signing of the first Maritime Boundary Treaty between Timor-Leste and Australia at the United Nations headquarters in New York, I have to reaffirm that this remarkable achievement would not have been possible without the hard work and dedication of the Commission. The people of Timor-Leste will not forget your role in building a better future for our nation.

Yours sincerely,

Kay Rala Xanana Gusmão

Chief Negotiator and Head of the Timor-Leste Petroleum Team
Council for the Final Delimitation of Maritime Boundaries

ATTACHED:

APPENDIX 1 - AUSTRALIAN GOVERNMENT'S INDIGENOUS AFFAIRS POLICY AND RELEVANT STATISTICS

APPENDIX 2 – 23 FEBRUARY LETTER & TIMOR-LESTE'S DRAFT (NO CONCEPT DECISION) FRAMEWORK AGREEMENT

APPENDIX 3 - TIMOR-LESTE SUMMARY RESPONSE TO COMMISSION

- Annex A: Comments on Condensed Comparative Analysis of Alternative Development Concepts
- Annex B: Comments on Commission Paper on the Comparative Development Benefits of Timor-LNG and Darwin-LNG
- Annex C: Timor-Leste's Comments on the Final Draft of the TLNG Framework Agreement
- Annex D: Timor-Leste's Comments on the Final Draft of the DLNG Framework Agreement
- Annex E: Timor-Leste's Comments on the Final Draft No Decision On Development Concept Framework Agreement
- Annex F: Timor-Leste GSR Dataroom File Listing