



Independent Center for Information on the Timor Sea
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Dili, 4th March 2005

TO: Mr. Thomas Ekeli
International Advisor
Timor Sea Office

Dear Mr. Thomas Ekeli,

We hereby submit the comments from CIITT and CAFOD on the draft Petroleum Fund Act. This joint submission contains our views on some of the critical issues regarding the Petroleum Fund which we believe need to be addressed. The document is currently only available in English, but we are working to produce copies in other relevant languages.

We are open to dialogue on our comments and are prepared to discuss the points in details at any time. We can be reached through the following contact persons:

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We look forward to a constructive dialogue in the future.

Sincerely,

Ernesto Pinto Madeira
Coordinator

COMMENTS ON THE TIMOR-LESTE PETROLEUM FUND DRAFT ACT

Summary

1. CAFOD and CIITT welcome this opportunity to comment on the Timor-Leste Petroleum Fund draft act. We fully support the Government's aim that 'the management of the Petroleum Fund shall be carried out with the highest standard of transparency and accountability.' Our response focuses on this aspect of the draft act.
2. The proposed legislation contains much that is welcome but there is still scope for further measures to build transparency and accountability into the way the fund is managed. We believe that the Petroleum Fund is more likely to be a successful tool for the stewardship of Timor-Leste's natural resources if:
 - companies publish details of their payments to the fund
 - reports are made available in full to the public
 - safeguards on the management of the fund are improved
 - the role of the Independent Consultative Council is strengthened.

CAFOD

3. CAFOD, the Catholic Agency for Overseas Development, is a major British charity that has been fighting poverty in the developing world since 1962. CAFOD has been working with partners in Timor-Leste since 1989. The revenue from Timor's oil and gas resources will have a huge impact on the future development of the new republic. By setting up robust legal structures governing the management of revenues, Timor-Leste will have the best possible chance of avoiding the corruption and conflict which countries such as Angola and Nigeria have experienced. We therefore strongly support the Government's objective that the Petroleum Fund should 'contribute to the wise management of Timor-Leste's petroleum resources for the benefit of both current and future generations.'

CIITT

4. In 2001 an informal discussion group composed of individuals and organisations formed to discuss the Timor Sea Treaty. The group recognised the pivotal importance that this and related issues had for the future of Timor-Leste. A formal network, CIITT, formed in 2002 to develop a joint advocacy position to:
 - Achieve maritime boundaries between Australia and Timor-Leste settled based on international principles (UNCLOS)
 - Achieve economic and social justice by ensuring that the benefits to Timor-Leste from natural resource revenues are enjoyed by all the Timorese people
 - Achieve environmental justice by ensuring that the national ecology is preserved for future generations.

To further these objectives, CIITT have provided analysis and input to the Australian and Timor-Leste governments as well as to international solidarity networks. CIITT see the creation of the Petroleum Fund as a key opportunity for ensuring that their objectives for economic, social and environmental justice are realised.

CIITT/CAFOD partnership

5. CIITT and CAFOD have been working together for over a year. The organisational relationship is based on long-term partnership, solidarity networks and friendship. CAFOD's on-going commitment to just development in Timor-Leste spans almost twenty years. The organisations share a vision for the sustainable future development of Timor-Leste, its people and its land. We believe that this can only be achieved through the establishment of just and transparent structures for the management of the country's natural resources.
6. The Government has created several opportunities for civil society to comment on the proposals for the Petroleum Fund. This consultative approach is welcome. We are pleased to note that a number of suggestions from the responses to the Petroleum Fund discussion paper have been taken on board in the draft act. CAFOD and CIITT would like to highlight four areas where the Petroleum Fund Act can be improved still further so that Timor-Leste becomes a good practice model for other resource rich developing countries both regionally and worldwide.

Publication of payments made by oil and gas companies

7. The draft act requires the Government to publish information about receipts from petroleum revenues but does not place any requirement on extractive companies to publish details of their payments to Timor-Leste. CAFOD and CIITT suggest that each petroleum company should be required by law to publish details of its payments to the fund. This could easily be incorporated into the draft petroleum fund legislation.
8. We believe that this approach of 'double disclosure' is a helpful mechanism to support lasting transparency. The Timorese people would be able to compare the payments that companies had made with the receipts to the fund. This would increase public understanding of and confidence in the way the new fund works.
9. The Government has set out as one of its key principles that 'the Petroleum Fund builds on international best practice and reflects the circumstances of Timor-Leste.' If companies publish their revenue payments, this would provide a valuable external check to complement the safeguards built into the operation of the petroleum fund. Company disclosure is also a requirement under the recent São Tomé and Príncipe law and a significant element of the Extractive Industry Transparency Initiative.

Reports should be made available in full to the public

10. CAFOD and CIITT strongly support the aim that 'the management of the Petroleum Fund shall always be carried out, and the related duties of all relevant parties shall be discharged, with the highest standard of transparency' (see 18.1). Publication of the

Central Bank's reports, the Independent Auditor's reports and the advices of the Independent Consultative Council are all necessary for a genuinely transparent system. However the draft act frequently refers to reports being 'adapted for publication' and 'measures taken to prevent the disclosure of confidential information'. This wording could offer considerable latitude to future regimes which may not share the current Government's concern for transparency and accountability.

11. We suggest that to ensure that the Timorese people get an accurate picture of what is happening to their natural resources, the act should specify that reports are published in full, as well as in summary form adapted for public information. This arrangement will ensure that if citizens want to look into the workings of the fund in more depth the full reports will be available. It will also help to ensure that any summaries published provide an accurate representation of the original documents. Both summaries and reports should be available in Tetum, Portuguese, English and Indonesian.
12. Since the act does not define what is regarded as confidential information with any precision, we are concerned that confidentiality could potentially be used as a blanket pretext for withholding data. Our understanding is that since the petroleum fund will be managing oil and gas revenues for the people of Timor-Leste there is no real need for information to be withheld from the public on the grounds of confidentiality. We therefore recommend that the references to preventing the disclosure of confidential information in 8.8, 10.10, 17.3, 17.7, 18.1 and 20.4 of the act are deleted.

Improved safeguards on the management of the fund

13. While it is not possible to legislate for the behaviour of future governments, the act can create safeguards which encourage wise and transparent management of the fund. CAFOD and CIITT welcome measures such as the Investment Advisory Board and the Independent Auditor. We would like to suggest a number of ways in which the effectiveness of the safeguards in the act could be increased.
14. An important first step is ensuring that all petroleum-related revenues received by Timor-Leste are paid into the fund. We welcome the clear requirement in the draft act that all payments relating to petroleum resources must go into the Fund (6.1). We recommend that the act underlines this by explicitly forbidding any petroleum-related payments to Timor-Leste, by any party, to places other than the Fund.
15. The Investment Advisory Board should provide a valuable source of expertise in insuring that revenues are invested wisely. However we are concerned that despite the good intentions of the drafters, an unscrupulous Government could bypass the safeguards which the act creates. For instance, there would be nothing to stop a Minister from sidelining the Investment Advisory Board on the grounds that there was 'insufficient time' to seek its advice.
16. We therefore suggest that Articles 10.2 to 10.4 are amended to read as follows:
"10.2 Subject to Article 10.4, the Minister shall seek the advice of the Investment Advisory Board before making a decision on any matter relating to the investment strategy or management of the Petroleum Fund.

10.3 The Investment Advisory Board should provide considered advice as requested within 25 working days. This period can be extended for more detailed analysis to 75 working days.

10.4 If the Investment Advisory Board does not provide the advice requested in a timely manner, having regard to the nature of the advice sought, the Minister shall make the decision.

10.5 If the Minister makes a decision under 10.4, the Minister shall immediately report the making of the decision to the Investment Advisory Board. The Minister shall reexamine the decision having regard to any subsequent advice provided by the Investment Advisory Board.”

17. As the act stands, the composition of the Investment Advisory Board is largely determined by the Minister (10.6). We suggest that the drafters should consider whether this provides sufficient checks and balances, for example what is the role of the additional person appointed by the Minister (10.6d)? It should also be specified that the members of the Investment Advisory Board have 'no direct interest with any petroleum operation'.
18. Independent, external audits will give the fund credibility and bolster confidence that revenues are not being misappropriated (Executive Summary, p. 4.) We believe instead of being appointed by the executive, the Independent Auditor should be selected independently by the court of appeal and, when the auditor's court is established, by the auditor's court. This appointment would then follow due process of approval by parliament and promulgation by the President. The process for the appointment of the Independent Auditor needs to be set out more clearly in the act. Our proposed transitional arrangement could be included in Chapter 8, Article 23.
19. The act provides for an earmarked receipts account (5.1) but there is no information on who the account holder is or who the signatories for transfers are. We suggest that there should be only one named national account for petroleum receipts and this account should be open for public scrutiny. As an additional safeguard against misuse of revenues, the signatories should be identified.

Strengthen the role of the Independent Consultative Council

20. We are pleased that the idea of the Independent Consultative Council has been included in the draft act. The purpose of the Council is twofold: the act talks of the Council having a 'watchdog function' and also outlines an important role in advising parliament.
21. Most of the detail in the act refers to the Council's advisory capacity. We suggest that the Council's powers should be strengthened in the final Petroleum Fund act so that it can fulfil more of an oversight function as well. For example, rather than being purely reactive, the Council should have the power to initiate its own investigations and issue opinions as it sees fit. The Council should also give its opinion on appropriations from the fund for investment purposes. We suggest that this requirement is added to 17.2a.

22. The draft act states that if the independent auditor of the fund concludes there is a discrepancy that cannot be accounted for, the matter should be referred to the Minister (20.4). We suggest that it would also be wise for such a discrepancy to be referred to the Provedor, who will provide an important link to the judicial system, and also to the Independent Consultative Council so that they have full picture of the operation of the fund.
23. To build public confidence it is essential that the composition of the Independent Consultative Council is clear and its members are appointed before the fund becomes operational. We therefore recommend that transitional provision (under Chapter 8 of the act) be made to cover the current situation in which there is no former President, Prime Minister etc. Clarification on the procedure and eligibility for the appointments described in 16.1 (f-h) would be helpful. In particular, it is vital that the civil society representative is chosen by civil society groups rather than appointed by Government.
24. The Petroleum Fund Act should build in a number of basic measures to ensure as far as possible that the members of the Council are independent. For example to avoid possible conflicts of interest, we suggest that the phrase 'and have no direct interest with any petroleum operation' is inserted in 16.1. This safeguard also needs to be included in the appointment of the independent adviser for economic and financial matters (16.6). We further recommend that appointees are selected on the basis of their relevant technical expertise rather than directly representing the interest of the appointing bodies.
25. It is an excellent idea to require the Council to consult widely in the community (17.4). To be effective this must be a genuine two-way dialogue. Therefore we suggest that the act should specify that members of the Independent Consultative Council can make their views about the oil fund public through interviews or articles as well as ensuring that their advices to parliament are published in full.

Conclusion

26. By addressing the points mentioned above, the Ministry of Planning and Finance and the Petroleum Fund Steering Group can improve the draft act and strengthen the transparency of the fund. We hope that they will take these suggestions on board and look forward to seeing the people of Timor-Leste benefit from a wise, considered approach to the management of the republic's oil and gas revenues.

CAFOD

CIITT

March 2005