



Oxfam in Timor-Leste
P.O Box 152.
Jl. Balide, Matadouro
Dili, Timor-Leste

TEL : +670 3312605
FAX : +670 3321 792
Mobile: (+67) 723 0830
EMAIL: dili.admin@oxfam.org.tp

Sr Thomas Ekeli,
Petroleum Fund Adviser
C/- The Petroleum Fund Steering Group
Governo de República Democrática de Timor-Leste

7th March 2005

Dear Thomas

REF: Oxfam Submission to the Petroleum Fund Steering Group.

Please find attached Oxfam's submission to the Petroleum Fund Steering Group. We thank you for the opportunity to provide a submission on the draft Petroleum Fund Act and hope that our recommendations provide useful input to the process of drafting this important legislation.

If you have any queries on the submission please do not hesitate to contact Keryn Clark by email on kerync@oxfam.org.tp or by phone on 723 0830.

Your sincerely

Keryn Clark
Timor-Leste Program Manager
Oxfam Community Aid Abroad

Encl:



Submission to the Steering Group on the Timor-Leste Draft Petroleum Fund Act

Introduction

Oxfam has a long history of work in East Timor and is currently engaged in a variety of development projects within East Timor to reduce poverty, support the emergence of a strong and robust civil society and promote good governance. Oxfam supports initiatives and projects at national level and in seven districts of East Timor – Covalima, Liquica, Oecusse, Manatutu, Baucau, Viqueque and Lautem.

Oxfam welcomes the opportunity to comment on the draft Timor-Leste Petroleum Fund Act and recognises the efforts by the government of Timor-Leste to initiate ongoing consultation on drafting the legislation for the Petroleum Fund.

Recognising the importance of the resources of the Timor Sea as a major contributor to East Timor's future, Oxfam has participated in the public consultations on the Petroleum Fund held in Dili, Timor-Leste. In analysing the draft act for the Timor-Leste Petroleum Fund Oxfam has met with East Timor Government officials from Ministry of Finance and from the Timor Sea Office and with a range of East Timorese and international NGOs. We have been encouraged by the submissions made by our NGO colleagues.

We have highlighted three key areas that from our analysis we will address in our submission to the Finance and Petroleum Fund Steering Group. We believe that the issues that we raise are in support of the key principles identified in the design of the Petroleum Fund, in particular the principle that the "management of the Petroleum Fund is carried out with the highest standard of transparency and accountability" (Executive Summary pages 2-3).

1. Publication of payments made by oil and gas companies

Recommendation 1. That the draft Act be amended to require petroleum companies to publish their payments to the Fund.

Background and Rationale.

Under Article 20 (20.2) the draft Act requires that *the independent auditor's report shall state the aggregate amounts of payments made as Petroleum fund receipts for each payer for the fiscal year*. Oxfam suggests that Petroleum Fund Legislation could also include a requirement that Petroleum Companies publicly provide details of their payments to the petroleum fund.

The rationale for a legal requirement for the petroleum companies to publish their payments to the fund, in addition to the independent auditors report as follows:

- In monitoring the transparency of payments, East Timorese people can triangulate payment information by comparing companies payments to the fund (as per companies disclosure) with the list of payments received by the fund by each payer (as per independent auditors report). This would support increased public understanding of and confidence in the system for accounting for receipts into the Petroleum Fund.
- By companies publishing their payments to the Petroleum Fund, this provides a valuable external check to compliment the independent auditors report.

¹ This submission is made by Oxfam Community Aid Abroad, Oxfam Hong Kong and Oxfam Great Britain, members of the Oxfam International network with offices in Timor-Leste.

- The Extractive Industry Transparency Initiative, established to promote best practice, identifies the publication of payments by petroleum companies as a key element of transparency.

2. Public Access to Information

Recommendation 2. That the draft Petroleum Fund legislation be strengthened through including a requirement under Article 14.2 (a) that the independent auditors report is included in the Annual Report.

Recommendation 3. That the draft Petroleum Fund legislation be amended to more clearly define what is considered to be confidential information and the period of time information is deemed confidential (e.g under Article 2 Definitions include confidential information).

Recommendation 4. That the draft Petroleum Fund legislation be amended to require that reports are available in four languages: Portuguese, Tetum, English and Indonesian in order for the information in reports to be accessible to the population of Timor-Leste,

Background and Rationale.

Article 14.1 requires the *Minister to submit an Annual Report for the Petroleum Fund for the fiscal year to the Parliament at the same time as the financial statements for that year are submitted to the Parliament.* Article 14.2 (a) the annual report shall contain the audited financial statements conducted by the independent auditor however does not specifically state the inclusion of the independent auditors report. Article 20.5 requires the *Minister to provide for the publication of the independent auditors report in such a form and manner as may be adapted for public information. The independent auditor shall ensure that in preparing the report measures are taken to prevent the disclosure of confidential information.*

Confidentiality clauses can be used as a pretext for withholding information that is important public information particularly in terms of monitoring transparency. The full publication of the reports and/or information listed below would be very useful in promoting transparency. In the draft Petroleum Fund the following reports or information are subject to a confidentiality clause:

- Quarterly Reports from the Central Bank (Article 8.8)
- Advices by the Investment Advisory Board to the Parliament (Article 10.10)
- Advices given by the Petroleum Fund Consultative Committee to the Parliament (Article 17.3)
- Information from the Minister or the Head of the Central Bank to the Petroleum Fund Consultative Council on aspects of the operation or performance of the Petroleum Fund. (Article 17.7)
- Information on the management of the Petroleum Fund and the related duties of the relevant parties (Article 18.1)
- The Independent Auditor's Report (Article 18.5)

3. Transparency mechanisms of the Petroleum Fund.

Oxfam welcomes the Government of Timor-Leste's commitment to ensuring the management of the Petroleum Fund is consistent with the highest standard of transparency and accountability. While Oxfam recognises that the draft Petroleum Fund Act includes a number of measures to promote transparency and accountability, from our analysis and discussions we make the following recommendations for further amendment of the draft Act:

Recommendation 5. That the draft Petroleum Fund legislation be amended to allow the Independent Consultative Council (ICC) the power to initiate its own investigations.

The Independent Consultative Council (ICC) has three areas of responsibility to advise Parliament as outlined in Article 15.2. It is not clear whether the ICC has the power to initiate its own investigations or is it restricted to providing advice identified under Article 15.2. The Petroleum Fund Legislation could clearly state that the ICC has the power to initiate its own investigations.

Recommendation 6. That the draft Petroleum Fund legislation be amended to require the independent auditor to also refer unaccounted discrepancies to the Independent Consultative Council.

Under Article 20.4 if the *independent Auditor concludes there is a discrepancy that cannot be accounted for, the independent auditor shall then refer the matter to the Minister*. It would increase transparency of the legislation also required the independent auditor to also refer this matter to the Independent Consultative Council.

Recommendation 7. That the draft Petroleum Fund legislation outlines procedures for appointment of civil society representatives to the Independent Consultative Council and eligibility criteria for appointment.

Article 16.5 refers to the civil society members of the Independent Consultative Council (Article 16.1 (i) – (k)) being *appointed according to procedures laid down by the Parliament*. The legislation would be strengthened with clarification on the procedures for appointment and who is eligible to stand for these positions.

Recommendation 8. That the draft Petroleum Fund legislation be amended to forbid any petroleum related payments to Timor-Leste, by any party, to places other than the petroleum fund.

Article 6.1 the Petroleum Fund Act requires that *all petroleum fund revenues received by Timor-Leste are paid into the fund*. A stronger clause would be to explicitly forbid any petroleum related payments to Timor-Leste, by any party, to places other than the petroleum fund.

Recommendation 9. That the draft Petroleum Fund legislation be strengthened by requiring greater transparency of information about the receipt account into which funds are credited.

Article 5.2 identifies an earmarked receipts account into which Petroleum Fund receipts are credited. Further clarity could be provided by including the account holder would be and who would be the signatories to this account. There should be information on this account publicly available on movements into and out of this account.

Recommendation 10. That the draft Petroleum Fund legislation be amended to provide a more rigorous process for selection of the independent auditor.

Under Article 23, the independent auditor (an internationally recognised accounting firm) is selected by the government. To promote transparency, the Auditor could be selected by the Court of Appeal in the interim, and then when established, by the Auditors Court. The proposed appointment would then be approved by parliament and promulgated by the President.

Recommendation 11. That the draft Petroleum Fund legislation be amended to require advice to be provided to the Minister by the Investment Advisory Board within a specific timeframe.

The Investment Advisory Board (IAB) has an important role in supporting the Minister on key investment decisions. However in our analysis and discussions concerns have been raised that the “insufficient time” clause could be used by an unscrupulous government to bypass the IAB. The legislation could be amended so that advice is provided by the IAB within a specified number of days (e.g. 25 working days for an initial consideration with a clause allowing a request for an additional 75 working days for more detailed analysis²).

² This example is drawn from discussions with CAFOD and CIITT who are also drafting a submission to the Petroleum Fund Steering Group.

Recommendation 12. That the draft Petroleum Fund legislation be amended to increase the independence and transparency of the IAB.

To promote independence and transparency of the Investment Advisory Board (IAB), the drafting team should consider that the IAB has five members, with three persons appointed by the Minister. In addition, it is not clear as the role of the additional member appointed by the Minister under Article 10.6(d).

ENDS.