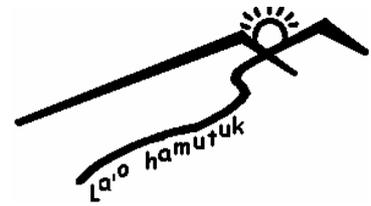


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Submission to the

Timor Sea Office and the

Timor Sea Designated Authority

Democratic Republic of Timor-Leste

from

La'o Hamutuk

regarding the

Proposed Petroleum Regime for Timor-Leste

29 September 2004

This submission is in three parts. This narrative discusses the subjects where we believe the draft legislation requires re-examination, additions, or amendments. We are appending annotated texts of the draft Timor-Leste Petroleum Act and the draft Model Production-Sharing Contract. These two appendices contain detailed wording for some proposed revisions, as well as additional questions and comments not included in this narrative in order to focus on our main points and keep it a reasonable length. We are not including annotated texts of the TSDA Petroleum Mining Code or TSDA Model PSC, but we intend our narrative comments and annotations regarding the Timor-Leste Act and PSC to also apply to the analogous articles and issues in the draft TSDA documents. In the text and footnotes of this submission, we refer to a number of laws and documents. La'o Hamutuk is happy to provide texts of these on CD-ROM or by email to anyone who would like them. We are making this submission in English because that is the common language of the people who are drafting this legislation. We hope, in short order, to have Portuguese and Bahasa Indonesia versions of this submission available.

Summary

- These five documents comprise a small part of the petroleum regime. All petroleum-related legislation and regulations should be enacted, tested, and thoroughly reviewed in two or three years, prior to any on-shore petroleum activities.
- The Public Register needs to be enhanced, with additional documents, reports, and records of payments specifically included and available for public inspection.
- This legislation should incorporate a presumption of transparency, with only very narrowly-defined exceptions. These draft laws take the opposite approach.
- Authorizations should not be granted without an open, competitive bidding process.
- The Petroleum Ministry's arbitrary powers to grant exemptions should be deleted.
- Laws should override regulations, and regulations should override directions.
- Companies or citizens should be able to appeal decisions of the Petroleum Ministry to the court system or other dispute resolution processes.
- The "Inspector" should be made permanent and independent, with the right to investigate all petroleum-related activities of companies and government.
- Timor-Leste should require petroleum companies to adhere to international norms and guidelines regarding "Good Oil Field Practice," human rights, transparency and security.
- The Petroleum Ministry, although not yet defined, appears too centralized and too powerful. Regulatory functions should be separated from responsibility for advancing petroleum development. Environmental, community consultation, human rights and other protective responsibilities of the Government should be managed by agencies independent of the Petroleum Ministry.
- The critical relationship between petroleum facilities and local communities is omitted from the draft legislation. Provisions must be included for prior informed consultation and consent, safeguarding community rights, protecting sacred and indigenous lands, sharing benefits with communities and compensating people for relocation and environmental damage.
- Environmental protection, decommissioning and restoration need higher priority, independent oversight, better planning, and company responsibility to repair damage due to negligence. After a project is complete, the environment should be restored to its original state.
- Timor-Leste should create a National Oil Company to enable the state and its citizens to participate more fully in petroleum developments for the medium term.
- The public consultation process for petroleum-related legislation needs to be slowed and enhanced, including more opportunities for public input and reports from the drafters' about suggestions they receive. After a few years, Timor-Leste should thoroughly review and revise its entire petroleum regime.
- Long-term planning and prioritization must begin now to prepare for the exhaustion of Timor-Leste's petroleum reserves with many of our citizens' lifetimes.

Introduction

La'o Hamutuk thanks the Prime Minister, the Government, and the drafting committee for the opportunity to participate in shaping this very important legislation. We believe that this is the first time Timor-Leste has undertaken such an extensive process of public consultation, and we believe that the laws, and the nation, will be better off because of it. We are engaged in this process optimistically and in good faith, and hope it can be a significant precedent for Timor-Leste's emerging democracy. We are hopeful that the pattern set by Indonesia and the United Nations, where "consultation" is used as a misleading synonym for "socialization," will not be followed here.

In preparing this submission, La'o Hamutuk received invaluable advice from academics, attorneys, other experts and NGOs from the UK, USA, Australia, Canada and Tanzania. We continue to learn from people and communities in Ecuador, Nigeria and Indonesia. We are grateful for their support and for their ongoing efforts to help the people of Timor-Leste undertake petroleum development with maximum benefits and minimum negative consequences.

This legislation is complex and technical, and many of the people who drafted it have decades of experience within or regulating the petroleum industry. However, the consequences for most people in developing countries from this industry have been overwhelmingly negative. It will require new approaches, and extraordinary care, to prevent Timor-Leste from suffering the "resource curse" that afflicts virtually all oil-dependent countries which were not rich before they extracted petroleum from under their territory.

La'o Hamutuk is focusing on areas of this legislation we believe are critical to avoiding the "paradox of plenty." Submissions from other NGOs and the President's office will go into more detail on environmental issues, protecting Timor-Leste's national interest (such as with a National Oil Company), local employment, and other areas. In most cases, we support their suggestions for increased control by Timor-Leste of petroleum developments here.

Our recommendations are mostly about democracy, accountability, transparency, human rights and community involvement -- areas where we believe the proposed draft regime has significant errors, flaws or omissions. We are not offering major suggestions on the taxation regime or the adoption of a PSC structure, as we believe that the drafting committee has done a good job in analyzing these complex issues.

The most fundamental decision -- whether or not Timor-Leste should extract petroleum under its territory -- was taken during colonial and occupation times, with no participation or consultation by the people of this country, or by governments representing them. The unfortunate experiences of other oil-rich developing countries would teach that this was a mistake, that the long-term welfare of the people of Timor-Leste would be better if the petroleum had been left in the ground. Nevertheless we are not suggesting that this decision be revisited for off-shore petroleum reserves.

However, Timor-Leste has not yet committed to any onshore petroleum exploration or projects. We urge that there be wide, informed consultation with the entire society before this second decision is taken, including socialization of the consequences of petroleum exploitation in other countries similar to Timor-Leste. The petroleum industry, and advisors and officials who have chosen to work to develop petroleum, should not make this decision by themselves.

Article 139 of the Constitution of Timor-Leste declares that undersea and underground resources belong to the State of Timor-Leste, not to any Government or Petroleum Ministry which holds office at a particular instant in time. In preparing this submission, we are mindful that this regime will establish laws and precedents that will endure far beyond the tenure of our current government officials, advisors, contractors or political parties. Timor-Leste needs to protect itself against potential abuses from hypothetical ill-intentioned, corrupt institutions and individuals who will be attracted by the many billions of dollars available from our resources. Our current enlightened leadership will not be there forever.

This legislation is being considered and enacted before Timor-Leste has designed the framework for its Petroleum Ministry, before our Petroleum Fund and revenue management system is in place, and before we have adopted laws and regulations protecting our environment, regulating foreign investment, establishing rights of local communities and individuals regarding forced relocation, and many other highly relevant subjects. We urge that all laws and regulations relating to Timor-Leste's petroleum development, including this Petroleum Regime, be thoroughly reviewed and revised after all relevant laws and regulations have been passed and Timor-Leste has had a few years experience in applying them. Genuine public and community consultation will be an essential component of that review. Because the potential consequences of poorly managed on-shore projects are so serious and long lasting, we recommend that Timor-Leste not commit to any on-shore projects until all legislation is in place, the necessary experience has been gained, and the review and revisions have been completed.

Last year, the Prime Minister told the Extractive Industries Transparency Initiative conference in London: "Proper management of revenues from this sector is critical in ensuring a strong economic and stable political future, not only for the current generations, but for the future generations, too." We encourage the authors and implementers of this legislation to consider their responsibility as trustees for the future generations of Timor-Leste. We believe that Timor-Leste, like any nation, will need to continue to adjust our petroleum regime over time. Oil and gas is Timor-Leste's only significant natural resource, and our supplies can be exhausted in one or two generations. Before we rush to convert our petroleum reserves into cash reserves, we need the best possible regime, procedures and experience.

We urge that best practices from petroleum development around the world be followed or exceeded. Timor-Leste deserves far better than "Good Oil Field Practice," an undefined and unenforceable goal cited seven times in the draft Model Production-Sharing Contract, for which we have proposed a definition incorporating international industry standards.

Transparency

Timor-Leste should commit to transparency in operations and revenue management right from the start, and that transparency needs to be established in the petroleum regime, not left for subsequent legislation or regulations. Transparency is not a political, ethical or ideological issue. The experience of other petroleum-dependent countries demonstrates that it is a necessary practical requirement to ensure that petroleum development benefits the people of Timor-Leste, rather than making money for a small number of unscrupulous politicians or foreign oil companies. We are concerned about the apparent assumption (exemplified by the first sentence of the Petroleum Act Preamble¹) that creating the legal infrastructure for oil and gas companies to do business is first priority, with administration, revenue management, public information, human rights and accountability deferred until later.

Some questions of transparency are being deferred to the oil fund and financial management laws, which will be drafted and enacted in 2005. However, from what we understand about the concepts which will underlie those laws, they fall far short of ensuring that petroleum development and revenues will be managed with an appropriate degree of public oversight. Indeed, there is no guarantee that all payments in connection with petroleum development will pass through the fund.

We encourage the Government to study the recently-enacted São Tomé revenue management law², where the mechanisms for receiving oil revenues and transferring them to the governments, as well as oversight, auditing and the public right to information on revenue flows, are spelled out clearly.

¹ "The purpose of Timor-Leste Petroleum Act is to create a regulatory regime for petroleum companies to explore for and develop petroleum resources which belong to Timor-Leste in such a way as to provide maximum benefit to Timor-Leste."

² Oil Revenue Management Law for São Tomé and Príncipe, adopted July 2004. La'o Hamutuk can provide the Portuguese original, as well as an English translation and explanatory notes in English.

Public Register

The Public Register (PA §26)³ is a good idea, but it needs to be made more specific and concrete. This legislation should explicitly prohibit any redactions, omissions or deletions from documents in the Register. If the drafters reject this suggestion, our fallback position is that a regulation be issued defining specifically what redactions are permissible, without using vague concepts like “commercial confidentiality” which are prone to abuse. Any redactions on documents in the Register need to be clearly identified, with an explanation of why the specific information needs to be kept secret.

When Timor-Leste enacts a Freedom of Information law, the Petroleum Act and PSC should be amended to ensure that they comply with that law. However, due to the importance of petroleum to the future of Timor-Leste, and to the global history of problems resulting from lack of transparency in the petroleum industry, the petroleum regime should embody an even higher standard of transparency than the Freedom of Information law.

The Public Register should be available for inspection in Dili. No fees should be charged (except perhaps for photocopying at 5¢/page or less) of Timor-Leste citizens or institutions for inspecting it. The Register should also be available on the internet, similar to the *Jornal da República*. Most documents and reports can be in the original language or Portuguese, but the most important ones, such as Regulations and Authorisations, should also be available in Tetum and/or Bahasa Indonesia (at least for the next few years). Efforts should also be made to include explanations or summaries of these documents to make them more accessible to less technically trained citizens.

If a National Oil Company is established, it should be required to comply with at least the same level of public disclosure as is suggested below.

We suggest all of the following be a mandatory minimum for inclusion in the Register:

1. Full texts (no redactions or deletions) of all Authorisations (PA §6 - 9) (including PSCs) and any amendments or annexes thereto.
2. Full texts of all Ministerial Approvals (PA §15), Directions (PA §28), Exemptions and Variations (PA §18), consents to flaring (PSC §5.5), and other instructions or permissions granted by the Petroleum Ministry. These should also be publicly announced when they are issued.
3. Full texts of invitations, Terms of Reference and any other announcements prior to a bidding or tender round for any authorization or other contract (PA §10). If an Authorisation is granted without inviting applications (which we recommend against), the notice (PA §10.6(b)) should be included in the register.
4. Full texts of any Proposed Plans for Health, Safety, Environment (PA §10.3), local employment and services (PA §10.4), and decommissioning (LH’s recommendation for a new PA §10.4½, also PSC§4.14) submitted by persons obtaining Authorisations.
5. Full texts of every quarterly and annual Production Statement (PSC Annex C §5), Value of Production And Pricing Statement (PSC Annex C §6), Cost Recovery Statement (PSC Annex C §7), Statement of Expenditure and Receipt (PSC Annex C §8).
6. All payments of \$1,000 or more made to the TSDA, the Government of Timor-Leste (or to any agency or agent of that government or Authority) by any person (which should be defined in PA §1 to include a corporation or other business), including the parent companies of joint venture participants or limited-liability corporations established for the purpose of signing a PSC, within

³ This document references specific articles in the draft Timor-Leste Petroleum Act as “PA ###.” References to articles in the draft Timor-Leste Model Production Sharing Contract are “PSC ###”, the draft Taxation Law are “TL ###”, the Petroleum Mining Code for the Joint Petroleum Development Area is “JPMC ###”, and the model PSC for the JPDA is “JPSC ###”. References to articles in the PA or PSC also apply to analogous articles in the draft JPDA PMC and PSC.

or outside of Timor-Leste, should be included in the registry within 150 days. This includes not only all payments in connection with the Statements referred to in the previous paragraph, but any other payments (including bonuses, finder's fees, etc.) within or outside of Timor-Leste, for the purpose of facilitating or implementing Petroleum activities in Timor-Leste. Each payment report should include the date the payment was made, the amount, the payer, the payee, the purpose of the payment, and any services or goods received in return. Timor-Leste's law should be at least as strict as Extractive Industry Transparency Initiative and Publish What You Pay principles.

7. All Operator changes (PSC §1.6e&f), relinquishment notices (PSC §3.1(d)), Work Programme and Budgets for Exploration, Appraisal, Development and Production (PSC §4.1-4.3, §4.8(a&b), §4.9, §4.12), Discovery notices (PSC §4.9), development plans (PSC §4.11), and Dispute Resolution decrees (PA §17.1(c))
8. All contracts between the Operator and customers for sales of Petroleum from Timor-Leste.
9. Information on loans taken out by Timor-Leste, the Designated Authority or its agents in connection with petroleum development or in anticipation of petroleum revenues. At minimum, this should include dates, amounts, repayment schedules, actual repayments, conditions and collateral offered.

Openness should be encouraged, not prohibited

The draft PSC provisions on data, information and reports (PSC §14.1 and §14.6) implement an inappropriate presumption of confidentiality on "all technical data and information acquired in the carrying on, or as a result, of Petroleum Operations." This is far too broad -- the government should be free to share most of this information, with a few carefully defined exceptions, and even those should expire after a few years. We do not believe that the drafters intended this, it is caused by the inadvertent combination of the right of the State to all technical data while reassuring the company that competitors will not gain access to specific technical data. However, the obligation of the Petroleum Ministry to respect commercial confidentiality should be limited to specific narrowly defined, enumerated, technical information, such as detailed geological data from prospecting and exploration. There should be another clause expressing the presumption that all other information relating to the project, including financial and development information, is available to the public.

PSC §14.2, barring the contractor from selling or disclosing "data, information and records" without the consent of the Petroleum Ministry, is an unnecessary limitation on voluntary transparency by the company (such as to comply with the Publish What You Pay guidelines) and should be deleted. It could, for example, offend foreign securities disclosure legislation, such as the Sarbanes-Oxley Act in the United States.

PA §27.1(iii) empowers the Petroleum Ministry, with approval of the Council of Ministers, to make regulations relating to the use and disclosure of information. Although this is reasonable, we are concerned that it could take a long time before such a Regulation is developed. In the meantime, and for all information not specifically limited in the Regulation, there should be a presumption of full and unrestricted disclosure.

Accountability

Authorizations granted without competitive bidding (PA §10.6) should not be permitted, as this is an opening for potential collusion. If such a provision is deemed essential to small seep projects, it should have clearly defined limitations in both time (under 1 year) and size of the project (under \$25,000). No Authorisation should be granted to a non-Timorese entity without an open competitive bidding process.

During the August 2004 public consultation, the drafters presented the Model PSC as "one-size-fits-all", not subject to negotiation on a project-by-project basis. The draft laws do not include this

principle, which should be explicit as it is a fundamental feature of the proposed regime. However, we have some concern that a legal and tax structure appropriate for a large offshore gas project, for example, may not be optimal for a small on-shore project. Perhaps additional flexibility would be to Timor-Leste's best advantage -- but if it is implemented, it must be with full protections for transparency, accountability, oversight and public consultation.

Article 18 of the Petroleum Act gives the Petroleum Ministry the power to unilaterally and secretly grant companies permission to violate any provision of their Contracts and Authorization, and should be deleted. This effectively guts the entire Act, since it allows the Petroleum Ministry, which negotiates with the petroleum companies, to exempt a company from following the law. This means that none of the conditions or restrictions of the Authorisation or Model PSC are actually binding. Article 18 is a gratuitous gateway to corruption or collusion. This Article also undercuts the universality of the Model PSC and weakens the negotiating position of the Petroleum Ministry by allowing the other side to demand more concessions. If the Petroleum Ministry did not have this power, they could present the petroleum companies with "take it or leave it" terms.

In the article on Regulations (PA §27.1), a list of 15 possible subjects for Regulation is followed by "any other matters relating to this Act." Given the breadth of this last option, there is no need for the prior list. As suggested above, all Regulations should be published in the Register (PA §27.1(b)) in addition to the Official Gazette. It should be explicit that in a conflict between a Regulation and the law, the law (including this Act) shall prevail.

The following article, on Directions (PA §28.1), is more problematic. It does not limit the topics to be covered by Directions (see PA §28.1 and PA §27.1(xvi)), and allows them to be promulgated by the Petroleum Ministry alone, without approval by the Council of Ministers or anyone else. Yet, according to PA §28.2, a Direction can overrule a Regulation, violating normal principles of legislative hierarchy and surrendering the authority of the Government to a single Ministry. PA §28.2 should be reversed -- in a conflict between a Regulation and a Direction, the Regulation should prevail.

The "Inspector" (PA §22.1) is envisioned as an appointment by and answerable to the Petroleum Ministry. We believe that this provides insufficient accountability and oversight, and that there should be a permanent and independent inspector, with security of tenure, status to take legal action, and separate mandatory reporting to both the Council of Ministers and Parliament. He or she should also have the authority to investigate the Petroleum Ministry and National Oil Company when appropriate, and to work together with or refer cases to the Provedor and/or the judicial system. The Inspector's reports should be public. Ideally, the Inspector's Office would be created by separate legislation.

Corporate Accountability

An emerging international consensus recognizes that transnational corporate activities have frequently violated economic justice as well as environmental and human rights. Governments and international agencies have developed a growing body of agreements, conventions and networks to deal with this problem. These principles should be legally mandatory in Timor-Leste, rather than hoping for voluntary compliance by corporations. As a new country with new laws, we should learn from others' experiences and compel, not beg, companies and officials involved with Timor-Leste's petroleum resources to respect our rights. Continuing compliance with these norms should be a prerequisite for the granting of Petroleum Authorisations (see proposed new PA §7.2(c)) as well as other sections on environment).

The United Nations Subcommission on the Promotion and Protection of Human Rights adopted a document⁴ last year describing relevant human rights norms with regards to transnational corporations, including living wages for workers and humane working conditions, protection of the environment, etc. Clause A(1) of that document says that “States have the primary responsibility to promote ... human rights, including ensuring that transnational corporations and other business enterprises respect human rights.” Timor-Leste’s Petroleum Regime should require corporations to meet or surpass these norms to protect our people from possible abuses by foreign corporations.

Timor-Leste’s government has already indicated that it will implement the principles of the U.K. government’s Extractive Industries Transparency Initiative (EITI).⁵ We expect that the Petroleum Regime, Petroleum Fund, and subsequent regulations and practices will do that. We also encourage Timor-Leste to legislate the goals of the Publish What You Pay⁶ campaign, which calls on governments and stock exchanges to require petroleum and mining companies to publicly release information about all payments they make to governments.

In many countries, on-shore petroleum facilities have an unfriendly relationship with the local community. To protect their investment, contractors employ barbed-wire fences and armed guards, and sometimes hire local police and military officers to guard their property, often leading to violent clashes, injuries, or even death. We recommend that Timor-Leste prohibit active-duty police and military officers from accepting such work, even during their off-hours. We also suggest that Timor-Leste require companies to follow the “Voluntary Principles on Security and Human Rights” governing the relationships between extractive industry facilities, their public or private security forces, and the rights of local people and communities. This document was adopted in 2000 by the U.S. and U.K. Governments, NGOs, and several extractive industry companies, including Conoco and Shell.

Democracy

In comparison with other Southeast Asian petroleum laws, Timor-Leste’s draft regime appears extremely favorable to industry, providing a very simple and centralized process for approvals and regulation through one ministry and almost no restrictions on company activities within Timor-Leste. However, other countries in Southeast Asia, including Indonesia’s 2001 petroleum law,⁷ include checks and balances in the approval and dispute resolution processes. Similar provisions in Timor-Leste’s law would make it more consistent with our region, and would make it more likely that those protections already in the law are enforced. In addition, greater human rights protections, both in procedural guarantees and greater community involvement, would ensure that the people of Timor-Leste share in the gains of petroleum development, and are insulated against its potential harms.

Although the draft Petroleum Regime vests tremendous authority in the Petroleum Ministry, that Ministry does not yet exist and is not defined in the draft laws. Furthermore, there is virtually no

⁴ Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, United Nations Document E/CN.4/Sub.2/2003/12/Rev.2 (2003)

⁵ According to the EITI website: “To successfully implement EITI a country has to do five things:

- Have an ongoing independent audit of revenues received from extractive industries;
- Publish figures on all of the payments by companies, and all revenues received by the government;
- Ensure that the process includes all companies operating in the country;
- Ensure that civil society organisations are involved in the process; and
- Have a workplan to ensure that all of the above actions are sustainable and will be ongoing.”

⁶ PWYP is a worldwide NGO coalition which “seeks to establish an international framework requiring extractive companies to publish net taxes, fees, royalties, and other payments made to government for every country of operation.”

⁷ Indonesian law number 2001/22, Petroleum and Natural Gas, enacted 23 November 2001. La’o Hamutuk can provide the original in Bahasa Indonesia or an unofficial English translation.

accountability for this highly centralized Ministry, which has conflicting responsibilities. The Ministry evaluates and approves contracts with oil companies, supervises the companies, and is also in charge of resolving disputes arising out of any potential violation of the act (PA §17.1).

The Petroleum Ministry should not have the final word in resolving disputes, and should not be considered infallible. Either party to a dispute, as well as citizens of Timor-Leste, local community residents, and affected landowners, should have the right to appeal to the national judicial system. We are suggesting a new provision (PA §17.3) to implement this right. The offices of the Provedor (Ombudsman) and Inspector should also be available to investigate alleged malfeasance. They can help reveal information and documentation which is necessary to resolve such problems through negotiation, mediation, arbitration or the judicial system.

We await further legislation defining the structure of the Petroleum Ministry, and we recommend that a public consultation process is conducted prior to enactment of that legislation. For now, we suggest that the Petroleum Ministry have an advisory committee including representatives from Government, President, Parliament, civil society, local communities, workers and other sectors. This committee should be involved in petroleum development and regulation throughout, with access to all information and the authority to call on the Inspector, Provedor, courts or other mechanisms. In addition, Petroleum-related responsibilities which could slow petroleum production if they were implemented conscientiously, such as protecting human rights, community rights, landowners, employment standards or the environment, should be carried out by government agencies outside the Petroleum Ministry. Major decisions by the Petroleum Ministry should also be subject to oversight by the Parliament, President and/or Council of Ministers, in order to protect against abuse of authority.

The Petroleum Ministry's lack of accountability is not in keeping with other petroleum legislation in the region. For example, Indonesia's new law creates a petroleum ministry (the "Executing Agency") similar to Timor-Leste's proposed Petroleum Ministry, but it also creates a separate regulatory agency (Chapter IX, Articles 44-49) for supervision and dispute resolution. A similar division of responsibilities could be adopted here to ensure that the law is carried out and to address the common problem of regulatory agencies unconsciously adopting the perspectives of those they are responsible to regulate. This division of responsibility will support enforcement, reducing conflicts of interest within the Ministry, so that the people responsible for attracting companies and revenue will not be the same as those who regulate them.

During Timor-Leste's brief experience as an independent nation, strong patterns of public consultation, community input, and public oversight have not yet developed to overcome secretive, centralized processes imposed on this country by Portugal, Indonesia and UNTAET. The petroleum regime should mandate public hearings about key decisions which affect local communities, providing an opportunity for the people who will most directly experience the consequences of development to be heard. We also urge that adoption of Regulations and Directions require prior public consultation and informed community consent before the final version is written and issued.

Local community involvement

In many other countries, petroleum facilities have a hostile relationship with the communities in which they are located, resulting in conflict, militarization and human rights abuses. In our own region, prolonged, deadly wars in Aceh, West Papua and Bougainville have resulted when communities feel that national economic development, and the goals of resource extraction companies, are pursued without appropriate compensation and consultation with people living in those areas. One frequent result is a fortress mentality and a militarized neighborhood, as foreign investors hire armed guards or soldiers to ward off the local population.

We believe the only way to avoid this unacceptable situation is for each community to feel secure about projects in their vicinity, and to feel ownership of and pride in each project. This requires not

only prior informed consent, but also sharing of the project's benefits. It relates to the project facilities itself, as well as any access rights or potentially affected areas nearby.

Benefits to the community can include cash payments or services from the national government for services (such as schools or health clinics), or to help the economic development of the community. In addition to jobs and training in construction and operation of petroleum projects, attention should be given to the development of other sectors which can continue to expand after the petroleum project is over. In many countries, government policies neglected sectors like agriculture, renewable energy or fishing in order to give full attention to petroleum development, and we urge Timor-Leste not to make this same mistake at either the local or the national level.

Socialization and consent must involve not only private and public landowners whose property could be directly affected, but also local traditional, sectoral and government leaders, as well as the community as a whole. Genuine prior informed consent requires extensive public education and socialization about possible consequences and options, especially for people who have never seen a poisoned river or the effects of a pipeline spill. Popular education and other tools for community consultation should be used; shortcutting this process can have devastating long term consequences not only for the community, but also for the entire nation.

Both local and national government must be involved to ensure that the rights of the landowner and community are respected, as the State is responsible to protect the rights of people and local communities. To ensure this, we urge that this task not be assigned to the Petroleum Ministry, but rather to another branch of national government which does not have an institutional priority to promote petroleum development at the possible detriment of local rights and lifestyles. Since the local governmental system of Timor-Leste is not yet fully functional, and since many communities feel that the national government does not give enough attention to local needs, it is especially important that this be done carefully.

The rights of people affected by petroleum operations are not mentioned in the Act. Comparable acts in the region provide for some protection, and the draft regime should be strengthened to better protect community, indigenous and individual rights. Indonesian Law 22/2001, for example, provides for a blanket restriction on petroleum development in sacred or tribal lands (Article 33(3)(a)),⁸ as we have suggested in a new article PA §10.5½. Similarly, although Australia's primary petroleum law⁹ does not mention human rights, numerous subsequent laws have created exceptions for, among other things, aboriginal lands.

Indonesia's petroleum law also has a local approval requirement (Article 33(3)(d)); a similar process should be adopted by Timor-Leste. It would give a seat at the negotiating table to the community or people most likely to be affected by petroleum projects.

⁸ Unofficial translation of Article 33 of Indonesian Petroleum Act (Law no. 22/2001)

- (1) The petroleum and natural gas-related business activities as meant in Article 5 shall be executed in the Indonesian mining jurisdiction.
- (2) Rights to working areas shall not cover rights to land being earth surface
- (3) Petroleum and natural gas-related business activities cannot be executed in :
 - a. cemeteries, places considered sacred, public places, public facilities and infrastructures, nature preserve, cultural preserve as well as land belonging to communal society;
 - b. state defense fields and buildings as well as surrounding land;
 - c. historic building and state symbols;
 - d. buildings, residences or factories along surrounding yard land, except under a license from government institutions, approval of communities and individuals with regard to the said matter.
- (4) Business entities or permanent establishments planning to undertake their activities can remove the buildings, public places, public facilities and infrastructures as meant in paragraph (3) letters a and b after securing prior licenses from the authorized government institutions.

⁹ Australian Petroleum (submerged lands) Act 1967

Indonesia's law (Article 40(3-5))¹⁰ forces companies to compensate for any pollution caused by their activities and provides for protection of communities. Timor-Leste should adopt similar provisions, and our draft law should be strengthened so that companies pay damages and/or fines (potentially punitive in some circumstances) for injured communities, affected peoples, and/or a damaged environment. In cases of negligence or malfeasance, the companies should not recover those costs from Timor-Leste.

If any relocation of residences, farms or other human activity will be required, we endorse the standard suggested by the World Bank EIR -- those relocated should be better off after their relocation. In cases of indigenous communities and sacred lands, relocation should be prohibited. Timor-Leste needs to develop procedures for this for all types of projects (not just petroleum) which respect international standards for rights of local and indigenous communities. In too many places around the world, the consequences of relocation have been devastating to those involved, far worse than putative benefits of the projects.

For small seep and other customary use projects, the Petroleum Ministry should provide technical, financial and other assistance to facilitate local use, and protect the community's right to control such projects.

Environment

Sadly, people all over the world have come to learn that petroleum developments can wreak havoc on the natural environment, not only destroying habitat, wildlife, forests and waters, but also causing starvation and illness, as people are unable to farm their fields or fish their rivers and seas. Many have been poisoned by chemicals or petroleum, and many have been forced to abandon homes and land where their families have lived for generations.

However, there are examples (although not as many as we would hope) where petroleum development has been done without permanent destruction of the local environment, and where temporary damage has been restored after a project is completed. Part of the purpose of this Petroleum Regime is to give assurances that Timor-Leste will follow this path, and not suffer the toxic consequences inflicted on people in so many places.

La'o Hamutuk is concerned that insufficient attention has been given to environmental protection in the draft petroleum regime, and that the environment is not effectively protected by these laws; environment is not even mentioned in the Act's preamble. We support the submissions of Haburas and others to improve this situation. Environmental protection is not La'o Hamutuk's principal focus, but we believe it is so important that we did not want to ignore it entirely, so we offer the following

¹⁰ Unofficial translation of Article 40 of Indonesian Petroleum Act (22/2001)

- (1) Business entities or permanent establishments shall guarantee the effective standard and quality in accordance with provisions of laws in force as well as apply good technical norms.
- (2) Business entities or permanent establishments shall guarantee working safety and security as well as the environmental management and abide by provisions of laws in force in the petroleum and natural gas-related business activities.
- (3) The environmental management as meant in paragraph (2) shall be in the form of obligations to prevent and overcome pollution as well as to restore the environmental damages, including obligation of post-mining operation.
- (4) Business entities or permanent establishments undertaking the petroleum and natural gas-related business activities as meant in Article 5 shall prioritize to the use of local manpower, goods and services as well as domestic design and engineering capacities transparently and competitively.
- (5) Business entities or permanent establishments undertaking the petroleum and natural gas-related business activities as meant in Article 5 shall be responsible for the development of the environmental and local communities.
- (6) Provisions on working safety and security as well as the environmental management as meant in paragraphs (1) and (2) shall be further stipulated by a government regulation

brief recommendations, which we would be happy to develop further in cooperation with the drafting committee and others.

1. There should be a separate article in the Petroleum Act specifically discussing environmental responsibilities and implementation under the Petroleum Regime. At present, this is scattered across various articles of the Act and the PSC, and is neither clear nor comprehensive.
2. Environmental assessment proposals (PA §10.3(b) and PSC §5.1(b)(i)) need to be clearly delineated and made binding. Environmental Impact Assessments (EIAs) should not be prepared by the company alone, but by independent consultants or NGOs, or by an agency of the Government of Timor-Leste independent of the Petroleum Ministry. There should be a public and community consultation process, including alternative EIAs or other mechanisms for incorporating indigenous and local knowledge, before an EIA is approved, as well as a provision for judicial review.
3. Decommissioning and Environmental Restoration proposals and plans should also be required, both in advance of the granting of any Authorisation and to be updated regularly. We are proposing a new PA §10.4½ to require such plans. Following closure of a project, companies should restore the environment to at least as good a state as it was before the project started. This requires restoration, not just “clean-up”, and is a better standard than “minimizing pollution and environmental harm” (PA §10.3(b)).
4. PA §7.5 should require Ministry approval of Environmental, Decommissioning, and Restoration plans prior to granting any Work Approval.
5. PA §19.1(a) should include environmental protection as an essential component of petroleum production work practices.
6. Failure of a company to comply with environmental laws, plans or standards; or pollution or other environmental damage caused by such failure or by willful, reckless or negligent actions by the company or its employees or subcontractors; is the responsibility of the company. It should carry civil (and sometimes criminal) penalties, and the company should be required to clean up and remediate any damage at its own expense, not as a recoverable cost ultimately paid by Timor-Leste. Premiums for insurance for policies which would cover non-recoverable costs (such as these) should not be recoverable.
7. Timor-Leste must take special precautions to preserve unique habitats and endangered species, both by signing the relevant international conventions and by ensuring that projects that would threaten such areas not be allowed to proceed.
8. The responsibility of protecting Timor-Leste’s environment from petroleum predation cannot be left within the Petroleum Ministry. A separate government agency, independent from agencies responsible for petroleum, economic development, or industry, should manage this process, approve or reject environmental plans and actions, and be responsible for enforcing environmental laws and regulations in Timor-Leste.
9. Until Timor-Leste has established an Environment Ministry and enacted our own environmental laws and regulations, Indonesian environmental law is in effect here. The Government should effectively enforce this law, and the companies should be informed that they are expected to follow it, and provided with Portuguese and/or English translations of the law.

Benefits to Timor-Leste

Like the environment, this is not La’o Hamutuk’s principal focus. However, we would like to support many of the recommendations made by the President’s office and others to use petroleum

developments to secure the maximum benefits for Timor-Leste and its people. There are more opportunities than the revenues from the production and sale of petroleum.

We support the creation of a Timor-Leste National Oil Company (TLNOC) as soon as practical. The primary reason for an NOC here would be to participate in the industry, developing Timor-Leste's human resources and capacity to eventually conduct its own oil exploration. The TLNOC will inspire the youth of Timor-Leste to become petroleum engineers, so that they can use their skills to develop their nation. Although we agree that foreign oil companies should also be required to train and employ workers from Timor-Leste, workers who gain their skills working for a foreign company are more likely to use their experience abroad (perhaps with the same company) than workers trained while employed by a Timor-Leste NOC.

The TLNOC should also be a partner in all joint ventures involved in petroleum development in Timor-Leste. However, we do not feel that the TLNOC should be part of the regulatory system, taking over functions from the Petroleum Ministry, as some are suggesting. La'o Hamutuk feels that the Government, through the Petroleum and other Ministries, is more likely to manage petroleum developments in an open, fair, transparent, democratic and environmentally responsible way than a NOC would be.

Participation of Timorese workers in training and jobs should not be left entirely to the companies (PA §10.4a), but should involve government initiatives as well. This is especially important for long-term human resources investment, such as sending students abroad to study petroleum engineering or related technical subjects. If the foreign company organizes this, the student's loyalty will be to the company, rather than to Timor-Leste. Furthermore, it is the responsibility of the Government to see the long-term picture, and to open opportunities for the people of Timor-Leste to participate.

When a project is relinquished or completed, Timor-Leste, perhaps through the TLNOC, should own any assets which it chooses to own. This should also apply to property owned by sub-contractors who purchased them with money later repaid through recoverable costs. Timor-Leste will have already paid for such assets, so no additional charges should be levied (PSC §11.2(b)). Such equipment may be useful for training purposes, even if it is no longer state-of-the-art or economical to use in a new petroleum project. This is part of the process of developing petroleum engineering and management capacity for this nation.

Timor-Leste should have an unassailable right to use its own petroleum resources domestically if it so chooses. This is not only to ensure national security if external supplies are interrupted (already, we see the price of petrol escalating every time a Pertamina ship is late), but to support the development of other sectors of our economy. In this submission, we will not discuss subsidies for local and/or renewable energy use or whether to modify our electric power or transportation systems to use local gas or oil, but these subjects deserve careful consideration.

Taxation Law

La'o Hamutuk does not have the time or the expertise to undertake a detailed analysis and critique of the draft Timor-Leste Petroleum Taxation Act. We are not offering an alternative regime, although we are sympathetic with the suggestion from the President's Office that more adaptability of this regime to different types and sizes of projects may improve the revenues for Timor-Leste. We would like to offer a few specific suggestions in regard the draft Taxation Act:

1. As in the other parts of the Petroleum Regime, a presumption for transparency should be included here, as well as mechanisms for public disclosure and accountability of all revenues received. A similar democratic mechanism must be created for managing the revenues after they have been received, but that is beyond the scope of this act and must be addressed in separate legislation.

2. Article 3 (Scope) should refer to the Timor-Leste Maritime Zones Act of 2002, in anticipation of a maritime boundary settlement.
3. Article 12.1 could be abused if the Contractor expresses overly optimistic recovery rates in additional development plans, and standards for approval by the Petroleum Ministry or DA should be spelled out in a Regulation.
4. Article 25 should include a list of the subjects for Regulation which could be enacted by the Finance and Petroleum Ministries, in order to ensure flexibility in taxation, since technology, corporate control, and oil prices will change.

Public Consultation process

If the consultation process for this legislation goes well, with meaningful dialogue between government and civil society, and with suggestions from people outside the drafting process being incorporated in the legislation, it will be an important precedent for the future development not only of Timor-Leste's petroleum industry, but for the fundamental relationship of our government with the citizens of this new nation.

We are concerned that the proposed timetable for adopting this legislation is too fast -- that it will take more time for people to analyze these bills, for the drafters to fully consider all suggestions and to correct significant oversights and misjudgments in the current drafts. Experience shows that once the bills are approved by the Council of Ministers, it will be difficult to make significant substantive changes. As described below, we hope that additional opportunities will exist for civil society and others to debate these issues and offer suggestions before the Council of Ministers considers the legislation. We are also concerned that offshore seismic prospecting is beginning without a clear legal framework, before this legislation is adopted, in an attempt to meet an arbitrary target date for the first licensing round.

We appreciate the effort that went into the three-day Public Consultation session in Dili on 23-25 August 2004. The presenters did a good job explaining why the legislation was drafted the way it is, and some fundamental questions considered during the drafting process. However, that was only the first step in a consultation process, of which these submissions are the second. In order to make this process more meaningful and effective, we suggest the following:

1. All submissions to the drafting process, including ours and those from petroleum companies, should be made available to the public.
2. A concerted effort should be made to socialize these issues among the Timor-Leste population both within and outside of Dili. In addition to public meetings, material in accessible languages should be distributed through churches, schools, local community groups and other channels. After people understand the issues and decisions this legislation involves, there should be a mechanism for their input to be considered.
3. After submissions and community input have been considered and the legislation is redrafted, the drafting committee should publish a report describing the suggested changes they received, and explaining why each one was incorporated or rejected. The Director of the Timor Sea Office has promised La'o Hamutuk that this will be done.
4. Once that report is published, another public hearing should be held in Dili, and perhaps in a few of the districts. These meetings should allocate most of the time for the public to present testimony, make suggestions and ask questions. The primary purpose should be to receive input, rather than to justify or explain the legislation's rationale.
5. After that meeting, another round of redrafting should be undertaken before the bills are considered by the Council of Ministers, and another report published.
6. During the Parliamentary approval process, there should be further opportunities for public input.

7. After this and related legislation has been in effect for two or three years, before any on-shore development contracts are signed, Government and Parliament should conduct an extensive review and revision process of all relevant legislation, This process must include public participation.

Averting the Resource Curse

Large petroleum projects take many years to develop, involving commitments of two or more generations. Yet they are transient, and once the underground resources have been converted into cash, the projects are useless. "The Petroleum Regime in Timor-Leste" summary of this legislation begins "In the near and long term, Timor-Leste's economy will be almost entirely dependent on revenue from [petroleum] resources." Yet Timor-Leste's known petroleum reserves will be used up within the lifetimes of many people alive today. Our vision for how petroleum resources can provide for current and future generations must be much longer.

We strongly urge Timor-Leste to undertake a major long-term planning process, involving the public and others, on how to develop non-petroleum sectors of Timor-Leste's economy over the next half-century. The National Development Plan prepared in 2002 looked only 18 years ahead to 2020, when our largest petroleum reserves, Bayu-Undan and Greater Sunrise, will still be producing. Thirty years after that, Timor-Leste may have no petroleum resources. If we have not developed other sectors of our economy, we will be condemned to perpetual poverty and dependence on imported energy.

If we do not begin this planning and prioritization process now, before large resource revenues flow into our treasury, we will be like people in so many other countries who lament that petroleum was ever discovered under their land and seas. In rich countries, oil companies and the oil consumers will have benefited from our resources, but their rightful owners, the people of Timor-Leste, will only have suffered.