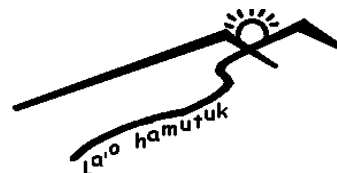


La'o Hamutuk

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(translated from Tetum original)

Dili, 11 May 2009

To : The Court of Appeals President Mr. Claudio Ximenes

Regarding : Interpellation no: 283 Entered: 17 April 2009

With Respect,

On 17 April 2009, the Court of Appeals received a case filed by 15 Parliament members on the legal position of the National Petroleum Authority (ANP) with registry number: **283 Entered: 17/4/2009**. La'o Hamutuk does not advocate to influence the court's decision, but La'o Hamutuk offers this contribution to help the court to make a just decision, based on the law and Constitution in this state under the democratic rule of law.

Since this issue arose, La'o Hamutuk did not agree that a decree law should be used to establish the National Petroleum Authority (ANP). La'o Hamutuk suggested that ANP should be established using a Parliamentary Law which would be open to public debate, and would be higher in the legislative hierarchy than a decree law.

In April and June 2007 La'o Hamutuk made two submissions to the Ministry of Natural Resource, Minerals and Energy Policy (MNRMEP) about packets of legislation related to Reorganizing Petroleum Activities in Timor-Leste. In these submissions La'o Hamutuk stated our legal perspectives about the Government's plan to establish a Petroleum Authority in Timor-Leste to replace the Timor Sea Designated Authority (TSDA).

The complete submissions are annexed to this letter *and can be downloaded from:*

April: <http://www.laohamutuk.org/Oil/PetRegime/Restruc/07RestructLH.htm> or Tetum version:

<http://www.laohamutuk.org/Oil/PetRegime/Restruc/LHSumissaunPetrolRestructureTe.pdf>

July: <http://www.laohamutuk.org/Oil/PetRegime/Restruc/07RestructLHSub2Jul07.htm>

In June 2008, the Fourth Constitutional Government of Timor-Leste proposed to establish the National Petroleum Authority (ANP) with a decree law, to regulate petroleum activities in Timor-Leste's exclusive area and the JPDA. Before the Timor-Leste Government established the ANP decree law (no. 20/2008), La'o Hamutuk made another submission on the ANP draft Decree Law to the Secretary of State for Natural Resources (SERN).

La'o Hamutuk shared the following perspectives:

- 1. Parliament has the Constitutional competence to deal with these matters by Law.**
According to Article 95.1 of the Constitution, "It is incumbent upon the National Parliament to make laws on basic issues of the country's domestic and foreign policy." Petroleum activities comprise more than 80% of Timor-Leste's economy (currently 83%, according to the IMF) and will provide more than 90% of government revenues (currently 98%) within a few years. It is hard to imagine an issue more "basic" to Timor-

Leste. This law also deals with foreign policy, in that managing projects in the JPDA involves Australia.

2. **This law may be outside the exclusive competence of Parliament** as enumerated in Article 95.2 of the Constitution. It has major implications for (p) tax policy and (q) the budget system. In fact, we believe that the ANP budget should be part of the National Budget, which would help resolve its contradictions with the Petroleum Fund Act. But even if parts of this law are not *exclusively* within Parliament's jurisdiction, Parliament still has the competence to pass them.
3. **Under Article 96 of the Constitution, Parliament has the power to authorize the Government to make laws** regarding "(d) General rules and regulations for the public service...", "(e) General bases for the organization of public administration" and "(h) Definition of the bases for a policy on environmental protection and sustainable development," among other areas. The proposed decree-law clearly covers these matters, yet there is no authorization from Parliament to Government to enact this legislation.
4. **The preamble of the ANP decree-law invokes Constitution Article 115.3 which reserves exclusive competence to the Government** on matters which relate to "its own organization and functioning." This would be a dangerously overbroad interpretation of this concept, opening the way to cronyism and corruption in many areas. Fortunately, Timor-Leste's legislative practice over the last five years has not followed this model.
5. **The statute contradicts or amends Parliamentary laws**, including the Petroleum Fund Act and the Petroleum Act. The ANP decree-law changes structures created by the Timor Sea Treaty, which was approved by Parliament. Only Parliament can change or repeal a decision made by Parliament.
6. **The ANP will be empowered to contract with international companies for projects which will last for generations.** It deserves the strongest, most democratic, and most stable foundation possible, which can only be provided by Parliamentary law.

The full submission is on our website at:

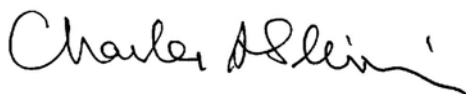
<http://www.laohamutuk.org/Oil/PetRegime/NPALaw/LHSubNPAJun08.pdf>

To complete this information, we have attached La'ó Hamutuk's submissions to the Government on ANP, and La'ó Hamutuk remains ready to share information with the Court or answer any related questions.

Also we apologize that our submissions are in English, because SERN and MNRMEP used English when they did consultations, and La'ó Hamutuk is ready to translate them to Tetum or Portuguese if the Appeals Court requires.

This is our thoughts and information, and we hope that the Court of Appeals will make a just decision based onto Timor-Leste's Constitution and laws. Thank you for your attention and cooperation.

Sincerely Yours,



Charles Scheiner



Viriato Seac



Juvinal Dias