

La'ó Hamutuk

Instituto Timor-Leste ba Analiza no Monitor Rekonstruksaun
Timor-Leste Institute for Reconstruction Monitoring and Analysis
1/1a Rua Mozambique, Farol, (P.O. Box 340) Dili, Timor-Leste
Tel: +670-3325013 or +670-7234330
email: info@laohamutuk.org
Web: <http://www.laohamutuk.org>



Second Submission to the

**Ministry of Natural Resources, Minerals and Energy Policy
Democratic Republic of Timor-Leste**

from

La'ó Hamutuk

regarding the

**Legislative Package on Reorganizing Petroleum Industry
Activities in Timor-Leste**

27 July 2007

Table of Contents

Summary of key recommendations	2
Introduction	4
Overall concerns	4
These laws should be passed by Parliament, not the Council of Ministers.	4
Three laws cannot fill a legal vacuum.	7
Upstream and downstream have different needs and objectives.	7
Many critical terms are not defined.	8
The draft laws centralize power and fail to protect against corruption.	8
These three laws cannot be immediately effective.	9
Draft Law creating the National Regulatory Authority on Natural Gas and Biofuels	9
Government oversight and budgeting	9
Safeguarding the public interest	10
Dispute resolution	11
Administrative Council and Single Auditor	12
Employees, Assets and Funds	13
Revenues and Expenditures	13
Miscellaneous	13
Draft PETROTIL Statute	14
Taking responsibility	15
Legislating with foundation	15
Section-by-section comments	16
Draft Law on Regulation of Petroleum Activity	20
Principles need more guidance	20
Powers and responsibilities	20
Consistency in Government structure	21
Conclusion	22

Summary of key recommendations

- This submission supplements the one we made on 5 April 2007, now that we have had more time to study the proposed laws and discuss them with various experts.
- La'o Hamutuk is encouraged by the extension of time for consultation and the decision not to enact this legislation until after the election.
- These three laws should be Parliamentary Laws, not Decree-Laws passed by the Council of Ministers in secret session.
- A comprehensive legal framework should precede these specific laws, which do not easily transplant into our mixed Timor-Leste/UN/Indonesian legal regime. In particular, overall laws on transparency, dispute resolution and conflicts of interest, as well as the organic law for the Ministry of Natural Resources, Minerals and Energy Policy (MNRMEP) should be enacted first.
- These three draft laws must comply with existing legislation on state-owned companies, the Petroleum Fund Act, the Petroleum Act, the structure of Government, etc.
- The National Regulatory Authority on Natural Gas and Biofuels (ARNP), Timor-Leste National Petroleum Company (PETROTIL) and National Council on Energy Policy (CNPE) should be involved in upstream operations only, and not have their mandate

expanded to downstream operations and distribution. Downstream and distribution have different objectives and dangers and are new to Timor-Leste, and should be the subject of separate legislation.

- These laws should define many technical and legal terms. The lack of definitions leads to an overly broad scope of activities to be regulated.
- Decision-making power, appointments and access to information are too centralized in the Minister of Natural Resources, Minerals and Energy Policy and should be distributed to create checks and balances. Oversight by Parliament and other independent bodies is essential, as is cooperation with and support from local government, the courts, the Provedor, the Prosecutor-General and other state agencies.
- Transparency is almost entirely lacking, and many provisions of these laws should be changed or added to ensure that important information is available to the public and that the public has meaningful input on decisions which affect them.
- The laws contain some rudimentary attempts to prevent conflicts of interest, but they need to be strengthened and implemented in a government-wide law on declaration of assets and prohibiting regulators from having personal interests in the sectors they regulate.
- Entry into force of these laws must be phased in, allowing appointments to be made, structures to be filled, and regulations to be enacted before the agencies are effective.
- The ARNP and PETROTIL should be government agencies, not semi-autonomous *instituto* and *empresa públicos*. Their expenditures should be exclusively through the normal government budget.
- Revenues from petroleum-related activities by the ARNP and PETROTIL are required to be deposited in the Petroleum Fund, and cannot be diverted by those agencies.
- The ARNP's primary responsibility is to safeguard the public interest, not the economic concerns of the petroleum industry. It must give adequate attention to environment, sustainability, community and human rights.
- The ARNP and CNPE should not prioritize biodiesel and biofuels, but give attention to all alternative energy possibilities.
- These laws should reinforce Timor-Leste's 2002 maritime boundary claim, which is yet to be resolved.
- The ARNP Single Auditor should be truly independent.
- ARNP and PETROTIL workers should have the same rights and benefits as other public servants in Timor-Leste.
- PETROTIL can be given advantages as a company owned by Timor-Leste's citizens, rather than forced to compete in a "free market."
- PETROTIL must be at least as transparent and accountable as a publicly traded, investor-owned oil company in a rich democracy. Its standards of corporate governance need to be spelled out and mandatory. It needs to consult with the public and local communities who will be affected by its operations,
- Profit-sharing for PETROTIL's Board and employees should not be allowed; it is inappropriate in a public company and violates the Petroleum Fund Act.
- PETROTIL should comply with normal government tender processes.
- PETROTIL international staff should not be exempted from import taxes.

Introduction

On 5 April 2007, La'ó Hamutuk made a submission to the RDTL Ministry of Natural Resources, Minerals and Energy Policy (MNRMEP) regarding the legislative package on reorganizing petroleum industry activities in Timor-Leste. We were the only Timorese organization to make a submission during the brief time available. This second submission supplements the one we made in April, now that we have had more time to analyze the proposed laws and discuss them with various experts. The two submissions should be considered together, as this document will not repeat some points we raised earlier, although we continue to believe they are important.

La'ó Hamutuk appreciates the extension of time for public consultation on these three draft laws, and that redrafted versions of them will go through another round of public consultation. However, we find it unfortunate that there was no public or official announcement that the consultation has been extended, and no active solicitation of input from various sectors. The discussion hosted by Luta Hamutuk at Hotel Timor on 1 June showed that Timorese civil society and leaders are interested and concerned about these laws, but many questions have yet to be answered and there have been few opportunities for input.

In the last three months, new corruption scandals have come to light in Brazil and São Tomé e Príncipe. The former is the model for many parts of these three draft decree-laws for Timor-Leste, but their Energy Minister was fired and 50 of his staff arrested. The latter is considered to have one of the world's best legal regimes for managing petroleum revenues. Their sad experiences should give Timor-Leste pause, and cause us to try even harder to develop laws which are not only among the best in the world, but which will prevent our nation from falling into the same trap. This will take more creativity, imagination, checks and balances, decentralization, public involvement, stability, transparency, accountability and legal effectiveness than is in the March drafts, and we again urge a careful and conscientious effort to learn from problems elsewhere to enact laws which will truly protect current and future generations of Timor-Leste citizens from the resource curse.

The decision by the Second and Third Constitutional Governments not to push these decree-laws through before the election is a hopeful sign, as is the extension of the Timor Sea Designated Authority (TSDA) until 2 January 2008. We encourage the new Government and Parliament to continue and expand the deliberative and consultative process, and to prioritize social justice and intergenerational equity for Timor-Leste's people above the short-term economic needs of those who wish to profit from our resources.

Overall concerns

These laws should be passed by Parliament, not the Council of Ministers.

These should be Laws enacted by Parliament, not Decree-Laws approved by the Council of Ministers. La'ó Hamutuk raised this in our April submission, and it has been seconded by every submission we have seen since (from Joseph Bell, the World Bank and Martin Sandbu), and by others in informal communication. At the 1 June public meeting, several members of the Petroleum Fund Consultative Council forcefully advocated for this.

Although some believe that these matters are technically within the competence of the Government (and could therefore be adopted as Decree-Laws), there is no doubt that they are

also within the competence of the Parliament. For many reasons, it would be better to go through the Parliamentary process:

- **Article 92 of the Constitution defines “The National Parliament is the organ of sovereignty of the Democratic Republic of East Timor that represents all Timorese citizens and is vested with legislative supervisory and political decision making powers.”** Article 103, on the other hand, states that the Government “is the organ of sovereignty responsible for conducting and executing the general policy of the country and is the supreme organ of Public Administration.” The creation of a National Petroleum Company and a National Council on Energy Policy are political decisions, not the implementation of general policy already legislated by Parliament. As such, they fall within the Parliament’s mandate, rather than that of the Government.
- **International experience shows that the petroleum sector, especially in countries which depend on it for most of their revenues, is particularly vulnerable to mismanagement, corruption and abuse of power.** Such accusations (true or not) are already a part of Timor-Leste’s political discourse and are likely to increase as onshore and domestic petroleum operations grow. It is therefore important to use the strongest, most transparent, most democratic, most inclusive and most deliberative process to establish the foundations of future petroleum development and regulation.
- **One of the 2002-2007 Government’s proudest achievements was transcending party differences to achieve a unanimous parliamentary vote for the Petroleum Fund Act.** This consensus model should be emulated, not circumvented. Involvement of elected representatives from both the governing party (or parties) and the opposition is essential to provide stability for the future.
- **Timor-Leste’s young democracy is experiencing a crisis of public confidence in our institutions.** Whether justified or not, many citizens and partisans accuse the Government of being undemocratic, corrupt, arrogant and secretive. In the energy sector, with its huge amounts of money and temptations to misuse power, it is important to avoid even the appearance of corruption. Parliament’s deliberations are open and involve all political factions, creating an intrinsic debate and restraint on arbitrary authority.

The Council of Ministers, by contrast, meets in secret and only includes people selected by the ruling party or coalition. In order to ensure societal acceptance and stability for these laws, as well as to improve the quality of the laws by listening to a variety of perspectives, the public Parliamentary process is far superior to the closed Government one.

Timor-Leste is likely to enter a period of coalition rule, with the possibility of more frequent changes of Government. In this context, a law passed openly by the people’s elected representatives is more durable than a secretly-debated decision by the Government of the day. Such stability is not only in the interests of Timor-Leste’s people, but will be more attractive to international petroleum companies, purchasers of our petroleum product exports, and others concerned about transparency, accountability, corruption and long-term economic growth.

- **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 and will provide more than 90% of government revenues within a few years. These laws also deal with foreign

policy, in that managing projects in the JPDA involves Australia. It is hard to imagine an issue more “basic” to Timor-Leste.

- **It is unclear whether these laws fall within the *exclusive* competences of Parliament** as enumerated in Articles 95.2 of the Constitution. They have major implications for (p) tax policy and (q) the budget system. In fact, we and others believe that PETROTIL’s budget should be part of the National Budget, which would help resolve the contradictions with the Petroleum Fund Act. Some aspects of these laws, such as the \$2 million transfer from the State Budget to PETROTIL in Article 5.1 of the PETROTIL Statutes, clearly require Parliamentary approval. But even if parts of these laws are not *exclusively* within Parliament’s jurisdiction, Parliament still has the competence to pass them.
- **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-laws clearly cover these matters, yet there is no authorization from Parliament to Government to enact this legislation. An argument has been advanced that the 2005 Petroleum Act creates the Parliamentary foundation for these decree-laws. However, that Act authorizes only upstream operations and provides no authorization for processing, marketing and distribution activities envisioned in the current draft laws. Furthermore, as the term of Parliament that passed the 2005 Act is now over, new authorization would be required.
- **Some have suggested that Constitution Articles 103 and 115.3 reserve exclusive competence on these matters to the Government**, insofar as they 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. The proposed laws contain several provisions which are not part of the normal functioning of a government agency, such as the reserves and profit-sharing in articles 29 and 30 of the draft PETROTIL Statutes. If such practices are implemented without Parliamentary authorization, it would be a precedent for Government to authorize other people in its employ to appropriate State property for personal gain.
- **If these decree-laws were to be enacted by Government, 20% of the members of Parliament could require a Parliamentary review** under Constitution Article 98. As these laws are controversial, this is likely to happen if they are adopted without Parliamentary approval. It would be bad for both the nation and the Government if these issues became embroiled in a power struggle between the Council of Ministers and Parliament.
- **PETROTIL in particular has long-term consequences for the State’s non-renewable resources**, being empowered to contract with international companies and to undertake 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 PETROTIL and other statutes contradict Parliamentary laws**, including the Petroleum Fund Act. The ARNP law changes structures created by the Timor Sea Treaty, which was approved by Parliament. Does Government have the power to violate Parliamentary laws, or to authorize others to do so? Only Parliament can change or repeal a decision made by Parliament.
- **Under Constitution Article 115.2(a), the Government is authorized “to submit bills and draft resolutions to the National Parliament.”** This would be the best path for enacting the three proposed laws on ARNP, CNPE and PETROTIL. The Government should con-

tinue drafting and revising them, in consultation with advisors from many sectors, experts, the public and others. Then they should be submitted to Parliament for hearings, deliberation, amendment and approval, prior to promulgation by the President. This is the most democratic and Constitutional approach. It is also the only way to get the broad public and political support necessary for the stability of this new legal regime.

Three laws cannot fill a legal vacuum.

Other legal provisions are necessary to make this system workable, and the enactment of these three laws without that foundation is likely to lead to legal confusion. Timor-Leste relies on 1999 Indonesian law where no other law has yet been passed. However, many of the foundational structures used for these draft decree-laws, such as *empresa publico* and *instituto publico*, do not exist in Indonesian law. Consequently, these laws would be unenforceable if passed. Furthermore, many gaps have not yet been filled, providing legal loopholes which could enable corruption or worse.

On 4 June, La'o Hamutuk made a submission to the MNRMEP on the Environmental Plan for Eni's Marine Seismic Survey. We pointed out some of these problems, including that Eni was told to conform to JPDA regulations although their survey is an area of Timor-Leste's territory outside of the JPDA, where Indonesian law applies (since Timor-Leste has not yet adopted environmental legislation). We pointed out that the Marine Seismic Survey poses little danger of serious negative consequences, but that other activities envisioned by these laws will be much riskier.

Where other related laws do exist, these draft laws often contradict them. They are inconsistent with parts of the Petroleum Act, the Petroleum Fund Act and the law on Public Companies. In addition, an organic law for the Ministry of Natural Resources, Minerals and Energy Policy should be enacted prior to these three draft laws. This would define the internal structure of the Ministry, perhaps incorporating much of the content of the draft ARNP and CNPE laws. We elaborate further on these problems in relation to particular articles below.

Upstream and downstream have different needs and objectives.

As La'o Hamutuk has written before, we question the wisdom of widening the mandate for petroleum regulation to the lowest end of the downstream phase without a clear vision and law-based authority. Upstream and downstream (especially marketing, sales and distribution) regulation have different purposes. The former is to provide revenue for the State treasury, while the latter, from a national government perspective, is to ensure energy availability to the people of Timor-Leste. It is unreasonable and inefficient to put them under the same regulators, who will inevitably prioritize certain concerns to the detriment of others.

Although the CNPE law's preamble claims that the "government's experience to date" shows that upstream and downstream sectors should be regulated together, the Government has almost no experience in regulating the downstream sector, as there has been very little downstream petroleum activity in Timor-Leste.

The mandate of ARNP should be limited to upstream and mid-stream operations (such as an LNG plant). Similarly, PETROTIL should only undertake upstream activities within the scope of the 2005 Petroleum Act, rather than a full range of downstream, retail, transport and distribution activities, as well as petrochemicals and all forms of energy. If public com-

panies are to be created to manage these areas (which is not obvious, given that they are not necessarily based on non-renewable natural resources belonging to Timor-Leste), they should be governed by different statutes than those appropriate for petroleum exploration and production.

Many critical terms are not defined.

The draft laws do not contain definitions, but they use many terms whose meaning is unclear, making them impossible to administer or enforce in a consistent and predictable manner. Definitions of some terms could be inherited by reference or incorporation from the 2005 Petroleum Act, but others are new and nebulous. For example, do “biofuels (*biocombustíveis*)” include wood, corn husks, coal, and/or ethanol? Do “derivatives (*seus derivados*)” of petroleum and natural gas include plastic, butane (e.g. cigarette lighters), fertilizer, petrochemicals, LNG, kerosene and/or asphalt? Article 2 of the Petroleum Act defines “petroleum (*petróleo*)” to include natural gas, but the ARNP law considers them separate. The absence of definitions makes it impossible to understand the broad scope of activities described in draft PETROTIL statute Article 3.1, and also prevents clarity in the ARNP and CNPE laws.

The draft laws centralize power and fail to protect against corruption.

Through these laws, the Minister for Natural Resources, Minerals and Energy Policy appoints other officials, is the final decision-maker, and is the principal recipient of reports and information. This excessive centralization characterizes much of Timor-Leste’s petroleum legislation, and is dangerous for many reasons that we have explained previously. Checks and balances, consultation, and transparency are essential not only among ministries (within Government), but also with other State institutions (President, Parliament, Provedor, judiciary) and with non-governmental actors (business, civil society, local communities). Ways to reduce excessive centralization are discussed below, particularly in relation to draft ARNP articles 7 and 11, PETROTIL articles 10.2 and 20.2, and CNPE articles 6 and 11.

Transparency and public information are essential tools to help prevent corruption, collusion and nepotism. We repeat our call for a comprehensive, government-wide, legally-binding policy of public information based on the principle that everything should be public unless there is a compelling reason (such as national security) for it to be kept secret. In particular, the secretive instincts of petroleum companies, often claimed as “commercial confidentiality,” should not override the right of citizens to understand the exploitation of our resources and the performance of our public servants. The discussion below includes many suggestions about specific information which should be available to the public.

In the same way, conflicts of interest are permitted by many articles in the proposed laws, and little is included to hold wrong-doers accountable for their actions. There would be no need for laws if everybody was well-intentioned and performed their tasks flawlessly – the purpose of legislation is to ensure that human greed or fallibility do not cause serious consequences for the people and the State.

As La'o Hamutuk has suggested, Timor-Leste should have a government-wide conflict of interest code, applied to officials in a decision-making capacity (including the ARNP Administrative Council and Single Auditor, the Board and management of PETROTIL and members of the National Council on Energy Policy. In addition to prohibiting involvement with businesses whose interests overlap with their regulatory duties, such a code should

require them to declare their assets prior to beginning their service, annually thereafter and when their service is completed. The difficulties in implementing Article 27.6 of the Petroleum Fund Act, which requires some of this for the Petroleum Fund Consultative Council, highlight the importance of a systematic, consistent process.

These draft laws need a great deal of improvement and amplification in this area, and we have made suggestions in our comments on ARNP articles 7.4 and 7.6, PETROTIL articles 10, 20.5 and 34.2, and CNPE articles 8 and 9.

These three laws cannot be immediately effective.

These draft laws are expected to come into force immediately when they are published, according to ARNP article 31, PETROTIL article 37 and CNPE article 22. CNPE Article 18.1 provides for the Council of Ministers to establish ARNP and PETROTIL within 120 days of the publication of the CNPE law, which implies that the ARNP and PETROTIL laws will be promulgated exactly 120 days after the CNPE law. A more deliberate and detailed schedule is required to phase these three laws into effect. It will take time to appoint the office-holders and enact subsidiary regulations before these organs can be fully functional.

If the TSDA and DNPG are dismantled before the ARNP is ready to assume regulatory responsibilities, the resulting gap in effective regulation could have disastrous consequences for consumers, citizens and the environment. Similarly, PETROTIL should not receive the cash infusion defined in PETROTIL article 5.1 until it has officials, bodies and procedures in place, and it should not be able to sign contracts until then.

The remainder of this submission looks at each of the three proposed decree-laws, and offers some general observations and some specific suggestions about each one.

Draft Law creating the National Regulatory Authority on Natural Gas and Biofuels

Government oversight and budgeting

The draft law creates a public institute (*instituto público*). Although we do not understand all the implications of such a structure, it is less integrated with the Government than a government department, such as the current National Directorate of Petroleum and Gas (DNPG). Since the principal purpose of the proposed National Regulatory Authority on Natural Gas and Biofuels (ARNP) is to manage the State's resources for the benefit of our people, a semi-autonomous agency may not be the best way to represent the interests of a democratically-elected Parliament and Government. To advance that goal, we suggest including a mechanism for oversight by Parliament in Article 2, rather than only by the Ministry (MNRMEP). The budget of ARNP should be part of the State budget, rather than being developed and implemented independently. This is discussed further below in relation to ARNP Articles 16 and 17.

The ARNP appears intended to exist in a virtual institutional vacuum. We suggest that it should be able to utilize the organs of the State – the courts, the Prosecutor-General, the Provedor for Human Rights and Justice, the Inspector-General, Parliament, local government, and other ministries to support and implement its regulatory responsibilities. The draft law should be more specific about when and how the ARNP interacts with other organs in order to clarify their responsibilities so that the ARNP can rely on them.

The draft law contains very little about public consultation or transparency of ARNP operations and the activities it regulates. In previous submissions, La'o Hamutuk has suggested many mechanisms for accountability, openness, developing relations with citizens and communities, and providing information to the public. We will not repeat them here, but reiterate their critical importance.

Safeguarding the public interest

We do not need to tell the drafters of this legislation that petroleum development in countries similar to Timor-Leste often brings a resource curse. Some of this arises from mismanagement or theft of revenues, but an equally dangerous component comes from the fact that commercial companies exist to serve their stockholders rather than the people of the countries where they operate. It is the responsibility of Timor-Leste's Government, assigned to the ARNP, to look after the needs and well-being of our citizens.

Article 3 includes more than 20 clauses about the jurisdiction of the ARNP, nearly all of which relate to business activities of the industry. We strongly believe that regulation of all sectors of the petroleum industry needs to be more comprehensive, including such responsibilities as protecting and restoring the environment, providing for sustainability, safeguarding worker health and safety, land rights, human rights, inter-generational equity, maximizing spin-off to Timor-Leste businesses and workers, guaranteeing company responsibility for decommissioning, etc. Most of these are recognized (albeit sometimes inadequately) in the Petroleum Act and the Model Production Sharing Contract, but Article 3 of the draft ARNP decree-law omits many. Since the ARNP will inherit petroleum-sector regulatory responsibilities currently exclusively assigned to the Ministry, we are troubled that it prioritizes short-term, commercial concerns over long-term, public interests. Commercial companies will watch out for their own economic wishes, but who else will protect the land and people of Timor-Leste?

In addition, we have some specific suggestions for Article 3:

- Article 3.1 and 3.1(a) should include all the concerns listed in the previous paragraph, not only business activities (*"actividades económicas"*) and supply and consumer (*"consumidores"*) concerns.
- Article 3.1(d) should specify that the Model PSC is to be used for all authorizations for upstream exploration and production.
- Article 3.1(f) should require that the criteria for pipeline transport rates be published and be consistent across all projects and companies.
- Articles 3.1(g) and 4.1(d) should include the application of criminal penalties (including prison), referral to the judicial system, and other sanctions strong enough to deter multi-billion dollar companies and potentially corrupt officials from inappropriate or illegal activities.
- Article 3.1(i) should be separated into several articles, spelling out mandates to ensure conservation, "rational use" and environmental preservation (which should include protection as well as restoration, both from accidents and operational pollution).
- Article 3.1(k) should include dissemination and publication of information, in addition to collection. This collection and circulation of data could be done in collaboration with a university to build capacity and knowledge about these issues, as well as to improve communications with the public.

- Article 3.1(l) should specify that the information on national reserves be disseminated to the public.
- Article 3.1(n) should include civil society and other representatives of the citizenry in coordination with energy sector regulation and the CNPE.
- Article 3.1(p) singles out and prioritizes biodiesel; it is unclear why the ARNP has a specific mandate in this area, rather than in a wider range of renewable energy sources, such as other biofuels, wind, water, hydroelectric, tidal, ocean thermal, solar, etc.

Article 3.1 should also include two additional matters:

- Timor-Leste's responsibilities as citizens of planet Earth, considering ways to minimize our emission of greenhouse gases and keep our carbon footprint small as global society inevitably moves away from a fossil fuel-based economy.
- Building human capacity for regulatory or corporate work in the petroleum sector, as well as the Timor-Leste Local Content process (which is described in a separate document). Should the ARNP have responsibilities in these areas?

Article 3.2 lists the jurisdiction inside the JPDA, but Timor-Leste should not relinquish jurisdiction over other areas disputed with Australia where no maritime boundary has been established. (The 2002 Timor Sea and 2006 CMATS treaties are petroleum revenue sharing agreements, specifically without prejudice to a future maritime boundary settlement.) This Decree-Law should, in this Article (including 3.2(i)) or elsewhere, refer to the territorial claims made in RDTL Law No. 7/2002 (Maritime Boundaries).

- Article 3.2(c) should require that the annual reports to the Joint Commission also be presented to the Government and be made public.
- Article 3.2(e) should also include decommissioning, emergency response, and alleviation of environmental damage from normal and exceptional operations.

Dispute resolution

Article 4.3 refers to the adversarial principle (*"princípio do contraditório"*) as a process for resolving conflicts regarding sanctions. Is this principle described or implemented by a law in effect in RDTL? Article 5 provides for ARNP to create a procedure for resolving conflicts between business agents, or between agents and consumers. This should also address conflicts between agents and the government as well as those involving communities or individuals whose rights may be infringed by petroleum-related businesses.

However, the invention of additional conflict resolution mechanisms for this particular sector of the economy may make things more difficult for investors, businesses and consumers alike. For dispute resolution between Authorized Persons (PSC holders) and the State of Timor-Leste, Article 20 of the 2005 Petroleum Act already specifies a legal mechanism. Proliferation of conflict resolution processes could become another source of conflict – and is an example of the problems inherent in legislating in one sector in the absence of a comprehensive legal framework. It would be preferable for Timor-Leste to have a universal mechanism to resolve business-related conflict applicable to all economic sectors, not only petroleum.

Administrative Council and Single Auditor

The ARNP Administrative Council (AC, or Board of Directors) should be appointed by diverse sources, since their work is so critical to the economy and future to Timor-Leste. Rather than having all three members appointed by the Minister for Natural Resources, Minerals and Energy Policy (Article 7), we propose that the Minister appoint one (the chairman), the Parliament appoint one and the President of the Republic appoint one. They should be confirmed by the Parliament (perhaps in addition to confirmation by the Council of Ministers). Since the parliament includes a range of political parties and meets in open session, this would be more transparent and democratic than a process run by the MNRMEP and the Council of Ministers, which is essential to prevent cronyism and to ensure broad public and political support for the decisions of the ARNP.

The proposed decree-law does not specify if the AC makes decisions by consensus or by majority (two to one) vote. We suggest that it should be by consensus, and that if consensus cannot be reached the decision should be made at a higher level, perhaps involving the MNRMEP, the Auditor or CNPE.

Articles 7.4 and 7.6 are a worthwhile beginning to try to avert corruption and collusion in the ARNP, but they do not go far enough. Article 7.4 should also bar close relatives of AC members from having financial or other interests in companies in the regulated sector, as well as in companies outside the sector which are significantly affected by ARNP decisions. For example, ARNP decisions about fuel prices will impact on an automobile dealer or a taxi business, and such conflicts of interest should be avoided. Article 7.6 bars AC members from working for or subcontracting from companies in the regulated sector for one year after they leave the AC. This prohibition should also be in effect during their term of office and should also apply to members of their families.

Article 8(e) should state that the collection of revenues and authorization of expenditures by the AC must be consistent with the Government budget and the 2005 Petroleum Fund Act and conform to policies set by Parliament in an open and democratic manner.

Article 8(g) is so broad as to make the remainder of Article 8 meaningless. It should be deleted.

Article 10 gives broad powers to the Chair of the Administrative Council, especially Article 10(c) which could allow him/her to suppress the activities of other members of the AC. The Chair should exercise his/her powers with the consent of the other members of the AC, and should not take any actions contrary to the wishes of the other Council members. (As the legislation is drafted, with all AC members answerable only to the Minister, this is not important as there is unlikely to be much difference among them, but with the multi-source appointments we are proposing, each AC member's views should be taken into account.)

Article 11 states that the Single Auditor (compliance officer) is an independent body (*“um órgão independente”*), but this is not really true as he/she is appointed by the same Minister who makes the other appointments, albeit together with the Minister for Planning and Finance. To be truly independent the Auditor should be appointed through a process external to the Ministry of Natural Resources or other ministries of the Government (since all Ministers serve at the pleasure of the Prime Minister), such as by the Banking and Payments Authority with approval by Parliament.

The reports and opinions by the Single Auditor enumerated in Article 13 should be published. In addition, there should be a specific requirement for an annual report by the Auditor on the finances and activities of the ARNP, which should be provided to Parliament and published shortly after the end of each fiscal year.

If irregularities are found (Article 13(g)) the Single Auditor (as an independent body) should be authorized to bring them to the attention of the Provedor and/or the General Prosecutor, in addition to the Ministers of Finance and Natural Resources.

Employees, Assets and Funds

Article 14 specifies a set of rules to apply to ARNP workers. These workers should not have a status different from other public servants; there is no need for a special regime.

Article 14.4 specifies that TSDA staff automatically become ARNP staff, maintaining the conditions of their contracts. While this may be appropriate for a transitional period (perhaps a year), over the longer term their contracts and working conditions should become the same as other Timor-Leste public servants. As the ARNP is in effect a merger of the functions of the TSDA and DNPG (and perhaps other parts of the MNRMEP, as described in Article 25), we wonder why current Ministry employees aren't given the same privileges as those of the TSDA. If necessary at all, this article should be based on the TSDA employment status at the time the ARNP legislation enters into force, not on the "*data da implantação*."

Revenues and Expenditures

The ARNP should not receive any revenues other than those described in Article 16(d) from the State budget. Articles 16(a), (b), (c) and (e) violate the Petroleum Fund Act's Article 6.1, which requires that all income "...from any Petroleum Operations, including prospecting or exploration for, and development, exploitation, transportation, sale or export of petroleum, and other activities relating thereto;... from direct or indirect participation of Timor-Leste in Petroleum Operations;... relating directly to petroleum resources" be deposited directly into the Petroleum Fund. The ARNP should not receive any income from petroleum-related activities. Articles 4.1(b) and 4.1(d) of the draft ARNP decree-law also potentially violate the Petroleum Fund Act; they should specify that any money collected must be deposited into the Petroleum Fund.

Similarly, expenditures as described in Article 17 of the draft ARNP law should be done according to the state budget developed by the Government and passed by Parliament, and not left to the Administrative Council to decide. Of course the small details of expenditures are not decided by Parliament, but Parliament should set overall amounts and categories, which should be overseen in the same way as expenditures by other Government agencies. Just as all ARNP revenues should come from the budget, expenditures should follow democratic decisions.

Miscellaneous

Article 18.1 should refer to the Timor-Leste Maritime Zones Act (RDTL Law No. 7/2002) as the definition of Timor-Leste's claimed EEZ, rather than the Law on Petroleum Activities, which does not define Timor-Leste's territory clearly, especially given Australia's intransigent refusal to define the maritime boundary between our two countries.

Article 18.2 should also refer to the CMATS Treaty and the Sunrise IUA, since these modify the conditions of the Timor Sea Treaty.

Why does Article 19 refer to sedimentary deposits only? There may be other minerals (including but not limited to fossil fuels) or resources under the seabed which are of commercial interest.

Article 20 should refer to the Model Production Sharing Contract, since presumably any upstream authorizations signed by the ARNP would follow this model. An analogous model contract could be developed for midstream and downstream operations, as a way to simplify negotiations and close off opportunities for corruption.

Article 26 illustrates the unfortunate focus of this law on economic benefits for people in the petroleum business and consumers of their products. As a regulator responsible to protect the human and property rights of all citizens of Timor-Leste, the ARNP should also consult with community residents and other stakeholders who might be impacted in any way (environmental, economic, land use, accident risk, urbanization, etc.) by activities or regulations relating to the ARNP's mandate. In particular, local public consultations should be held in communities which could be affected by petroleum-related activities, with adequate notice, information, translation, time and opportunity for participation. Projects and regulations should be modified (or, in the extreme, cancelled) based on information and ideas which emerge from the consultation process.

Articles 22, 24 and 27 are extremely broad, requiring everyone involved in trading petroleum products to register within 120 days (presumably from the date this law enters into force, which should be explicit) and to receive ARNP authorization. This include every shop which sells kerosene or exchanges LPG bottles, every kiosk which sells petrol, even every street vendor who sells butane cigarette lighters. Since "petroleum derivatives" is undefined, it could be interpreted to mean anyone who sells items made of petroleum-derived plastic. A clearer and more limited definition of distribution activities to be regulated by the ARNP is essential.

Article 29 should concern not only infractions of the economic order, but also criminal offenses. Bribery, environmental destruction, illegal land expropriation, extortion, etc. should be referred to the appropriate judicial and prosecutorial authorities if they are uncovered in the course of ARNP's regulatory activities.

Draft PETROTIL Statute

In principle, La'o Hamutuk supports the creation of a strong, well-managed, citizen-owned national oil company for Timor-Leste. Such an institution can help develop our resources and our capacity to manage them, as well as maximizing the financial benefit to the people of Timor-Leste. In addition, a transparent, accountable, democratically-controlled national oil company will respond to the needs and wishes of our own people, rather than to investors from overseas. It will prioritize Timor-Leste's long-term interests, rather than daily share prices or quarterly dividends.

However, in other countries, national petroleum companies are often a pathway to disaster. Such companies can be used to evade responsibility for pollution or remediation for environmental damage caused by profit-making foreign companies (such as Texaco selling its interests in Ecuador to Petroecuador). They can enable flouting laws about safety or com-

munication with local people (such as NNPC in Nigeria). If not carefully regulated, a national oil company can be far more dangerous than a privately owned one which is accountable to stock exchange or government regulators in countries where its stock is traded.

Taking responsibility

PETROTIL in Timor-Leste will not have to comply with transparency and anti-corruption provisions of the Australian or U.S. Stock Exchanges, as Santos, Woodside and ConocoPhillips do. It will not have to obey well-established European or national regulators, such as those who try to keep Royal Dutch Shell and Statoil in line. Timor-Leste's Government alone will have the responsibility to keep it honest, responsible and transparent, and this is a critical and difficult task.

One reasonable standard would be for the reporting and transparency requirements for PETROTIL to be at least as strict as those for a publicly traded, investor-owned company in a rich democracy. For example, the quarterly reports filed by Santos with the Australian Stock Exchange provide information on sales and production from every project, as well as all exploration activities and significant financial developments. Every director's remuneration, share holdings, participation, and past and present employment are published annually. The company must report every well it drills, and the resulting find or production. Unfortunately, the draft PETROTIL statute contains none of these requirements, and it therefore endangers Timor-Leste.

Legislating with foundation

PETROTIL is created as an *empresa pública*, but Timor-Leste does not yet have the full set of laws to regulate such a structure, as exists in other countries which use it. Consequently, the powers but not the responsibilities of this organ are defined, creating a dangerous situation. In particular, Article 1 refers to PETROTIL as being created in accordance with the laws governing state-owned companies (which should be explicitly cited as RDTL Decree-Law 14/2003), but the prerequisites required by Section 3.3 of that law for "appropriate technical, economic and financial studies, as well as a draft organic structure of the company, including the opinion of Ministry of Planning and Finance" have not been fulfilled.

In many areas, the PETROTIL draft statute follows the structure and rules outlined in Decree-Law 14/2003, but there are some cases where the draft statute violates that law. For example, Article 17 of the statute says that the Audit Committee (or Monitoring Board) is appointed jointly by the Finance and Natural Resources Ministers, for a once-renewable three-year term. However, D-L 14/2003 says that the appointments should be made by the Finance Minister after consulting with the Natural Resources Minister, for a renewable four-year term. In another example, Section 25 of Decree-Law 14/2003 implies that a Public Company has the same fiscal year as the Government (July to June), but Article 31 of the draft PETROTIL Statute says that the company's fiscal year is the calendar year.

To our knowledge, no public consultation and little debate was held when Decree-Law 14/2003 was enacted by the Council of Ministers in July 2003. Consequently, that law is manifestly inadequate with regard to transparency, accountability, reporting, and avoidance of conflicts of interest. These are especially important in the petroleum industry, with its history of corruption, its responsibility to manage the resource birthright of our citizens, the huge amounts of money involved, and the tremendous environmental and societal dangers posed by petroleum development. This submission, therefore, will recommend some

safeguards which are in neither the Public Companies Decree-Law nor the draft PETROTIL statute, both of which should be amended to incorporate them.

We have not compared every article of the draft PETROTIL statute with the Public Companies Decree-Law, but strongly recommend that the two be made consistent. Some of our suggestions below would require amendments to either or both of these laws.

As a Parliamentary law, the Petroleum Fund Act cannot be modified or overridden by a Decree-Law enacted by the Council of Ministers. Therefore, we are concerned that the draft PETROTIL statute directly contradicts this act, especially in Article 30 which requires PETROTIL to distribute some or all of its profits to its employees and directors and Article 25.2 which links compensation for public servants to the profits of the company. In addition to violating the Petroleum Fund Act, this is an open invitation to corruption. According to the RDTL Constitution, the resources which generate PETROTIL's profits belong to Timor-Leste, not to a few individuals.

The PETROTIL statute does not require an outside (independent) audit, but one should be conducted and published annually. There is also no explicit statement that the activities of PETROTIL officials are under the jurisdiction of the Provedor and the Inspector General, and that those organs have the authority to compel information and cooperation in order to investigate alleged wrong-doing. As a state institution, PETROTIL should be subject to the same oversight and protection mechanisms as other public organs.

Section-by-section comments

Article 3.3 states that PETROTIL is developed "on the basis of free market competition according to market conditions." This seems to be an odd basis for a public company, whose *raison d'être* is to provide benefits for the citizens of Timor-Leste which a private, foreign-owned company would not. When appropriate, and decided in a democratic and transparent manner, a state-owned company like PETROTIL should be given subsidies, preferential access to consumers or other advantages not available in the "free market" but which would help it serve our people's needs.

Article 5.2 states that PETROTIL receives all its oil-sector operational assets from the State, to be managed with transparency and good corporate governance. The two concepts in this paragraph should be in separate articles. Regarding the receipt of assets, PETROTIL should also have the right to purchase oil-sector assets from other sources, and not be restricted to those owned by the State. Article 7, which allows PETROTIL to acquire shares in other companies, would seem to contradict the first part of Article 5.2.

Principles of transparency and good corporate governance should apply to all of PETROTIL's operations, not simply to its initial capital. They should also be spelled out, including compliance with Publish What You Pay, Extractive Industry Transparency Initiative and other standards, as well as detailed internal, governmental and public reporting requirements. Rather than half a sentence, this requires an entire Chapter. Good corporate governance ("*boa governança corporative*") is undefined and vague, giving no instruction to PETROTIL management and not enforceable in a court of law. It needs to be made concrete and specific.

The description of initial assets required by Article 5.3 should be published, in addition to it being approved by two Ministers. Such an asset list should be published annually, in addition to other information.

Article 10.2 exemplifies excessive centralization. We agree that the Council of Ministers should appoint the Chairman of the Board of Directors, but the other six Directors should be appointed in diverse ways to ensure checks and balances and to guard against conflicts of interest. The Finance Ministry should appoint its own Director, as should the private sector and the workers of PETROTIL. Other Directors should be appointed by the President, by Parliament and by civil society.

Article 10 should also include provisions to minimize risks of corruption and conflict of interest. Directors should have to declare all their personal assets at the beginning and end of their service. They and members of their immediate families should be barred from business activities in the petroleum sector, and from financial interests in any business contracting with PETROTIL, during their terms of office and for two years afterwards.

Some of the powers of the Board listed in Article 11 should be limited by the laws and policies of the State of Timor-Leste, in particular the annual state budget and the decisions of the CNPE and ARNP. It should also be subject to Parliamentary and public supervision. A multi-sectoral Consultative Council, similar to the one for the Petroleum Fund, could help improve oversight and accountability.

Many of the powers described in Article 11.1(l) and elsewhere could have significant impact on the public. Such policies should be published and, where possible, subject to public or community consultation and governmental review prior to their enactment.

Article 11.1(m) empowers the Board to approve the transfer of ownership of company assets. This needs to be expanded to guard against nepotism and conflicts of interest, and to ensure that the company receives appropriate remuneration for any assets which are transferred.

Article 11.2(e) empowers the Board to approve a Code of Best Practices. The enactment and enforcement of such a Code should be mandatory, and the statute should describe what it includes, with specific requirements for reporting, transparency, accountability, environmental protection, worker health and safety, etc. Unfortunately, the precedent of many national oil companies in other countries sets a low standard for "best practices." This also applies to Article 11.2(f) about corporate governance guidelines.

Article 12 empowers the Board to decide on verification and auditing, implicitly including the power to decide not to conduct audits. The PETROTIL statute should contain specific requirements for annual audits, both internal and done by an independent outside auditor. The results of these audits should be published as part of a comprehensive public information regime which includes quarterly and annual reports.

The Board's meeting record book referred to in Article 13.4 should be available to the public.

Article 13.5 is unclear. Does the Chair only vote when necessary to break a tie, or does he vote at the same time as the other Directors, and then vote again if a tie has occurred?

Article 14 should require the Chair to ensure that the Executive Committee follows laws and regulations of RDTL, in addition to decisions of the Board and guidelines from the Ministry.

Article 18.1(a) should specify the period (perhaps quarterly) which determines when the Audit Committee examines PETROTIL's books.

The reports, opinions and verification described in Article 18(c) and (d), as well as other findings of the Audit Committee, should be published. These are a part of a larger necessity for transparency, which could be modeled on the reporting requirements for an investor-owned petroleum company or public utility in a country with well-established transparency and accountability.

In Article 20.2, we believe it would be better for the Board of Directors to elect one of its members as Executive Director. This would reduce the excessive centralization of power in the MNRMEP and clarify that the Executive Director is responsible to PETROTIL, rather than to the Government.

Article 20.3, which allows the Board to remove members of the Executive Committee, needs to be clearer. What would be valid grounds for removal? Are removed Executive Committee members also removed from the Board? Do they have any right to appeal? Is there protection for whistleblowers?

Article 20.5 is a loophole to allow certain conflicts of interest, although the more important provision to prevent such conflicts has been omitted from the legislation. Not only should the loophole be closed, but a strong statute to prohibit all PETROTIL Directors (not just the Executive Committee) and their families from involvement in companies doing business with or in competition with PETROTIL needs to be included, as we suggested above in relation to Article 10. The preamble to the PETROTIL statute explains that they are entrusted to manage the assets of State of Timor-Leste, and they should not have personal economic interests which could interfere with making the best decisions for the State and its people.

Article 21 lists the responsibilities of the Executive Committee, and article 21.2 enumerates those which do not require approval by the Board of Directors. We recommend that certain fundamental decisions, including 21.2(e) (operating standards, management policies, procurement policies); 21.2(h) (basic structure and standards for the company) and 21.2(l) (annual business plans) should require approval by the Board of Directors. The Executive Committee's purpose is to execute the Board's decisions, not to make them in its stead.

Article 23(c) empowers the Executive Director to propose candidates for the Board of Directors; we suggest that every Director should be empowered to nominate candidates. However, this clause may be inconsistent with Article 10.2, which suggests a different method for selecting Directors.

Article 23(g) empowers the Executive Director to provide information to Government bodies, oversight bodies and other organs of the State. He/she should also be able to provide information to the public. Furthermore, the duties enumerated in this clause must not be exclusive to the Executive Director; other Directors and members of the Audit Committee should also provide information to the public and other agencies. A new section should be added itemizing what information should and can be released, based on the principle that everything is transparent unless there is a compelling reason (such as national security or personal privacy) to keep it secret.

Article 24 should specify that contracts with PETROTIL workers are in accordance with the law and labor code of RDTL, not only with PETROTIL's internal regulations. Where possible, such contracts should be consistent with those for other public employees.

Article 25.2, with its implied profit-sharing among employees (worryingly based on internal regulations) to reward them based on the results of the business violates the Petroleum Fund Act as discussed above. It also establishes a dangerous precedent for public employees – are tax collectors to be paid a percentage of the revenues they collect? Purchasing agents to receive a percentage kickback for the contracts they award? Public servants should be paid salaries for their work – not awarded commissions on monies that pass through their agency.

Article 27 links PETROTIL's management principles to the National Development Plan, The NDP was written before independence, is outdated, only looks 15 years ahead, and does not conform to Timor-Leste's current needs and priorities in many ways. This article also requires good governance and efficient management, but these principles appear focused on the health of PETROTIL itself, rather than the needs of the nation. More precisely defined, these goals might be appropriate for a privately owned company, but for a public one the principles must also be based on wise and sustainable management of the State's resources, as well as the needs and lives of current and future generations of citizens of Timor-Leste.

Much of Article 28 appears inconsistent with the Petroleum Fund Act, which requires that all petroleum-related revenues must be deposited into the Petroleum Fund. Articles 6.1(d) and 6.2 of the Petroleum Fund Act specify a mechanism for Timor-Leste participation through a national oil company; all dividends, taxes, royalties and other payments to the state must go into the Petroleum Fund. If PETROTIL receives assets (including contractual rights) from the State and then sells them (as described in PETROTIL Statute Article 28(d)), those revenues should go directly to the State (i.e. the Petroleum Fund), rather than to PETROTIL itself. The generality of article 28(e) raises additional possibilities for violations of the Petroleum Fund Act.

Article 30 also violates the Petroleum Fund Act (all profits should go to the State), especially article 30.2, which diverts public resources for private gain. Sharing profits among its own managers and staff (especially at their own discretion) has no place in any public company, even if the Petroleum Fund were not involved. PETROTIL belongs to the State and people of Timor-Leste, not to a select appointed few. In one recent public meeting, the Minister for Natural Resources, Minerals and Energy Policy justified this profit-sharing by saying that it was necessary to attract qualified personnel in the highly-paid oil industry. We believe it is more likely to attract greedy people tempted by the opportunity to steal our resource entitlement. High salaries may be needed to entice capable managers, but they should not be given a license to embezzle from the people of Timor-Leste.

Article 32 appears to be a dangerous opening to corruption in the tender process. In addition to exempting PETROTIL from normal tender procedures, it authorizes a "simplified provisioning procedure" to be decided by the Board of Directors. The PETROTIL statute should not shortcut the safeguards in Decree-Laws 10/2005 and 12/2005, especially without specifying another transparent, accountable, fair, fiscally responsible process.

Article 33 exemplifies favoritism which should have no place in Timor-Leste. It also contradicts the free competition declared in Article 3.3 by giving PETROTIL a preferential tax status for its international employees. Highly-remunerated PETROTIL international staff should not receive benefits that local staff or people who work for other companies or agencies do not. Furthermore, a decree-law cannot override the tax law (Law 5/2002, enacted by Parliament to amend UNTAET Regulation 2000/28). Schedule 1, Section 4(B) of the consolidated tax code lists sixteen categories of exemptions from import duties, none of which

are intended to privilege particular public or private companies. If PETROTIL's international staff and their families are exempted from import taxes on personal items, it creates a dangerous precedent for cronyism and privilege which undermines the rule of law.

Article 34.2 is a half-hearted attempt to reduce conflicts of interest. It needs to be expanded and clarified, or replaced by a comprehensive, effective and enforceable conflict of interest law for all employees and managers for state organs and *empresas publicos*.

Article 34.3 requires PETROTIL to defend and insure its officials against legal proceedings. This should not apply for acts of negligence, recklessness or criminal intent. Furthermore, such a provision should be government-wide, rather than for these officials alone.

Draft Law on Regulation of Petroleum Activity

Principles need more guidance

Article 2 sets out 13 Guiding Principles, although a few are so vague as to be ineffective. We would like to suggest a few more, particularly sustainability and intergenerational equity (in relation to 2(b)), building the capacity of the RDTL labor force, increasing the absorptive capacity of our economy, long-term planning and minimizing global environmental damage. Article 2(d) should also mention protecting Timor-Leste's land, communities, and existing activities (such as fishing and agriculture).

Although Article 2(j) cites transparency as a principle, this law contains very little to implement it.

Article 2(m) is puzzling, partly because "biofuels" is undefined. It seems inappropriate for a general structural law about energy policy processes to promote a particular energy source, especially when the use of firewood already has negative consequences on our environment and infrastructure (through erosion and flooding).

Article 3.1 should reference the Timor-Leste Maritime Zones Act (RDTL Law No. 7/2002).

Article 4.1 refers to a "concession regime (*regime de concessão*).” Is this the Production Sharing Contract system set out in the Petroleum Act?

If this decree-law will apply to projects in the JPDA, including downstream activities flowing from upstream production there, Article 4.3 should also refer to the Timor Sea Treaty, JPDA Petroleum Mining Code and subsequent related agreements.

Powers and responsibilities

Article 5 empowers the CNPE to propose policies to the Council of Ministers. This indicates that it is an advisory body, without real decision-making powers or legal responsibilities. We do not disagree with this, but other commentary on the CNPE describes it as an oversight or regulatory organ. If CNPE is advisory, it should also be authorized to propose policies to Parliament, the MNRMEP, the Ministry of Public Works, the Ministry of Agriculture, the Department of the Environment and other organs in relation to energy policy. Each of these organs, of course, will decide whether or not to adopt the proposals from the CNPE.

Article 5.1(f) seems to overlap the responsibilities of EDTL.

Article 5.1(h) empowers CNPE to recommend approval of the budgets and financial reports of energy regulators. If the CNPE itself is authorized to approve (or reject) such reports, this should be clarified. If CNPE cannot reject or amend a report, it's unclear what the power to recommend approval signifies.

In Article 6, the members of CNPE are drawn from diverse ministries and sectors of society, which is good. However, the purpose of this article is undermined by Article 6.3, which has the MNRMEP appoint the three non-governmental representatives. These should be chosen by the sectors themselves; otherwise they will represent the Minister, rather than civil society, academia and the private sector. The expertise of the civil society and university representatives (Article 6.2(V and VI)) in "energy matters" should be broadly construed to include environmental and community rights, not only petroleum production. If this is an advisory body to help shape energy policy for the entire nation, it should be enlarged to include representatives of labor, rural communities and consumers. Members of the Government (six of the ten members are Ministers or their appointees) already have a large influence on policy-making; the purpose of a Council like this one is to incorporate more diverse perspectives.

Article 7.1(III) assigns the President of the CNPE (who is the Minister for Natural Resource, Minerals and Energy Policy, according to Article 6.1) the responsibility to bring its proposals to the Council of Ministers. We hope this does not prohibit other CNPE members from doing this and that it does not mean that CNPE proposals cannot be brought before other bodies, such as Parliament. This law should also specify that policy decisions proposed by CNPE should be published before or at the time they are brought to other bodies for consideration.

Article 8 empowers the CNPE to establish working groups and technical committees. It should specify that the existence, mandates and membership of such groups are publicly announced. Failure to do so in the United States enabled members of a single industry to dictate government energy and environmental policy, with negative consequences for both policy and democracy. Rather than giving these committees the option of involving civil society, agents and consumers in its deliberations, that involvement should be required and announced, with each sector deciding how to participate.

Article 9.2 also risks industry capture. CNPE should be able to draw on technical expertise from many sectors, not only the energy industry.

The minutes of CNPE meetings described in Article 10.1 should be published, as should its internal regulations (10.2) and its reports to the Council of Ministers (10.3). These reports are required during the last two months of each year; does this refer to November-December (the calendar year) or May-June (the fiscal year)?

Consistency in Government structure

Article 11.1(II) authorizes the Minister for Natural Resources, Minerals and Energy Policy to propose energy-related policies to the Council of Ministers. We hope that this authorization is not exclusive to this Minister, and that he and others are also empowered to propose policies related to energy conservation and sustainability.

Parts of this Article appear to contradict the responsibilities and powers of the MNRMEP listed in Article 20 of Decree-Law 3/2005 (restructuring the Constitutional government). Furthermore, several other Ministries have organic decree-laws defining their structures (e.g. Decree-Law 21/2006 for the Ministry of Education and Culture). The competencies and structure of the Ministry of Natural Resources, Minerals and Energy Policy should be defined in an analogous organic law, rather than in this draft law on Regulation of Petroleum Activities which prioritizes one sector of the Ministry's work and pre-empts more deliberate, coordinated design of the structure and responsibilities of the ministry.

Article 13 on the ARNP appears redundant with the separate ARNP decree-law. Our comments above regarding that draft law also apply to this Article, particularly that the ARNP succeeds the DNPG as well as the TSDA.

Similarly, Articles 14 through 17 are redundant with the PETROTIL statute, and our comments on that statute apply to those Articles.

Article 18.3 reserves the powers of the ARNP to the MNRMEP until the ARNP is instituted, but in fact many of these powers reside in the TSDA, as is recognized by Article 19.

Article 20 risks violating the Petroleum Fund Act, and should be explicit that "available resources" of the Designated Authority do not include petroleum revenues which must be deposited into the Petroleum Fund when they are transferred to the Government.

Article 21 appropriately preserves contractual rights of third parties, but should not prevent the MNRMEP or other competent bodies from revising prior acts of the Ministry, even within exclusive contract areas, provided that proper procedures are followed.

Conclusion

La'o Hamutuk thanks the Ministry of Natural Resources, Minerals and Energy Policy, its advisors, and others involved in this process for your consideration of our suggestions. We remain ready to provide further information, clarification and ideas, and look forward to continuing collaboration so that Timor-Leste can enact the best legal regime possible to manage this dominant, lucrative and perilous aspect of our nation.