

# Comments on Proposed Petroleum Regime

Thank you for the opportunity to participate in the public consultation about the proposed Petroleum Regime for Timor-Leste. We have also sought advice from those who know better, “experts” both from international and national.

Let me firstly, introduce briefly about LАBEH the “Mirror for the People” LАBEH is a Timorese non-governmental organization. Whose mission is to fight against corruption in the public and private sectors and to promote greater transparency and accountability, good governance and rule of law. This is our commitment, we have written several articles in our national newspapers with numerous radio talk shows in these same regards.

Since our main objectives are “Transparency and Accountability and combating corruption, and human rights”, our main research in regard to the proposed draft Petroleum Regime was in this area, we have also contacted other civil society organizations that also would be sending in their comments in other different areas. Being that we are a member of international community that engages in transparency and accountability around the world whose expertise and experience has served in many countries we believe that our comments and suggestions could be of a value to the draft Petroleum Regime.

Sound governance, taken a step further, is a subset of governance wherein public resources and problems are managed efficiently and in response to the critical needs of society. Effective democratic forms of governance rely on public participation, accountability and transparency.

Public accountability covers the spectrum of approaches and practices used by government to ensure that activities of and output meet intended goals and standards. While realization of the government goals and objectives is a subject of complex and long standing debate, financial accountability presents an urgent challenge that requires an immediate and practical solution, especially giving the rising concern for transparency and responsible governance in our country.

The perceived absence of integrity in our oil and gas funds deposit severely weakens the credibility of our democratic institution. Improving integrity, or developing and implementing strategies for prevention or control of corruption, is an integral part of ensuring accountability. Corruption, be it in the public or private sectors, results in the misuse of scarce resources that greatly affects the entire economy.

Corruption is a symptom of something gone wrong in the management of the state. The United Nations General Assembly, concerned about the seriousness of the problems posed by corruption, adopted a resolution on January 28, 1997 requesting that the Secretary General help Member States design strategies to prevent and control corruption.

In the words of the General Assembly resolution, corruption “may endanger the stability and security of societies, undermine the values of democracy and morality and jeopardize social, economic and political development” (Regulation 51/59).

The general Assembly resolution recognizes that the fight against and prevention of corruption ought to be part of any serious attempt to reform the governance institutions of developing and transition states. It calls on the Secretary General to work with Member States in developing national anti-corruption strategies.

This request fits well with Lalenok Ba Ema Hotu (LABEH) objectives on transparency, accountability and anti-corruption. LABEH defines corruption as “**a symptom of something gone wrong in the management of the state**”. We also define good governance as “**a process through which citizens and groups articulate their interests, mediate their differences and exercise their legal rights and obligations**”

We would like to extend our appreciation to the Government’s initiatives in conducting the public consultations for three days in Dili, Lalenok Ba Ema Hotu (LABEH) was present in this meetings but we are also disappointed in the little participation of the citizens during the consultations. However there is a need for greater engagement of the populations and the civil society in a matter that has to do with national interest. We would also add that the three-day consultations in Dili and few days in selected districts from 13 districts that made up our country is not a enough in a matter that effects the whole populations.

The people fought for 24 years to regain independence, to give only few days or weeks to decide their economic future is far too short for them to make research, seek opinions and advice to respond to a matter such as Petroleum Regime is again far too short.

After careful reading of the current draft proposed Petroleum Regime. LABEH estimate that it lacks suitable international research of best practice in transparency and accountability, that is why it should be important, prior to any new law creation, to apply a consultation strategy which involves the civil society as a whole.

Transparency enhancements initially in the provision of information and data would be the first step in designing a new map. Such a step requires political commitment, much more than it does in technical assistance. Freedom of information is one major obstacle to public scrutiny of the government’s activities and the use of public funds due to the government’s failure to provide relevant data.

LABEH wants the Parliament to pass Free Information Act to enable our people to enjoy their rights to access to information, freedom of speech and freedom of expression in accordance with the international Universal Declaration of Human Rights and the Timor-Leste constitution and the law.

Article 19 of the international Universal Declaration of Human Rights states: everyone has the right to freedom of opinion and expression; this right includes freedom to hold

opinions without interference and seek, receive and impart information and ideas through any media and regardless of frontiers.

Section 40 of the constitution of Timor-Leste provides Freedom of speech and information. Article (2). The exercise of freedom of speech and information shall not be limited by any sort of censorship. While in Section 23 of the constitution is stated that Fundamental rights enshrined in the constitution shall not exclude any other rights provided for by the law and shall be interpreted in accordance with the Universal Declaration of Human Rights.

The lack of transparency undermines the Timorese citizens' ability to enjoy their right to information as enshrined under Article 19 (2) of the ICCPR, which states. "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice"

In LABEH's view this right should be interpreted, as generally entailing a right of access to official information as well as information that is generally available. Even in cases where our government may not have violated its human rights treaty obligations, it has clearly undermined the ability of the people to enjoy their rights to freedom of expression.

There is no doubt that the proposed Petroleum Regime plays an essential role in our development process. Certainly the government decision of creating Petroleum Regime represents a great opportunity to develop a new model that meets the needs of our newly developing democratic nation. It also might be as the draft paper notes an occasion to implement anti-democratic measures with risky consequences for the Timor-Leste oil sector.

That is why it would be fundamental that before passing this Petroleum Regime, the Parliamentary members should join with the government to carry out the public consultation strategy which involves the civil society as a whole and particularly to those in the districts. This is one of the best ways to avoid unpopular laws that sometimes attempt against freedom of expression.

As a new democratic country, nothing more natural for our State authorities than the desire to create a new legislation and repeal norms established in former non-democratic or transitional periods. The establishment of new legislation is a complex task that requires the efforts of all sectors of the society and can be facilitated by certain tools.

LABEH is a member of "Publish What You Pay International" (PWYP) a coalition of over 200 NGOs from every continent which aims to achieve transparency and good management of natural resource revenues. We warmly welcome the government's

recognition of the importance of getting transparency in place in the early stages of the oil industry's development.

And for the government to be accountable and to maintain its commitment on June 17<sup>th</sup> 2003 at a high level meeting of the Extractive Industries Transparency Initiative (EITI) in London as stated by Prime Minister Mari Alkatiri. LABEH believes that the government must carryout its promises, on transparency and accountability for the process to be credible.

While LABEH welcomed the government initiative on the Petroleum Regime, we feel that the Petroleum Regime contains little detail of how transparency and accountability would be achieved. The terms of the Petroleum Regime do not cover the transfer of revenues to the government, nor do the Petroleum Regime provide in any detail for disclosure of revenue received by the government from the oil companies which would in turn support the government commitment for transparency and accountability.

The crucial aspect of any successful plan for stabilizing saving and productively investing oil revenues must account for the relative newness and weakness of both the civil service and the ruling governing politics. We think that our leaders do not yet have internalized rules that prevent misuse of revenue, civil servants will take time to internalize an ethic of professionalism in office. Civil society and NGOs has not fully developed the sense of entitlement to knowing how national resources are being utilized, due to these factors LABEH suggests that a law that provides clear penalties for violations might be the best way to ensure appropriate use of the oil and gas revenues.

Our government must fulfill its leadership role in impregnating revenue transparency in the Petroleum Regime; this is essential for our development, growth and poverty alleviation that could contribute significantly to meaningful and rapid progress on transparency and accountability.

The government should have mainstream transparency and accountability into the draft Petroleum Regime by requiring a mandatory disclosure of payments by the oil companies. This should be core condition for all the government structural adjustment for transparency and good governance.

**Specific issues to consider:**

- There should have been a title of the draft Petroleum Regime with “Transparency and Accountability” its chapter and article should have contained transparency as a fundamental principle.
- Set up a public information office regarding all dealings in the oil and gas sector where ordinary citizens can track the revenue from oil extraction.
- Requiring that government publish what the oil companies pay for the right to access and exploit oil and gas resources.

- Required disclosure should include taxes, fees, royalties and other payments, including signature bonuses, production-sharing agreements and other contracts vital to the tracking of revenue should also be disclosed.
- Publication of payments of each individual oil companies, as well as the government to publish what it receives, this type of conditionality is necessary for monitoring of transparency in the government.
- Action plans for establishing high standards of transparency for all budget flows for the awarding of contracts.
- Requiring the use of templates to shape mandatory arrangements.
- Revenues and expenditures must be reported in the media in the language that the population would understand.
- Petroleum Fund Management needs to include the four organs of sovereignty (the President, the Parliament, the Government and the Court) with representative from the civil society.

LABEH note, for example, that Sao Tome and Principe Model Oil Revenue Management Law prepared by Columbia University Oil Advisory Group included the basics of transparency and accountability in their law. The Government of Nigeria has recently committed to requiring oil and gas companies in Nigeria to individually publish what they pay the Government, as well as the government publishing what it receives.

LABEH would be concerned therefore, if the government were to be advocating a lower standard of transparency and accountability than to follow best practices of transparency and accountability. Timor-Leste ability to prosper in the post oil era will be largely based on its own ability to encourage the development of a diverse economy during the oil era. To increase transparency should be a condition for accountability and good governance.

The views expressed in this paper are the views of LABEH are not necessarily representing the views of other NGOs.

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