

Timor Leste Petroleum Fund discussion paper

November 2004

We thank you for the opportunity to comment on this paper. We warmly welcome the emphasis therein on the transparent and accountable management of Timor Leste's putative Petroleum Fund. Such measures will greatly increase the hope that Timor Leste will escape the 'resource curse' of weak growth, corruption, authoritarian government and instability that has afflicted so many oil-rich developing countries.

There need to be clear, specific and comprehensive provisions in the legislation that would govern the establishment and operation of the Fund to ensure that the government's aims are met in practice.

As the paper notes, it is not enough just to say how much money is actually in the Fund by itself. There also needs to be transparency of revenue flows from the oil industry into the Fund to ensure that everything is being properly accounted for. If companies publish what they pay to the government, and the government publishes what it receives, then there is an innate double-check built into the Fund's operations, which will allow more effective scrutiny of oil revenues and which would also help build public trust in the management of that money.

Such transparency provisions, if they are to be effective and durable, need to be embodied in the legal framework that governs the oil industry. A number of civil society organisations, including Global Witness, have suggested that companies should publish all petroleum-related payments to the government, and that the appropriate place to put this requirement would be the Petroleum Act, because this is the law that will govern the interactions of oil companies with the state.

We don't currently know what the final form of the Petroleum Act will be; if it does not contain a requirement for disclosure of payments by companies, then the issue of revenue transparency must be tackled as a priority in the law governing the Fund. We suggest that the Sao Tome and Principe revenue management law, which incorporates an oil fund, could be a useful model for Timor Leste of how to assemble the various provisions in one law.¹

¹ Available in English and Portuguese at www.earth.columbia.edu/cgsd.

The commitment of the current government of Timor Leste to transparency and public consultation has been exemplary; however, politics is always uncertain and future governments might not share the same commitment. Therefore we think that the Fund's governance and transparency should be strongly enshrined in primary legislation rather than in administrative decree.

Similarly, we strongly endorse the proposal for external, independent audits. Legislation needs to stipulate that the auditor will be chosen through a competitive tender with transparent procedures, and that the conclusions of the auditor will be published in an accessible form, without redactions or omissions. The audit should not only cover the operations of the Fund but also the flow of revenues from industry into the Fund and payments out of the Fund to government departments (to ensure that payments have only been made for approved purposes). The audit should take place at least annually.

None of this would constrain the right of the government and parliament to allocate revenues for public purposes via the national budget. It would simply ensure that the sources and uses of petroleum revenues are clear to citizens.

It also very important that the fund's governing legislation mandates clearly that *all* revenues from oil extraction are to be paid into the fund. This will prevent diversion or misappropriation of money due to the state has plagued countries like Angola and Equatorial Guinea and Indonesia because this operation has not been legal mandated.

The law needs to spell out that all payments made by petroleum companies, their agents and representatives to the government of Timor Leste, its agents and representatives, and relating to the discovery, exploitation, marketing and sale of petroleum, will be paid into the Fund and publicly disclosed by the payer within a specified time period.

The definition of such payments needs to be comprehensive. If it is too restrictive, then companies or people wishing to make improper payments will simply describe their payments so as to fall outside the definition and thus avoid disclosure. The purpose of each payment should also be described – eg royalty, production bonus etc.

The law should require that payments made *on behalf of the petroleum industry by third parties* should go into the Fund, and be declared. Companies that want to pay bribes tend to use third-party consultants to make the payments, so as to obscure the connection between the company and the bribe. If all legitimate payments had to go into the Fund and be declared, this risk would be avoided.

The law needs to spell out clearly the responsibilities of all officials involved in running the Fund and lay out the conditions under which money may legitimately be transferred from the Fund (for example, that money is only allowed to be transferred to the bank accounts of government departments and other institutions that spend public money, and never to individual officials or private persons.) There needs to be an effective legal remedy for dealing with state officials or anyone else who breaks these laws.

Timor Leste could actually ban all petroleum-related payments to the government that are not paid into the Fund. This provision, by making clear that payments into other accounts are illegal and invalid, will protect companies against any future requests for “side payments” by giving them an unambiguous reason to refuse.

We also strongly endorse the idea of a Council of Eminent Persons to monitor the Fund and inform Parliament of all aspects of its operation: in fact, we believe that it would be a serious mistake to create the Fund without an independent oversight body.

We suggest that:

- This Council should publish all its reports to Parliament and its members should be accessible to the media and the public of Timor Leste.
- The Council should be independently funded: that is, funded from a source which cannot be constrained by the government of the day, and with enough money to be able to carry out its tasks effectively.
- The mechanism for choosing Council members should be as broad-based as possible and that it should include representatives of ordinary citizens and civil society organisations.

We believe that these suggestions could easily be integrated into the Petroleum Fund law without creating significant extra cost or impairing the efficient working of industry or government. Indeed, for a small outlay in terms of resources and effort, they would reap a huge return by narrowing the scope for future corruption of oil and gas revenues.

We think it speaks very well of the government’s commitment to consultation and good governance in the oil sector that we have had this opportunity to comment and we thank you again for the opportunity. We hope that we will get an opportunity to discuss the detailed legislation governing the Fund in due course.

Sincerely,

Global Witness
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