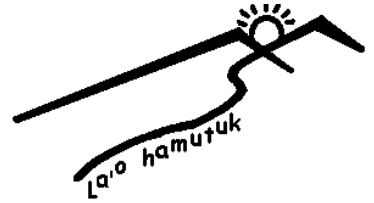


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**Submission to the
National Directorate for Environmental Services
Democratic Republic of Timor-Leste**

**from
La'ó Hamutuk**

regarding the

Reliance 2D/3D Seismic Survey Environment Plan

24 March 2008

Summary

- This public consultation is too brief, not publicized and inappropriately conducted. It violates guidelines of the National Directorate of Environmental Services and policies of the Ministry of Economy and Development.
- Notification and documents for consultations should be provided in timely fashion, accessible languages, in both paper and electronic media, and with permission to circulate to others.
- The proposed law on Environmental Impact Assessment should be made available for public comment before it is approved by the Council of Ministers.
- Generic legal framework and oversight mechanisms for such projects should be in place before the projects are conducted. This includes public consultations, environmental regulations and enforcement mechanisms.
- The proposed Emergency Response Plan contains contradictions and downplays significant dangers. It postulates an emergency response capability that does not exist in Timor-Leste and prevents timely public information.
- The proposed Environmental Plan contains internal contradictions and dismisses many risks as negligible rather than seriously trying to reduce them.
- The statutory framework is incomplete, and needs to recognize the marine component of the National Park. Reliance should be asked to comply with Australian standards when they are stricter than Indonesian ones.
- Timor-Leste does not yet have the legal framework or the capacity to oversee marine projects like this one.
- Twenty-minute slow starts should be done every time the acoustic array is fired up.
- Acoustic operation should be suspended if whales are sighted within 2 km, including at night if whales were seen during daylight hours.
- Timor-Leste needs to build on its experience with previous seismic surveys, developing effective consultation and enforcement prior to approval of drilling or onshore operations which are much more dangerous to our environment.
- *La'o Hamutuk* raised many of these concerns in relation to previous surveys, but they have not yet been addressed.

Introduction

La'o Hamutuk thanks the National Directorate for Environmental Services (DoNES) for the opportunity to participate in this important consultation. This is the second time the public has been invited to comment on an environmental plan for petroleum-related activities. Although Reliance's proposed 2D/3D Marine Seismic Survey involves less environmental risk than other petroleum projects, we are gratified that it has been opened for limited public consultation, and we welcome the chance to be part of the discussion on 11 March and to submit this written testimony.

Reliance's seismic survey has been delayed at least four months, creating time to improve the Environment Plan that would not have existed if the survey had been done on schedule. We are glad that DoNES and Reliance are willing to revise the plan, and offer these suggestions in the hopeful spirit that they will improve it.

This submission discusses some general concerns about public consultation and legal framework, as well as the Emergency Response and Environmental Plans. Future public environmental consultations could be based on this precedent, so *La'o Hamutuk* believes it is important to suggest how the process can be improved.

The consultation process

We learned of this consultation less than one week before it took place, and only by accident from a source outside Timor-Leste. There was no mention in the media, and nothing on any website. No NGO or civil society organization was told about it by any person or agency within the Government of Timor-Leste until we inquired, and even then no one other than La'o Hamutuk received information about the 11 March meeting. Although DoNES asserted before and at that meeting that other NGOs had been invited, those NGOs told La'o Hamutuk they did not receive any notification of the consultation process or the meeting.

La'o Hamutuk has made written submissions to every public consultation related to petroleum projects or legislation since 2004, including Eni's environmental plan for their marine seismic survey last year.¹ We hope that DoNES and other parts of the Government are aware of our interest in these issues, and would inform us of consultations like this one.

More fundamentally, some in Government appear to believe that "stakeholders" are the only ones who should have input into government decisions, and that the citizens of Timor-Leste, as well as NGOs and other civil society organizations, are not "stakeholders." In a democratic state, important decisions are not made in secrecy, with only those with a vested interest participating. The people of Timor-Leste are the owners of the oil and gas resources being explored, and their children and grandchildren must live with the consequences of decisions which are made today, long after current officials and companies have departed. We urge MED, DoNES, DNPG, SERN and others to consider the citizenry as stakeholders, and to ensure that they are consulted prior to important decisions. The previous Government did this a number of times, but the Fourth Constitutional Government has not.

Like the Timor-Leste Government, civil society (including La'o Hamutuk) often relies on outside experts to expand our capacity and provide critical analysis. To do this, we need electronic copies of draft documents, so that we can share them with others and make more accurate, comprehensive submissions. In this case, only paper photocopies were made available to us, and some pages were unreadable because the original had been in color.

Reliance submitted their draft Environmental and Emergency Plans to the Government more than three months ago. They should have been posted on a Government website or otherwise made available at that time, so that people would be aware of the plans and have time to analyze them. The Government or Reliance should have translated them

¹ See <http://www.laohamutuk.org/Oil/Project/07EniEPseismicLH.htm>

into Tetum or other accessible languages, and given public notice through the media and/or by a letter to potentially interested organizations.

Reliance had planned to start this seismic survey in March 2008; such a hasty public consultation allows very little time to implement desirable changes which could result from the consultation. Fortunately, the lack of available vessels has delayed the survey for four months or more, allowing time for revisions.

The Emergency and Environmental Plans both say "No part of this work may be reproduced or transmitted in any form ... without permission in writing from Reliance Industries Limited." Although secrecy may be habitual in the petroleum industry, it is inappropriate for public documents and violates Article 40 of Timor-Leste's Constitution, as well as making meaningful public consultation impossible. These restrictions should be removed before the plans are approved.

A few years ago, DoNES developed a series of Guidelines for environmental plans, management and consultation. Guideline #5 on "public engagement" spells out components of an effective consultation process, none of which were employed for this consultation. The Guideline states that "The public has the right to participate in the decision-making process, and it is the responsibility of the Proponent and Directorate of Environmental Services to ensure that the public has adequate opportunity to do so." This consultation does not meet that standard.

Our submission on Eni's seismic environmental plan,² as well as others³ during the past few years, spell out additional recommendations regarding public consultation. We will not repeat them here.

During the meeting on 11 March, La'o Hamutuk enquired about the draft law on Environmental Impact Assessment, currently pending action by the Council of Ministers. Although this law relates to a process where public consultation will not be essential, DoNES refuses to make a draft available.

This secrecy suppresses democracy and prevents Timor-Leste from developing the best possible legislation. It also contradicts the program of the Ministry of Economy and Development as enacted by Parliament in the 2008 RDTL State Budget.⁴ The Budget Law specifies one of the main roles of the Ministry as "carrying out strategic environmental assessments of plans and programmes, and coordinate the processes to assess the environmental impact of national level projects, **including public consultation procedures.**" The Action Plan in that budget includes the goals

- "Diffuse information on Ministry activities at internal and external levels."
- "Ensure accountability before the Government and the community in what concerns financial, environmental and security aspects of the extractive and energy industries."

² See <http://www.laohamutuk.org/Oil/Project/LHSubmissionEni3DseismicEn.pdf>, page 3.

³ See, for example, our submissions on the proposed restructuring of petroleum regulation in 2007 (<http://www.laohamutuk.org/Oil/PetRegime/Restruc/07RestructIndex.htm>), the 2005 Petroleum Act (<http://www.laohamutuk.org/Oil/PetRegime/LH sub1 Eng.htm>), and the 2004 Petroleum Fund Act (http://www.laohamutuk.org/Oil/PetFund/Consult/LH PetFund submission.htm#Public_consultation).

⁴ See 2008 General Budget of the State, Budget Book 1, pages 206-215. Available at http://www.laohamutuk.org/misc/AMPGovt/08/BP1_2008_En.pdf

The discussion on 11 March clarified some concerns. Reliance responded to a number of important issues raised by members of the Government and La'o Hamutuk. We hope that a good transcript has been made of this meeting, as we did not see any recorder or person taking detailed notes. If Reliance is to be expected to follow through on their reassurances, the regulators will need accurate verification of what they promised. We were also concerned about the poor interpretation between English and Tetum at the meeting; in the future it should be clear in advance what language a consultation will be in and who will provide a competent interpreter, if required.

La'o Hamutuk has not seen any notes from the 11 March meeting, or any revisions to Reliance's plans. We look forward to receiving ongoing reports from this process, as well as the plans as they are eventually approved, as well as responses from the relevant departments about the issues we have raised about the consultation process.

Emergency Response Plan

We are not sure if the Emergency Response Plan (ERP) from Reliance is intended to be part of this consultation. However, since we were given a copy, we will offer a few suggestions.

Like the Environment Plan, the ERP appears to have been cut and pasted from several sources. Consequently, it contains a number of contradictions and inconsistent statements.

For example, the ERP (Section 2.1) says that March and April is "non monsoon season, hence it is not anticipated any cyclones or storms." However, Reliance's Environmental Plan (Section 3.1) is more accurate: "in the east and south (of TL) the rainy season is at its height in April. ... Cyclones most often occurring in the months of December to April."

As the survey will now be conducted in July or August, this particular inconsistency is not important, but it represents a pattern which makes these plans impossible to implement or verify, in that those responsible for carrying them out cannot know which assertion is correct. It also exemplifies another worrying feature of these plans: stating that a particular risk is not important, rather than specifying how the risk will be dealt with. The first two sentences of section 2.1 should be deleted or corrected.

Section 2.2 should specify whose helicopter would be used if a medevac becomes necessary, and to where the injured personnel will be evacuated. The information throughout this section – the list of hospitals, reliance on the 112 emergency number, etc. – hypothesizes capacities of emergency response and medical care far beyond those in Timor-Leste today. These should be revised to match current realities. In particular, dialing 112, especially from a satellite phone on a ship at sea, is unlikely to result in effective response.

This section also says twice that Timor-Leste government and hospital personnel are forbidden to communicate with the media, a violation of Timor-Leste's constitution. Given that the "corporate authorized spokesperson for RIL" is unlikely to be in Timor-Leste at the time of an emergency, this effectively suppresses all public information and should be deleted.

Section 2.5 says that “rescue and fire fighting personnel” are to be deployed immediately to the site of a fire. Where are these expected to come from, since the Timor-Leste government has no ships, helicopters, or personnel trained to respond to fires on vessels?

Many of the Emergency Response Team contacts are missing or incorrect. These should be corrected and completed before the seismic survey is conducted. It is also unclear which of Timor-Leste’s domestic and international police forces are to be called upon.

Appendix A on the Bunkering procedure says “night operation permitted or not.” This should be corrected to read “bunkering is to be done only during daylight hours,” as is implied in Section 6.1.6 of the Environmental Plan. Smoking should be prohibited on the entire ship while refueling, both in port and at sea.

Environmental Plan

Like the Emergency Response Plan, Reliance’s Environmental Plan has been compiled from a number of sources, and therefore contradicts itself and is impossible to apply in practice. We pointed out some of these below, and urge a careful examination and revision of the entire plan with an eye toward how it will be applied in practice.

We are particularly worried by such statements as “overall impact (of air gun noise) on marine biota is considered to be negligible.”⁵ This tone pervades this plan, such as “the effects are expected to be of a minor nature” (page 24), “the encounter of fishing activity during the survey area is minimal” (page 21), “minimize the risks, though minor” (page 29), the many risks termed “negligible” or “tolerable” without mitigation (Table 4.1). Sentences like this tell the subcontractors that they don’t need to conscientiously implement the procedures in Appendix C, and should be deleted. Given that industry practice and this plan include extensive procedures for minimizing these impacts, is it incorrect and inappropriate to describe them as “negligible.”

Reliance has little experience operating in democratic countries whose Governments safeguard their citizens and environment. In the 11 March meeting and other conversations, Reliance representatives often assure that the professionalism of their subcontractor and their personnel will protect Timor-Leste’s environment. Environmental destruction results from many activities of the oil industry worldwide. Furthermore, Reliance and their subcontractor have a strong financial motivation to complete their survey as quickly as possible. Consequently, the Government must require Reliance to prepare and implement a serious, unambiguous and effective Environmental Plan, and Reliance must be held accountable if the plan is not followed.

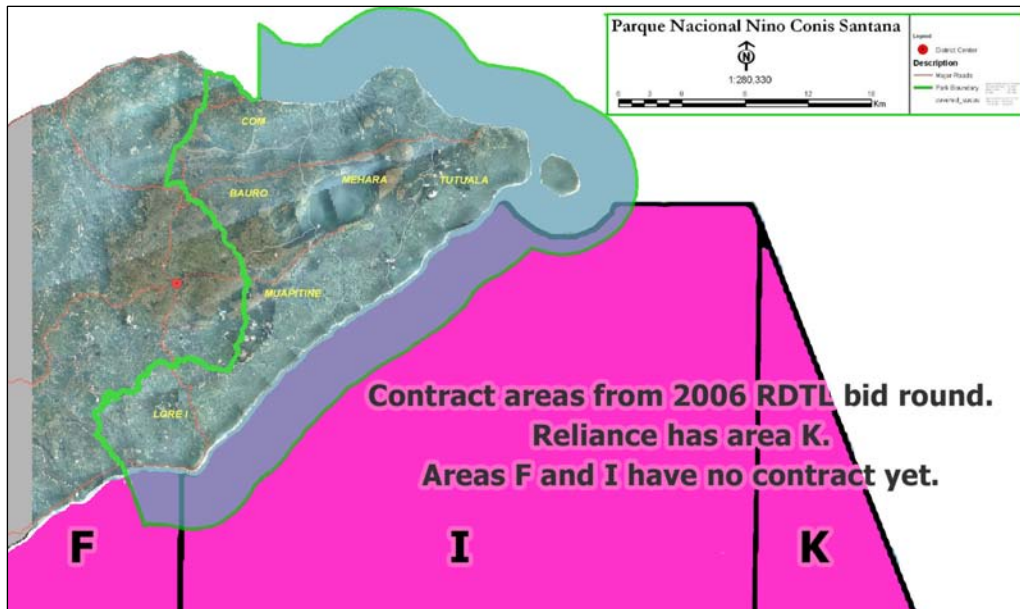
Statutory Framework

Timor-Leste has not yet enacted laws defining environmental practices, including public consultation. According to the RDTL Constitution Article 165 and RDTL Law No. 10/2003, Indonesian laws in effect on 25 October 1999 are applicable in Timor-Leste in the absence of RDTL law or UNTAET regulations.

⁵ Reliance Environmental Plan Section 4.1, page 25.

The list of applicable laws in section 1.4 of the Environmental Plan is incomplete; it should also include Timor-Leste's Law on Petroleum Activities (No. 13/2005)⁶ and RDTL Government Resolution No. 8/2007 establishing Nino Konis Santana National Park.⁷

La'o Hamutuk has created the map below to show how close the marine component of the park is to the RIL contract area. The Plan should be amended to discuss how RIL plans to interact with the marine park, which surrounds the closest coastline to Block K, coming as close as 10 km to the contract area.



When Eni conducted a seismic survey in five blocks in Timor-Leste territory in 2007, they stated that their Environmental Plan was based on industry best practice and complies with the JPDA Petroleum Mining Code and Article 7 of the Timor Sea Treaty, which incorporate Australian law. DoNES and DNPG officials persuaded Eni to comply with laws and regulations applicable in the Joint Petroleum Development Area, although the activity was in RDTL sovereign territory. When Australian law protects the environment better than Indonesian law, this is also appropriate for Reliance.

The confusion about applicable law and the inadequate *ad hoc* nature of this public consultation process are two examples of a more fundamental problem – undertaking projects before a legal framework is in place to regulate them. By putting the cart before the horse, Timor-Leste's people and the companies we contract with are in legal limbo, initiating activities which may later be regulated under new laws. At that time, projects will either have to be given grandfathered exceptions to legal rules or be modified to conform to new laws as enacted. Either of these can lead to poor results and unnecessarily complex regulation; it would be better for Timor-Leste to enact appropriate legislation before undertaking such projects.

⁶ Available at http://www.mj.gov.tl/jornal/antigos/page2/113_05.htm in Portuguese or <http://www.laohamutuk.org/Oil/PetRegime/Petrol%20Act%20290705.pdf> in unofficial English translation.

⁷ Available at <http://www.laohamutuk.org/Oil/LNG/Refs/075RDTLRes8-2007PNSantana.pdf>

Enforcement responsibility and capacity

A further consequence of Timor-Leste's young state is inadequate capacity for enforcement, something which became clear during the discussion of illegal fishing during the 11 March meeting. Who will inspect, enforce and supervise the survey to ensure that it complies with this Environmental Plan and applicable laws? What court system will apply? Some in Government appear to believe that Reliance's good intentions are sufficient; *La'o Hamutuk* does not share this confidence and believes that effective regulation, oversight and enforcement are essential.

This will be even more critical as potentially more dangerous projects, such as drilling, extraction or on-shore operations, are initiated over the next few years, and we strongly encourage Timor-Leste to establish its legal framework and strengthen its enforcement capacity before they begin.

Reliance's Environmental Plan

In general, Reliance appears to have considered the most important risks and proposed reasonable measures to minimize them, although the mixed messages discussed above raise questions about the sincerity of their effort. Unfortunately, *La'o Hamutuk* does not have the technical expertise to conduct a detailed review in the short time available.

Section 3.2 needs revision in light of recent and pending legislation on protected areas.

Sections 3.3 and 6.1.4 downplay the number of shipping vessels expected to pass through block K. Eni's plan says that "A large number of vessels are expected to be transiting the area as it is an important shipping route and is adjacent to a major trade route."⁸ It is possible that nearly all of the hundreds of ships which annually pass through blocks A,B,C,E and H will go around block K, but we are doubtful.

The plan is confused about how to reduce impacts on marine mammals. It should state that soft start procedures, lasting at least 20 minutes (not 10-20 minutes), be followed without exception every time the acoustic array is fired up. Sentences like "they do not apply to sightings of dolphins ..." (pages 41 and 61) should be deleted.

Appendix C spells out more effective and consistent procedures than the Plan itself, and we recommend that the plan explicitly state that the procedures in Appendix C are to be followed at all times.

Seismic operation should not be conducted at night or during times of low visibility if three or more sightings of large whales within 2 km occurred the previous day, as per Eni's practice.

The second bullet point under "Stop Work Procedures" in Appendix C (page 60) should be deleted. At this distance, ship personnel cannot know whether whales are "skirting the edge of the 2km limit." If a whale or whales are within 2 km of the ship the acoustic source should be shut down, regardless of who is considered to be approaching whom.

⁸ Eni draft Environmental Plan, Section 3.5.2, page 24. Available at http://www.laohamutuk.org/Oil/Project/3D_Marine_Seismic_Survey_EP_Rev_0LH.pdf

Learning from the past

This is the third offshore seismic survey conducted in Timor-Leste sovereign territory since independence, including Eni's 2007 seismic survey and the 2004 2D seismic survey. However, the processes of public consultation and enforcement have not improved, and La'o Hamutuk finds ourselves raising the same concerns year after year.

We urge the Government and the companies to do better. Although offshore seismic surveys are relatively benign, they are a good opportunity for Government, companies, and civil society to develop these processes.

In the next year or two, DoNES and DNPG will be asked to authorize offshore exploratory and production drilling, as well as onshore activities. If environmental planning, review and enforcement are not far more effective by then, Timor-Leste's environment will be threatened. The companies will go away when no profitable oil and gas is left, but current and future generations of Timorese people will have to live with the consequences of their actions.