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The CMATS Treaty

Earlier this year, the governments of Australia and Timor-Leste signed a treaty to explore and exploit oil and gas fields of the Timor Sea outside the Joint Petroleum Development Area* (JPDA). The Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS Treaty), often referred to in Timor-Leste as the “Sunrise Agreement,” allocates oil and gas revenues from formerly disputed areas (see maps 1&2, pages 2&3), but delays deciding which country’s territory includes which areas of the sea and seabed. This enables international companies to proceed with petroleum projects, and will provide additional revenue to both countries, but does not resolve the essential question of maritime boundaries.

The two sides finalized the CMATS Treaty in November 2005, after two years and more than a dozen rounds of talks, and signed it in Sydney on 12 January 2006. This treaty resolves a long-standing dispute between the two governments, at least for the next 50 years. It now remains for the Treaty to be formally ratified by each country’s Parliament.

* *Technical terms in this article are defined in a glossary on page 10 and are underlined the first few times they are used.*

Timor-Leste and Australia will each receive half of the upstream (extraction, but not refining or liquefaction) revenues of the large Greater Sunrise field, which is twice as close to Timor-Leste as it is to Australia. Australia will get all of the proceeds from other areas of the Timor Sea south of the 1972 Australia-Indonesia Seabed Boundary and outside the JPDA but closer to Timor-Leste, including Laminaria-Corallina, Buffalo and other areas being explored now or in the future (see map 1). Before CMATS, Timor-Leste protested Australia’s development of these areas, which should belong to Timor-Leste under current international legal principles.

Long-term petroleum prices are impossible to predict accurately, but some estimate that the government of Timor-Leste will receive US\$14 billion in total from the Greater Sunrise field over the next 40-50 years. Australia will receive as much or more. Although the Sunrise field was discovered in 1975, its development has been stalled for the last few years due to the boundary dispute (see chronology below). Sunrise operator Woodside Petroleum suspended all work in late 2004, and is waiting for the CMATS Treaty to be ratified before resuming the project.

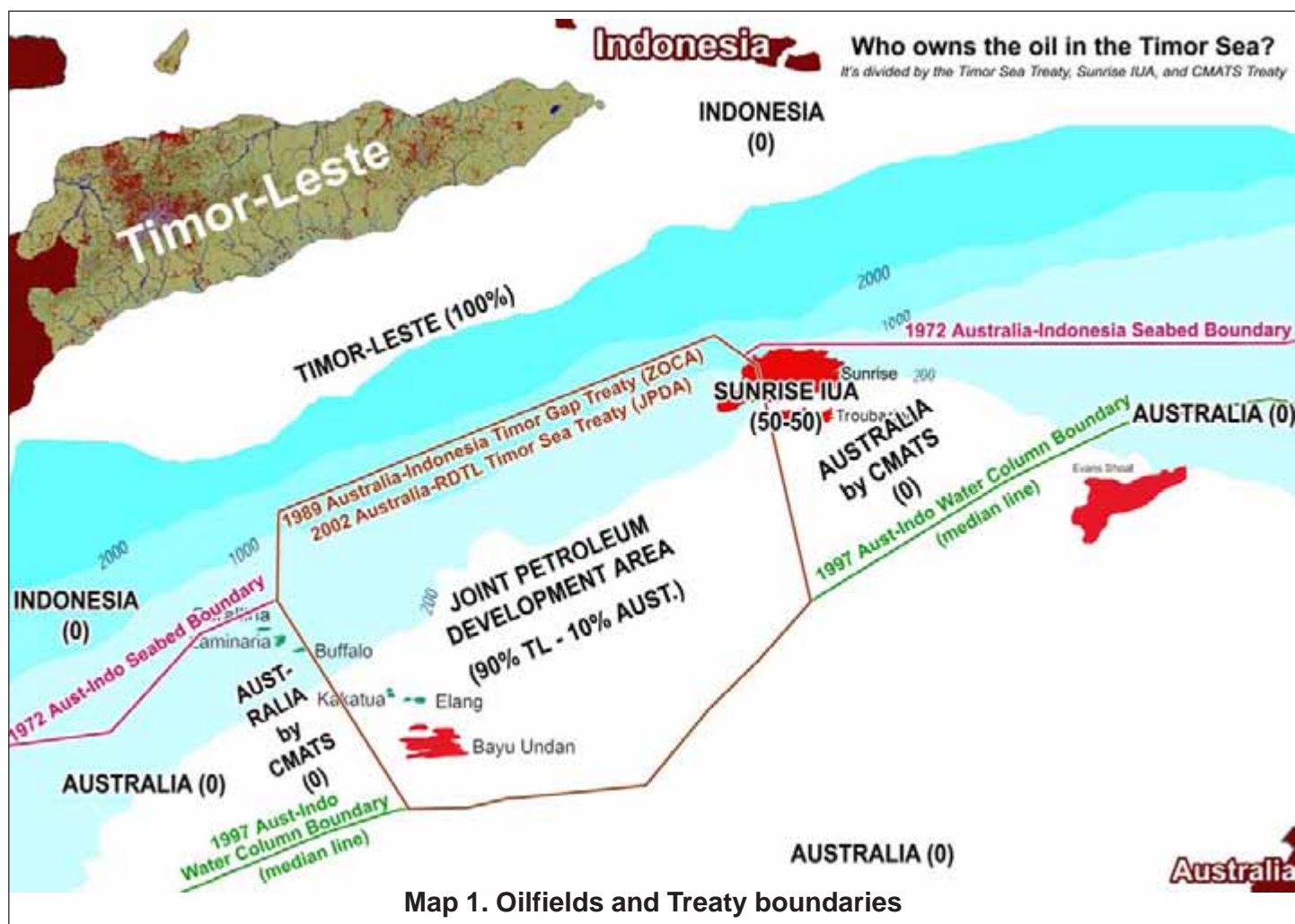
(Continued on page 2)



Foreign Ministers José Ramos-Horta and Alexander Downer after signing the CMATS Treaty in Sydney on 12 January 2006, with Prime Ministers Mari Alkatiri and John Howard looking on.

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If Woodside and its partners (ConocoPhillips, Shell and Osaka Gas) decide to build a gas pipeline to Timor-Leste to liquefy Sunrise gas here for shipment to overseas customers, this could increase the income and raise the local economic level of Timor-Leste, helping to propel the nation's economic development. This decision will be made during the next few years, and both Timor-Leste and Australia's Northern Territory are actively campaigning for the project.

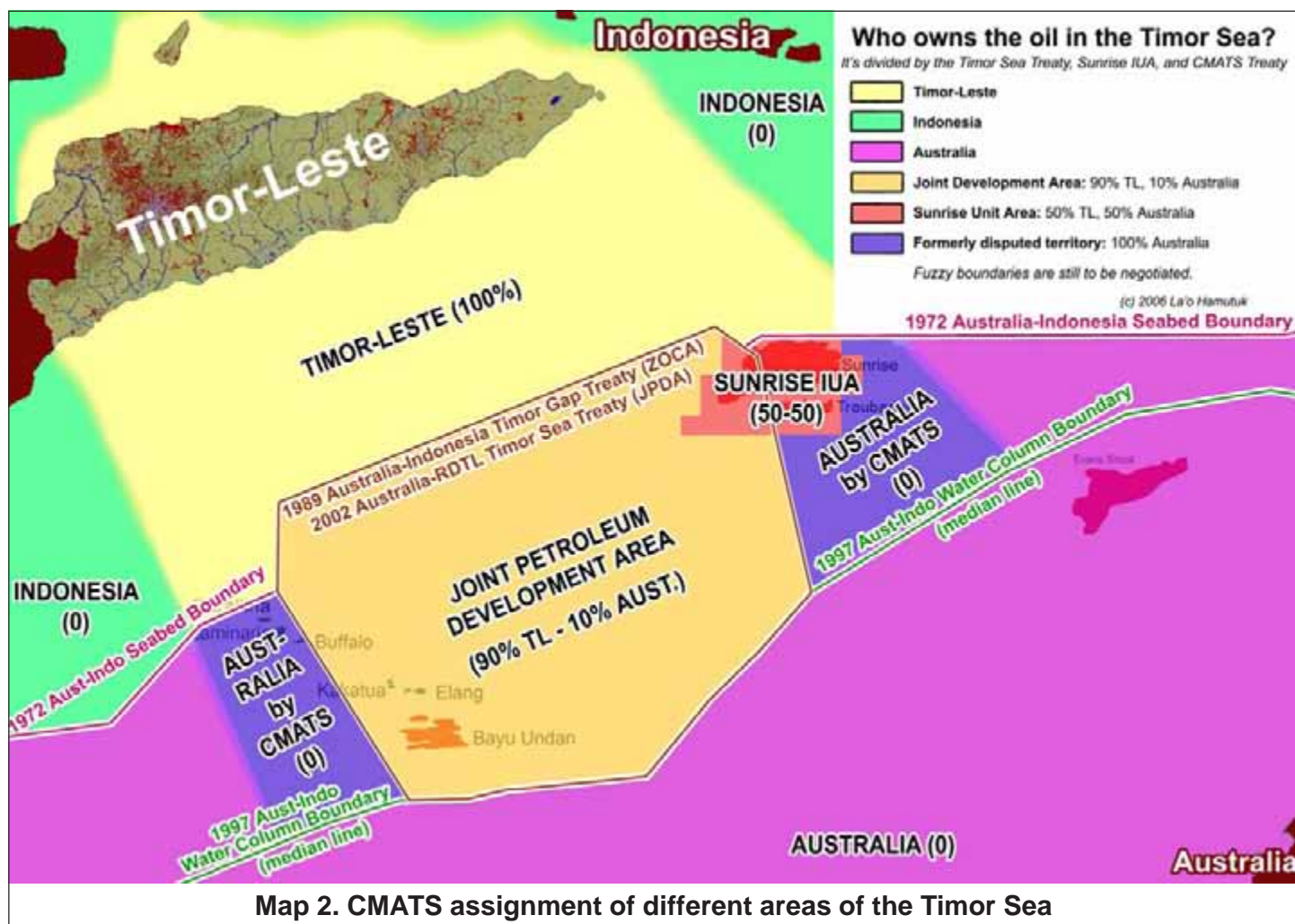
The governments of Australia and Timor-Leste are hailing the CMATS Treaty as a major success. Although Australian officials claim that the treaty demonstrates Australia's generosity toward its poorer northern neighbor, Timor-Leste officials have pointed out that Australia also benefits substantially from the Treaty, including US\$2 billion in tax revenues from the Darwin LNG plant (for Bayu-Undan) and US\$2.5 billion from formerly disputed fields. Manuel de Lemos of the RDTL Timor Sea Office stated that "It is inappropriate to characterise the result of these negotiations as a 'very generous' gesture on the part of Australia. The resources at stake in these negotiations were claimed under international law."

In addition to petroleum revenue, Timor-Leste conceded what many in civil society believe is the critical issue of national sovereignty, accepting Australia's illegal maritime continuation of the brutal Indonesian occupation of Timor-Leste's territory by deferring any process to establish maritime boundaries until all oil and gas in disputed areas has been extracted and sold.

Some in Timor-Leste's government have expressed concerns about Indonesia's possible intervention in the maritime boundary negotiations with Australia, which may have been a factor in Timor-Leste's signing an agreement at this time. However, Timor-Leste and Indonesia still have to settle their maritime boundaries, and the CMATS Treaty (see "fishing rights" below) leaves some questions open for that negotiation. Furthermore, it is doubtful that Indonesia could legally intervene in the Australia-RDTL negotiations, since Indonesia and Australia established their seabed boundary in 1972, and all of the territory under discussion with Australia was conceded by Indonesia at that time.

La'o Hamutuk has written many articles about Timor-Leste's oil and gas development. This one focuses on the CMATS Treaty and the process of negotiations which led up to it. Beginning with a review of this history, we describe the specifics of the treaty (p. 8), followed by analysis, recommendations, a glossary (p. 10) of underlined technical terms used in this article and a timeline (p. 12).

Our overall conclusion is that the Treaty is an improvement on what Australia had been prepared to offer in 2002 and 2003, but still has some serious problems which we believe could be remedied by continuing the negotiations, accompanied by an ongoing campaign by civil society in Timor-Leste, Australia and elsewhere. Such a campaign has moved Australia significantly over the last two years and could be even more effective if continued.



Background and history

Timor-Leste is the newest country in the world. Independence was obtained through a long struggle that left the country with some problems, including establishing its sovereignty over land and sea. This sovereignty is not just about oil and gas, but also about other economic resources, security and, most importantly, defining the nation's territory. Many in Timor-Leste believe that our national independence will not be complete until our territorial sovereignty is accepted by our neighbors.

Australia has been working to expand its access to its neighbors' Timor Sea oil and gas fields since the 1970's, pressuring both Indonesia and Timor-Leste to concede territory which should be theirs under current legal principles, which establish such boundaries half way between the two nations' coastlines. But rather than decide according to law or by impartial third-party arbitration, Australia has insisted on bilateral negotiations. This allows the difference in the two countries' economic and political power to influence the result and strongly favors the more powerful nation. The last four years of negotiations between Timor-Leste and Australia provide evidence: Australia's government repeatedly demonstrated its lack of respect for the national sovereignty of its newly-independent neighbor, although the Australian people have often protested their government's arrogant approach to Timor-Leste.

Unfortunately, the CMATS Treaty prolongs this inequity by requiring that any disputes under the treaty be settled by bilateral negotiation rather than legal process.

The CMATS Treaty results from a diplomatic process lasting more than 30 years, and it will be in effect for 50 more (see timeline page 12). This chronology includes the most important events in that process. (A more detailed chronology through the end of 2002 was in *La'o Hamutuk Bulletin* Vol. 3 No. 8.)

Chronology of Timor Sea Negotiations

1970: Australia and Indonesia begin negotiations on seabed boundaries, ignoring Portuguese objections that the seabed should be demarcated half way between Timor and Australia. Australia and Indonesia sign treaties "Establishing Certain Seabed Boundaries" on 18 May 1971 and 9 October 1972, which come into effect in November 1973. (Map 1). These treaties are based on the continental shelf principle, which is biased in favor of Australia. Because Portugal did not participate, the other two countries could not complete the line between Portuguese Timor and Australia, creating the "Timor Gap."

1975: Greater Sunrise oil and gas field discovered.

7 Dec 1975: Indonesia invades Timor-Leste.

1978: Australia recognizes Indonesia's *de facto* annexation of Timor.

1979: Australia accords legal *de jure* recognition to Indonesia's annexation, opening the way for Australia to negotiate with Indonesia about a maritime boundary to close the Timor Gap. Over the next ten years, Australia and Indonesia try to

negotiate a seabed boundary south of Timor-Leste, holding more than a dozen negotiating rounds. Although the countries cannot agree on a seabed boundary to close the Timor Gap, they eventually make an arrangement to share oil revenues.

11 Dec 1989: Australia and Indonesia sign the Timor Gap Treaty in an airplane flying over the Timor Sea. The treaty establishes a Zone of Cooperation (ZOC) between Timor-Leste and Australia (later called the JPDA), north of the median line. It provides for Indonesia-Australia joint exploration of the illegally occupied territory, with revenues shared 50-50. The treaty is ratified, taking effect on 9 Feb 1991. (Map 1)

11 Dec 1991: Australia and Indonesia award production sharing contracts to Phillips Petroleum (which later became ConocoPhillips), Royal Dutch Shell, Woodside Australian Energy (later, Woodside Petroleum) and other companies to explore and exploit resources in the Timor Gap Zone of Cooperation. Contracts continue to be awarded, and explorations continue, throughout the 1990s. Several fields are discovered in 1994 and 1995, with production beginning in 1998 at Elang-Kakatua in the JPDA, and in 1999 at Laminaria-Corallina just outside the ZOC. (Map 1)

14 Mar 1997: Australia and Indonesia sign a treaty covering the water column boundary but not the seabed resources, under the median line principles established by the United Nations Convention on the Law of the Sea in 1982. Because Indonesia's occupation of Timor-Leste was terminated, this treaty is never ratified. (Map 1)

1999-2001

30 Aug 1999: Timor-Leste's people vote overwhelmingly to reject integration with Indonesia.

Oct 1999: Seven oil companies led by Phillips Petroleum approve development of the Bayu-Undan gas and oil field, in the ZOC.

Nov 1999: Woodside's Laminaria-Corallina project begins producing oil. Since then the companies extract nearly the entire reserve, generating more than US\$1.3 billion for the Australian government. Some or all of this revenue would be Timor-Leste's under UN Law of the Sea principles. The 2006 CMATS Treaty marks the end of Timor-Leste's protests over this theft of its resources.

10 Feb 2000: Australia and UNTAET sign an interim Memorandum of Understanding, to continue the 1989 Australia-Indonesia Timor Gap Treaty terms but replace Indonesia with Timor-Leste. These agreements specify a 50-50 division between Australia and Timor-Leste of oil and gas production from the Joint Petroleum Development Area (called the Zone of Cooperation under the Timor Gap Treaty).

Oct 2000: UNTAET begins negotiations with Australia for a longer-duration agreement over division of Timor Sea resources, but not about maritime boundaries or the EEZ. In April 2001 Australia reiterates that it will not discuss formal maritime boundaries in the Timor Sea.

5 July 2001: UNTAET and Mari Alkatiri, sign the Timor Sea Arrangement with Australia. Under this Arrangement, which

replaces the February 2000 MOU, Timor-Leste will receive 90% and Australia 10% of upstream oil and gas revenues from the JPDA. The JPDA inherits the ZOC from the 1989 Timor Gap Treaty, altering only the division of revenues. The largest gas field, Greater Sunrise, is deemed to lie 20% in the JPDA and 80% in Australian territory.

2002

21 Mar 2002: Australia secretly withdraws from international processes for resolving maritime boundary disputes under the Law of the Sea (UNCLOS) and the International Court of Justice. In addition to demonstrating that Canberra knows its legal arguments are weak, this action prevents Timor-Leste from bringing the dispute to an impartial third-party arbiter, forcing it to rely on inherently unequal negotiations.

19 May 2002: Timor-Leste civil society groups and opposition political parties protest the imminent signing of the Timor Sea Treaty between Timor-Leste Prime Minister Mari Alkatiri and Australian Prime Minister John Howard. The 2006 CMATS treaty applies Timor-Leste laws (there were none) and Australian laws from this date to legitimize Australia's exploitation of contested areas (see "Legalizing Australia's exploitation" below).

19-20 May 2002 (midnight): The Democratic Republic of Timor-Leste becomes an independent nation.

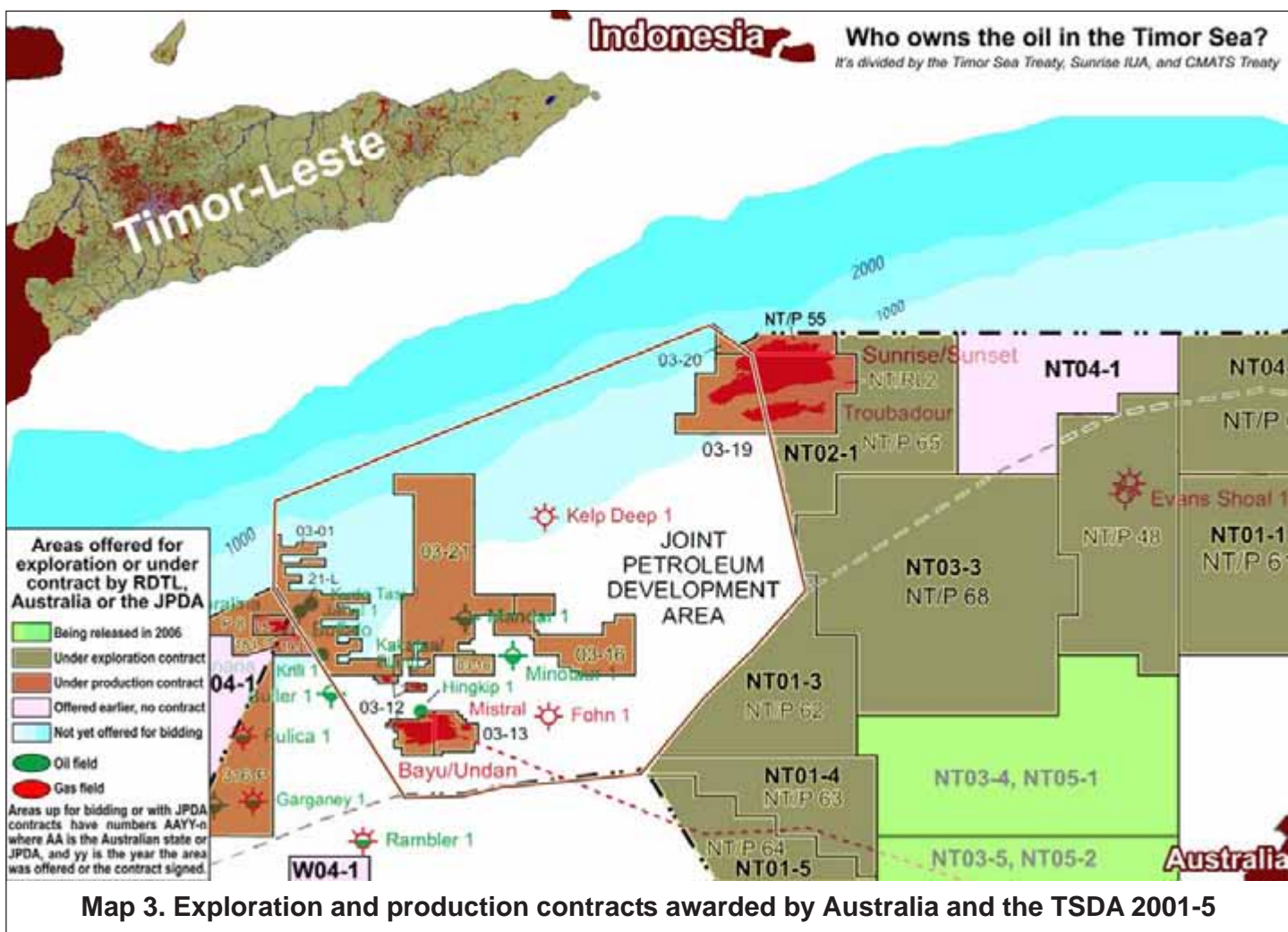
20 May 2002: Timor-Leste and Australia Prime Ministers sign the Timor Sea Treaty (TST) to replace the 2001 Arrangement. The substance of that Arrangement is continued, "without prejudice" to a future maritime boundary settlement which would replace the treaty. (See Editorial, *La'o Hamutuk Bulletin* Vol. 3 No. 7, October 2002).

19 July 2002: The first round of negotiations between Timor-Leste and Australia on a Sunrise International Unitization Agreement (IUA) concludes with both parties pledging to reach agreement by the end of 2002. The IUA will define how the Greater Sunrise field, with about 9 trillion cubic feet of natural gas will be divided. Australia (currently expected to receive 82% of Sunrise revenues) places a high priority on reaching this agreement so that the Sunrise project can proceed.

24 Aug 2002: Timor-Leste passes a maritime boundary law based on UNCLOS principles, claiming an Exclusive Economic Zone for 200 miles off Timor-Leste's coasts. The law is retroactive to 20 May 2002.

20 Sept 2002: Australia awards an exploration contract for an area partly on Timor-Leste's side of the median line. Similar contracts, protested by Timor-Leste, are awarded in April 2003 and February 2004. (see map 3).

3 Oct 2002: Timor-Leste Prime Minister Mari Alkatiri writes Australian PM John Howard to propose initial discussions on maritime boundaries. A month later, Howard replies that Australia "is willing to commence discussions" after the Timor Sea Treaty is in force and the Sunrise IUA "has been completed." On 18 Nov Alkatiri writes back that he sees no reason why "completion of these interim arrangements" is necessary



before boundary talks start, and asks for a “swift timetable” for boundary discussions.

Oct 2002: Sunrise unitization agreement talks continue. Australia and Woodside want to link this agreement to the ratification of the Timor Sea Treaty, thereby holding the Bayu-Undan project (which primarily benefits Timor-Leste) hostage to Timor-Leste’s concession of most of the revenues from the larger Sunrise project to Australia.

27 Nov 2002: Australian Foreign Minister Alexander Downer, after an acrimonious meeting with Mari Alkatiri in Dili, says that Australia may not ratify the Timor Sea Treaty until February 2003 or later, violating both governments’ commitments to complete ratification in 2002. The oil companies say that the delay could endanger arrangements to sell gas from Bayu-Undan and Sunrise, adding to pressure on Timor-Leste’s government to promptly accept Sunrise unitization terms which unfairly benefit Australia, rather than insisting that the maritime boundaries be negotiated.

6 Dec 2002: Sunrise partners Woodside, ConocoPhillips, Shell and Osaka Gas announce the indefinite delay of the Sunrise project, claiming that neither the floating LNG processing plant nor the pipeline to Darwin is economically viable. Many see this as a tactic to pressure Timor-Leste to accept Australia’s wishes on Sunrise.

17 Dec 2002: Timor-Leste’s Parliament ratifies the Timor Sea Treaty.

2003

26 Jan 2003: The East Timor Action Network (ETAN) demonstrates in Washington to demand that Australia abide by international law. This is the first of many such demonstrations over the next 2½ years.

1 Feb 2003: Australia, rejecting Timor-Leste’s refusal to concede sovereignty over the part of Greater Sunrise which lies outside the JPDA, says its Parliament will not ratify the Timor Sea Treaty until Timor-Leste gives in and signs Australia’s proposed version of the Sunrise International Unitization Agreement.

4 March 2003: Having received no response to his 18 November 2002 letter, Mari Alkatiri writes to John Howard that the TST will soon be in force and the IUA is being submitted to the RDTL Council of Ministers. He asks for an “early indication of a date” on which permanent boundary “discussions might begin, and a date by which you consider those discussions might result in a permanent boundary delimitation.” Five months later, Howard replies, indicating a willingness to begin talking about boundaries, with no timetable.

6 March 2003: Australia and Timor-Leste sign the International Unitization Agreement (IUA) for Greater Sunrise.

6 March 2003: The Australian Parliament ratifies the Timor Sea Treaty. Green Senator Bob Brown is expelled for accusing John Howard of “blackmail” by delaying ratification until after Timor-Leste signs the IUA.

2 April 2003: The Timor Sea Treaty enters into force, establishing the bi-national Timor Sea Designated Authority (TSDA) to manage projects in the joint development area. It will expire in 30 years, or when maritime boundaries are established, whichever comes first.

16 May 2003: Australia and Timor-Leste complete negotiations on Production Sharing Contracts and the Development Plan for Bayu-Undan.

17 July 2003: United States Senate Foreign Operations Committee urges Timor-Leste and Australia “to engage in good faith negotiations to resolve their maritime boundary expeditiously in accordance with international legal principles.” Members of the U.S. Congress take similar actions several times over the next two years, usually just prior to negotiations between Timor-Leste and Australia.

7 Nov 2003: Representatives of more than 100 non-governmental organizations from around the world write to Australian Prime Minister John Howard to urge him to negotiate fairly with Timor-Leste on maritime boundaries.

12 Nov 2003: Negotiators from Timor-Leste and Australia meet in Darwin for the first “scoping session” of maritime boundary negotiations. Timor-Leste’s government expresses unhappiness after the talks.

2004

26 Jan 2004: Worldwide actions on Australia’s national day protest their theft of Timor-Leste’s resources.



Bangkok, 26 January 2004

29 March 2004: Australia ratifies the Sunrise IUA. Until today, Timor-Leste’s Parliament has not ratified the IUA, seeing it as against their national interest.

April 2004: New campaigns to protest Australia’s theft of Timor-Leste’s resources are launched on both sides of the Timor Sea: The Timor Sea Justice Campaign in Australia and the Movement Against the Occupation of the Timor Sea in Timor-Leste. Large protests are held in Dili.

19-22 April 2004: The first substantive round of boundary talks take place in Dili, with little results.



Dili, outside negotiations at Hotel Timor, 21 April 2004

20 May 2004: Timor Sea Justice Campaign holds demonstrations across Australia, part of an escalating campaign that includes television advertisements, media releases, endorsements, ongoing protests, and actions by religious organizations.



Washington, June 2004

11 August 2004: Foreign Ministers José Ramos-Horta and Alexander Downer meet in Canberra, suggesting a “creative solution” to the boundary dispute, where Australia would provide a larger share of revenue from disputed areas to Timor-Leste, while Timor-Leste would agree to forego a permanent maritime boundary at least until all the petroleum is exhausted.

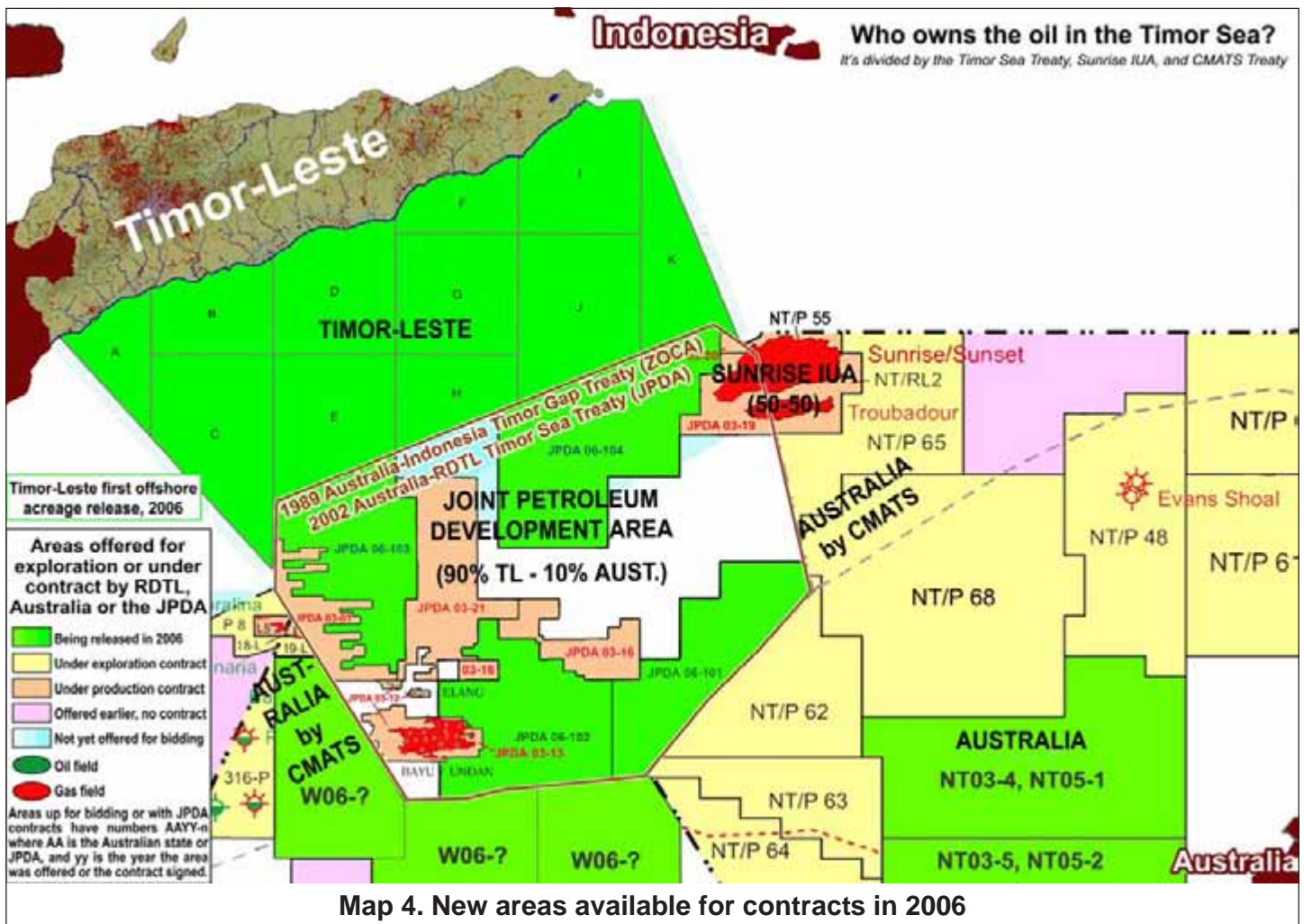
19-22 September 2004: A second round of boundary discussions is held in Canberra, followed by discussions in Darwin the following week. Talks are adjourned with no agreement or announcement.

27 October 2004: Boundary negotiations resume in Dili, with a call for fairness by Timor-Leste NGOs. The talks end with no agreement, restoring the status quo to before the 11 August “creative solution.”

17 November 2004: Woodside suspends the Greater Sunrise project due to the failure to agree on boundaries.

2005

14 January 2005: Australia invites Timor-Leste to re-commence boundary talks. Timor-Leste accepts the



offer in early February, and talks are scheduled for March in Canberra.

26 January 2005: On Australia Day, businessman Ian Melrose runs a TV commercial and newspaper advertisements challenging Australia's position on the border negotiations with Timor-Leste. A series of ads featuring Australian World War II veterans is especially effective.

7-9 March 2005: Australian and RDTL negotiators meet in Canberra. The following month they meet in Dili, with demonstrations across Australia. A third meeting is held

11-13 May in Sydney. Australia claims an agreement has been made, but Timor-Leste officials are not so clear.

June 2005: The Australian government assistance agency AusAID cancels a grant to a Timorese human rights NGO because they had spoken out against Australia's continuing occupation of the Timor Sea. (See Editorial, *La'o Hamutuk Bulletin* Vol. 6 No. 4, November 2005.) In November, AusAID cancelled another grant to a Timorese environmental NGO.

September 2005: Timor-Leste and Australia agree on the details of a Petroleum Mining Code for the JPDA, which must be formally approved before a licensing round for new JPDA areas scheduled for early 2006 can be conducted.

29 November 2005: Australian and RDTL technical delegations meet in Darwin reaching an agreement to resolve disputed oil and gas fields, but it is not made public.

2006

12 January 2006: Australia and RDTL sign the Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS) in Sydney.

28 February 2006: Australia approves the JPDA Petroleum Mining Code, enabling the May 2006 TSDA bidding round (map 4) to proceed.



Sydney, April 2005

Next steps:

- ✓ Ratification of CMATS by both countries.
- ✓ First bidding round for areas in Timor-Leste's undisputed maritime territory, conducted by the RDTL government under Timor-Leste's Petroleum Act. Bids are due on 19 April, with contracts to be signed on 20 June.
- ✓ First bidding round for new areas in the JPDA under the Timor Sea Treaty, conducted by the TSDA under the Petroleum Mining Code. Bids are due on 26 May.
- ✓ Woodside Petroleum and its Sunrise partners look for customers and decide on development plans, including where the gas will be liquefied. The plan must be approved by Australia and the TSDA within six years after CMATS comes into effect, and production must start within 10 years, or either country can ask for CMATS to be terminated. If Sunrise production begins later, the CMATS Treaty is automatically reinstated.

What the CMATS Treaty says

The CMATS Treaty includes twelve articles, two appendices, and two side letters. It incorporates and modifies the 2002 Timor Sea Treaty and the Sunrise International Unitization Agreement (IUA) which was signed in 2003 but has not yet been ratified. The following are some of the most important points of the treaty, which is available on *La'o Hamutuk's* website and elsewhere.

No maritime boundaries: Article 2 of CMATS says that the treaty is without prejudice to the positions of both countries on maritime boundaries or territorial claims, setting aside discussion of their conflicting claims for as long as the treaty is in effect. The CMATS Treaty repeatedly states that neither party shall claim sovereign rights (article 4.1), discuss maritime boundaries (articles 4.6 and 4.7) or engage in any legal process in relation to maritime boundaries or territorial jurisdiction (4.4, 4.5).

Duration: Article 12 makes CMATS effective for 50 years after its ratification and entry in to force, although this can be shorter if Sunrise production has not started within 10 years or ends less than 45 years after CMATS enters into force. If both countries agree, CMATS can be extended longer. Under CMATS Article 3, the 2002 Timor Sea Treaty (which was due to expire in 2033 or sooner, if maritime boundaries had been established) is extended for as long as CMATS is in effect. (see timeline, page 12).

The 50 year duration appears to be based on commercial grounds, providing certainty for oil companies to explore and exploit petroleum resources without any changes of ownership until the oil and gas is used up. It is consistent with the duration of the previous Timor Sea Treaty and Timor Gap Treaty, as well as with oil and gas project lifetimes.

Legalizing Australia's exploitation of disputed areas: In a confusing way, the CMATS treaty includes Timor-Leste's acceptance of Australian petroleum activities in formerly disputed areas outside the JPDA. Article 4.2 says that both countries' domestic legislation regulating existing undersea resource activities and authorizing new ones is in effect as it was on 19 May 2002 — the day before

Can a treaty be changed or ended?

The CMATS Treaty, the Timor Sea Treaty, and the Sunrise Unitization Agreement are bilateral treaties — contracts signed between two governments. They are stronger than national laws. Some treaties, especially conventions signed by many nations, include provisions allowing one nation to withdraw from some or all parts of the treaty. The petroleum-related treaties between Timor-Leste and Australia do not. In the future, neither country by itself can cancel its participation, regardless of what political leaders are in power. However, these and many other treaties without specific processes for withdrawal come under the terms of the 1969 Vienna Convention on the Law of Treaties, which has been signed and ratified by both Timor-Leste and Australia. Under Article 54 of the Vienna Convention, a treaty can be cancelled if both countries agree to cancel it. It is also possible for both governments to agree to modify a treaty which has already been ratified; this can be done with a new treaty. For example, the CMATS Treaty changes the duration of the Timor Sea Treaty, even though the TST has already been in effect for three years.

RDTL became a sovereign nation. Side letters between the two Foreign Ministers confirm that Timor-Leste had no such legislation on that date, while Australia had specific laws, including its 1972 treaty with Indonesia (see map 2) and its 1967 and 1994 petroleum laws. As a result, Australia is allowed to continue petroleum exploitation in these areas, while Timor-Leste surrenders its claim. This provision of the Treaty appears unnecessarily obscure.

Distribution of Sunrise revenues: Article 5 of CMATS says that the parties will share the upstream income from the Sunrise Unit Area equally. Each country will collect revenues according to its own taxation laws and the 2003 IUA (which assigns 18% of Sunrise to Timor-Leste and 82% to Australia), and then Australia will pay Timor-Leste so that each country ends up with an equal amount. For example, if Australia received \$82 million and Timor-Leste \$18 million in a particular quarter, Australia would then pay Timor-Leste \$32 million so that each country would end up with \$50 million.

The revenues discussed in Article 5 are from “upstream exploitation” — that is, the value of the oil and gas at the valuation point when it comes out of the well, prior to entering any pipeline or ship. Article 6 and Annex I give more details of how this revenue allotment will be implemented, and a mechanism for resolving differences between the two countries.

Fishing rights: CMATS Article 8.1(b), together with Annex II, divides the water column resources (including fish) between the two countries along the southern edge of the JPDA, allowing Timor-Leste fishermen to work inside the JPDA, provided that their activities do not inhibit petroleum activities. The Treaty does not specify fishing rights in the previously contested lateral areas east and west of the JPDA.

In 1997, Australia signed a treaty giving Indonesia water column rights in these areas, but it was never ratified,

leading to the current ambiguity. Timor-Leste and Indonesia have not yet negotiated water column rights off the north, east, and south coasts of Timor-Leste. This negotiation could also resolve the question with Australia, if Australia continues to accept the water column boundary it agreed to with Indonesia in 1997.

Maritime Commission: CMATS Article 9 creates this Commission, with one person appointed by each country. It meets annually to review the status of maritime boundary arrangements (but not to change them), and consult on security, environment, resource management and other issues. Its mandate includes both renewable (fish) and non-renewable (oil and gas) resources, as well as the promotion of sustainable management strategies.

The Maritime Commission has no authority regarding the exploration and exploitation of petroleum from Greater Sunrise. These decisions are assigned to the Sunrise Commission which is created by Article 9.2 of the Sunrise International Unitization Agreement. The Sunrise Commission, which has two Australian and one Timor-Leste members, coordinates the work of the “regulatory authorities” in the IUA — that is, the Australian government and the Timor Sea Designated Authority (TSDA). If there is a disagreement which cannot be resolved by the regulatory authorities or the Sunrise Commission, it can be referred to arbitration under Article 26.2 and Annex IV of the IUA.

CMATS dispute resolution: In contrast with the IUA, the CMATS treaty prohibits arbitration or judicial involvement except in one narrow instance. Rather, it requires that disputes about the CMATS treaty be settled by consultation or negotiation, a process which is almost always biased in favor of the more powerful party. However, disputes about the collection and distribution of tax revenues from Greater Sunrise can be resolved by an assessor — an arbitrator appointed by both countries or by an impartial international agency.

Critiques of the CMATS treaty

As soon as the treaty was announced, supporters of Timor-Leste’s rights criticized Australia for continuing to bully Timor-Leste. The Australian Timor Sea Justice Campaign called the deal “another sad chapter of Australian foreign policy betrayal” and described it as “a ‘stop gap, band aid’ solution that will enable the commercial development of the Sunrise field without the Australian Government acknowledging Timor-Leste’s sovereign rights to this and other fields on Timor-Leste’s side of the median line. Not only has the Australian Government refused to negotiate permanent maritime boundaries until a time when all of the oil and gas has been taken, but it continues to unilaterally deplete the Laminaria-Corallina and Bufalo fields.”

In the U.S., the East Timor and Indonesia Action Network (ETAN) continues to see this treaty as the extension of the illegal occupation that was supported and carried out by the Australian government against the Timor-Leste people since 1975. However, ETAN said the CMATS treaty “may be the best that could be achieved at this time, given the pressures on Timor-Leste from Australia and oil com-

panies and the tremendous economic, political, size and other disparities in an inherently unequal negotiation process.”

In early March 2006, La’o Hamutuk wrote a letter to the RDTL Parliament. We said that the RDTL Government has the legal authority to negotiate and sign the CMATS Treaty, but we questioned whether it should be signed and ratified at this time, when civil society pressure was being effective in moving Australia closer to respecting Timor-Leste’s sovereignty and rights. Furthermore, Bayu-Undan revenues, if managed well, will be sufficient to provide for Timor-Leste’s needs for at least fifteen years, so there is no need to develop Sunrise immediately.

In addition to raising the issues of maritime boundaries and illegal occupation, La’o Hamutuk’s letter pointed out that CMATS benefits Australia and the oil companies more than it does Timor-Leste. We also recalled the wisdom of Parliament and the Government in declining to ratify the Sunrise IUA, which forced Australia back to the negotiating table, and led to the significantly improved CMATS Treaty. However, we believe CMATS can be improved even more, and we urged Parliament not to ratify CMATS in its current form, but to send it back for further negotiation, with the following goals:

- Maritime boundary discussion processes should be allowed to continue while CMATS is in force, including while the Greater Sunrise project proceeds. In addition to negotiations, either party should have the right to appeal to impartial, third-party dispute resolution mechanisms, including those provided for under international law, especially the UN Convention on the Law of the Sea (UNCLOS).
- During this time, there should be a moratorium on exploration of new fields outside the JPDA and IUA, but on Timor-Leste’s side of the median line (see map 3). As we have said before, revenues received from fields in these disputed areas should be put into escrow until maritime boundaries are agreed.
- Dispute resolution under CMATS should incorporate arbitration and courts, in addition to other impartial, third-party mechanisms. Such resolution should not be prohibited for issues directly or indirectly related to maritime delimitation (CMATS Article 4.5) or required to be done by inherently unbalanced negotiations (Article 11). Arbitration processes are already used in the Timor Sea Treaty and Sunrise IUA, and for tax disputes under CMATS. It would be more equitable to use similar processes for all disputes which might arise under the CMATS treaty.
- IUA Article 9.8 should be modified to give equal representation from both countries on the Sunrise Commission. This will help ensure that the decision about where to process Sunrise Gas respects Timor-Leste’s rights.
- A new article should be added stating that both parties will encourage the companies to develop the Sunrise field with a gas pipeline to Timor-Leste and an LNG plant in our territory, to maximize the benefits to the people of Timor-Leste.

We agree with the Timor-Leste government that both countries have to improve their relationship for the future. But we cannot accept the Australian government's actions and approach. The people of Timor-Leste and Australia have had good relations for a long time. Beginning with World War II, when we helped the Australian Army fight the Japanese, Timorese people have shown their good will. And during our struggle against the Indonesian occupation, the Australian people showed their solidarity. Today, Australians are helping the Timor-Leste people in the struggle to develop our country.

However the actions of the Australian government in the Timor Sea raise questions about democracy in Australia. Most informed Australian people do not agree with the position of their government. Their campaigns, supported by citizens and officials from Timor-Leste and around the world, have already moved their government. There is no reason to believe that continued campaigning, together with skillful bargaining by the Government of Timor-Leste, would not move Canberra even further. ❖

Glossary

Arbitration: a method of resolving disputes where a third party, or a jointly-agreed panel, makes a decision. The two disagreeing parties agree in advance to accept the arbitrator's decision. If the parties cannot agree on an arbitrator, he/she can be appointed by an impartial international agency.

CMATS: The Treaty on Certain Maritime Arrangements in the Timor Sea, signed between Australia and Timor-Leste on 12 January 2006 to allocate upstream revenues from previously disputed maritime areas while deferring maritime boundary discussions.

Downstream: the refining or liquification part of the petroleum process, transforming oil or gas as extracted (upstream) into a form or product that can be transported and sold to customers.

Exploitation: the process of extracting oil and gas from the ground, processing it and selling it. Also **production**.

Exploration: the process of geological analysis, seismic testing, and test wells to locate, identify and estimate the size of underground or undersea oil and gas deposits.

Exclusive Economic Zone (EEZ): an area of the sea and seabed adjoining a country's land territory where the country has rights to exploit and sell the resources in and under the water. Under UNCLOS, the EEZ usually extends 200 nautical miles (330 km) from the shore. When two countries are less than 400 miles apart, a process of negotiation and/or arbitration can decide the boundary between the EEZs, which is usually along the median line.

International Court of Justice (ICJ): a court in The Hague, Netherlands, where national governments can bring civil cases against one another. The ICJ has often served as a mediator or arbitrator in maritime boundary disputes. In March 2002, Australia gave notice that it would no longer accept ICJ or UNCLOS processes for arbitrating maritime boundaries.

International Unitization Agreement (IUA): an agreement between two countries to develop a petroleum field or fields that crosses a boundary as a single entity, applying a single system of laws, taxes, environmental standards, safety codes, labor rules, etc. to that field. When a field is developed as one project, it would be impractical for different regulations to apply on different sides of an imaginary line in the middle of the sea. Timor-Leste and Australia signed an IUA for Greater Sunrise in March 2003, but Timor-Leste's Parliament has never ratified it. The CMATS Treaty requires ratification of the Sunrise IUA.

Joint Petroleum Development Area (JPDA): an area of the Timor Sea between Timor-Leste and Australia, but closer to Timor-Leste. This was defined first in the 1989 Timor Gap Treaty as Zone of Cooperation Area A, and re-established by the Timor Sea Treaty. It is now jointly developed by Timor-Leste and Australia, with Timor-Leste receiving 90% of the government revenues from upstream production. The JPDA includes the Bayu-Undan and Elang-Kakatua gas and oil fields, and about 20% of the Greater Sunrise field.

Lateral Boundaries: the definition of which territory belongs to Timor-Leste and which to Australia in areas east and west of the JPDA. These have not been established, but would be significantly wider than the JPDA according to current international legal principles. The JPDA's edges were set by Indonesia and Australia in 1972 and 1989, without participation from Portugal or Timor-Leste. Under CMATS, Timor-Leste concedes Australia's right to extract petroleum from these previously disputed areas.

Liquefaction: the process of transforming natural gas to a liquid state (LNG) for loading onto ships, done in a large factory and requiring cooling and pressure. Bayu-Undan's natural gas is liquefied at the Wickham Point facility in Darwin. No decision has been made about where the gas from Greater Sunrise will be processed.

LNG (liquefied natural gas): In order to transport natural gas by ship, it must be cooled and pressurized from its natural gaseous state to be a liquid, so that it requires less space. See Liquefaction.

Maritime Commission: created by CMATS, with equal representation from Timor-Leste and Australia. This Commission will review and consult on issues of environment, security, resource management, and maritime boundary status, but has no authority to negotiate or determine maritime boundaries.

Median line principle: the accepted legal rule for settling a maritime boundary when two countries' Exclusive Economic Zones overlap. As established by the UNCLOS and many ICJ decisions, the boundary should be drawn half-way between the coastlines of the two countries.

Natural gas: a petroleum resource found underground in a gaseous state, consisting primarily of methane and ethane, with smaller amounts of heavier hydrocarbons. It is often distributed as a gas by pipeline (usually after extraction of the heavier hydrocarbons), but can be liquefied into LNG for storage or transport by ship, rail, or road. Most of Timor-Leste's undersea petroleum is natural gas.

Operator: an oil company that is part of a joint venture (often the largest shareholder) and takes responsibility for exploration, drilling, construction and operation of processing facilities. However, all joint venture partners usually make major decisions together, each having a vote in proportion to their share. ConocoPhillips and Woodside Petroleum are the operators of Bayu-Undan and Greater Sunrise, respectively.

Petroleum: liquid, gaseous, or solid fossil fuel found underground; any naturally occurring hydrocarbon. Petroleum includes crude oil, condensate, liquefied petroleum gas (LPG) and natural gas.

Petroleum Mining Code (PMC): a law adopted by the TSDA in 2005 to govern petroleum activities in new areas of the JPDA. The Bayu-Undan, Elang-Kakatua and Greater Sunrise fields, already under contract, are covered by a previous interim code. The PMC will apply to areas up for bid from now on (see map 4). Australia withheld approval of the PMC to pressure Timor-Leste to sign the CMATS Treaty, but approved it in February 2006.

Seabed boundary treaty: signed between Australia and Indonesia in 1972. This treaty draws a boundary between the two countries' seabed (ocean floor) resource entitlements, following the continental shelf principle of drawing the line through the Timor Trough, the deepest water between the two countries. Portugal, which was then administering Timor-Leste, refused to participate in the negotiations, so there is a gap in the line off the coast of Timor-Leste.

Sunrise Commission: established by the IUA, it will have two members appointed by Australia and one by Timor-Leste. This Commission will coordinate the work of the Australian government and the Timor Sea Designated Authority (TSDA) regarding exploration and exploitation of petroleum in the Sunrise Unit Area. If there is a disagreement which cannot be resolved by the regulatory authorities or the Sunrise Commission, it can be referred to arbitration.

Timor Gap Treaty: signed between Australia and Indonesia in 1989 to allow the two countries to explore for petroleum in illegally-occupied Timor-Leste seabed territory, with a 40-year term. This treaty closed the Timor Gap in the 1972 Australia-Indonesia seabed boundary line by defining a Zone of Cooperation, later called the Joint Petroleum Development Area (JPDA). The Timor Gap Treaty became meaningless in October 1999, when Indonesia gave up its claim to Timor-Leste.

Timor Sea Arrangement: a July 2001 agreement between UNTAET and Australia which established the basic terms of the Timor Sea Treaty signed the following year: continuing petroleum activities in the ZOC/JPDA, with upstream revenues divided 90% for Timor-Leste and 10% for Australia, and avoiding the maritime boundary dispute.

Timor Sea Designated Authority (TSDA): the regulatory agency for the JPDA, established by the Timor Sea

Treaty, 2/3 controlled by Timor-Leste. The TSDA acts as if it were a government for purposes of contracting with and managing oil company operations in the JPDA.

Timor Sea Treaty: signed between Timor-Leste and Australia on 20 May 2002, came into force on 2 April 2003. This continues the JPDA defined in the Timor Gap Treaty, but replaces Indonesia with Timor-Leste and allocates 90% of the JPDA government revenues to Timor-Leste. The Timor Sea Treaty becomes void after 30 years, or after a permanent maritime boundary is agreed between the two countries, whichever comes first.

United Nations Convention on the Law of the Sea (UNCLOS): signed in 1982, and adopted by most countries in the world. It entered into force in 1994. This treaty defines laws for many issues relating to the sea, including the establishment of Exclusive Economic Zones and procedures for establishing maritime boundaries according to median line principles. It also includes a process for resolving disputes, both in court and by arbitration, from which Australia withdrew in March 2002. Indonesia ratified UNCLOS in 1986, Australia in 1994. Timor-Leste has not yet signed or ratified UNCLOS.

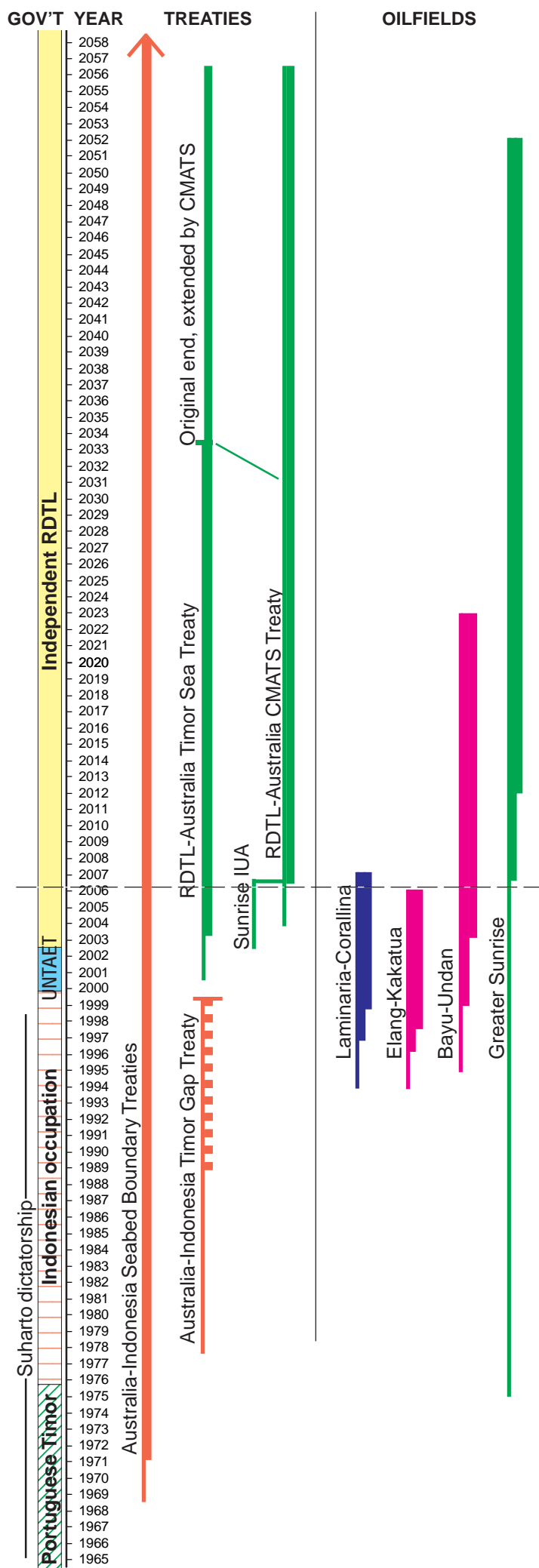
Unitized, Unitization, Unit Area: see International Unitization Agreement.

Upstream: the part of the petroleum resource development process that involves finding and getting the raw petroleum material out of the ground and into a pipeline or ship for further downstream processing. This is defined in CMATS as petroleum activities and facilities before the valuation point defined in the Sunrise IUA.

Valuation Point: the point of the first commercial sale of petroleum extracted from the Sunrise field, which is when natural gas enters a pipeline which leaves the Unit Area. For other marketable components — such as crude oil, condensate, liquefied petroleum gas (LPG, propane), it represents the first sale of the component. (See IUA Articles 1(h), 1(i) and 1(t)).

Water Column: resources contained on the surface and within the water of the sea, including fish and dissolved minerals, but not including the seabed underneath. In 1997, Australia and Indonesia signed a treaty drawing a boundary between their water column (fish, etc.) resources along the median line in accordance with more modern (UNCLOS) principles, but that treaty was never ratified due to Timor-Leste's independence. CMATS defines Timor-Leste's rights to water column resources within the JPDA, and Australia's rights south of it, but leaves open who has water column rights in lateral areas.

Zone of Cooperation: a portion of the Timor Sea between Australia and Timor-Leste, but closer to Timor-Leste. This was created by Australia and Indonesia in the 1989 Timor Gap Treaty as a mechanism for sharing petroleum revenues where they had not been able to agree on their maritime boundary. Its central portion - Area A - became the Joint Petroleum Development Area (JPDA) under the Timor Sea Treaty. See map 1. ❖



Timor Sea Development Timeline

This diagram shows how negotiations and projects about oil reserves in the Timor Sea relate to historical events, from when Suharto took power until all the oil and gas in Timor-Leste's part of the Timor Sea will be used up.

The line at the top represents **historical periods** -- the Portuguese, Indonesian, UNTAET and RDTL governments who ruled Timor-Leste. This is followed by a scale of years, from left to right.

The next set of lines represents different **treaties** negotiated between Australia, Indonesia and Timor-Leste. Each line begins at the left when negotiations started. It gets thicker after ratification, when the treaty enters into force. The line extends rightward for as long as the treaty is in effect.

The first two treaties were negotiated between Australia and Indonesia without Timorese participation. The 1972 **boundary treaty** is in effect indefinitely, and the illegal 1989 **Timor Gap Treaty**, originally planned to last until 2031, ended when Indonesia was forced out of Timor-Leste in 1999.

The 2002 **Timor Sea Treaty**, 2003 **Sunrise International Unitization Agreement** (IUA) and 2006 **Certain Maritime Arrangements in the Timor Sea Treaty** (CMATS) were signed between Australia and Timor-Leste. Although the Timor Sea

Treaty would have expired in 2033, it has been extended to 2056 by CMATS. The IUA has not been ratified, although it is incorporated in the CMATS agreement and will be in force during the same period.

The next set of information is about the four principal oil and gas fields in the part of the Timor Sea which should belong to Timor-Leste under international legal principles. For each one, the line begins when the field was discovered, gets thicker after development begins, and reaches maximum thickness when the field is in production.

♦ **Laminaria-Corallina** revenue goes entirely to Australia, although the field is much closer to Timor-Leste's shoreline than to Australia.

♦ **Elang-Kakatua** and **Bayu-Undan** are in the joint development area (JPDA), with upstream (extraction) revenue shared 90% for Timor-Leste and 10% for Australia, which gets all the downstream (processing) benefits.

♦ **Greater Sunrise** is partly in the JPDA. When it starts production in a few years, Timor-Leste and Australia will share upstream revenue 50%-50%. The companies have not yet decided where to process the Sunrise gas, which will determine who gets downstream revenue.

Cuba Solidarity News from India

By Antero Benedito da Silva, Representative to APRCSC from the Timor-Leste-Cuba Solidarity Committee

“And an opposing voice against imperialism trying to trample upon the weak...”

The Indian and Cuban Solidarity Committee organized the third Asia Pacific Regional Cuba Solidarity Conference (APRCSC) in the city of Chennai (formerly Madras), Tamil Nadu. Tamil Nadu is one of the most populated states in India. In the 1950s, political parties in India from all ideologies came forward to send food grains to Cuba in support of Fidel Castro and Cuban struggle against the US-backed exploitative regime in Cuba at that time. This year's conference re-affirms once again the commitment of Indian people to fight for the right cause. The prominent leader M. Karunanidhi, former three times Chief Minister of Tamil Nadu, stated that defending Cuba is not the task of Cubans alone. It is the job of right-thinking people all over the world. Cuba was and is the symbol of a fight for a new world, a just human world.

The participants of the APRCSC came from 17 countries in the Asia-Pacific region, from New Zealand to China, from Sri Lanka to Japan, representing Marxist political organizations and religious denominations. Taking into consideration Timor-Leste's ongoing cooperation with Cuba, Timor-Leste sent one participant to this people-to-

people solidarity conference from 20-21 January 2006. Before the conference, the Timor-Leste government had called at the United Nations for the end of the economic blockade against Cuba.

The APRCSC condemned the 46-year embargo against Cuba by the United States as a “cruel and unlawful blockade.” It set 26 July as “Cuba Solidarity Day” and called on friends of Cuba and good-hearted people around the world to observe this day. The participants supported worldwide actions by political organizations, social organizations of workers, farmers, agricultural laborers, youth, women, students, intellectuals, and artists to fight US imperialism under George Bush, and called for a regime change in the United States. Indians were looking forward to organizing a huge protest against George Bush during his visit to India in March.

Since there is ongoing cooperation between the governments of Cuba and Timor-Leste, Timor-Leste civil society should continue to build Timorese-Cuban Solidarity, actively promoting cultural exchange programs and looking into improving the quality of ongoing solidarity between Cuba and Timor-Leste. ♦

“Hasta La Victoria Siempre”

La'o Hamutuk Asks President to Veto Criminal Defamation Law

On 17 January 2006, La'o Hamutuk sent the following letter to RDTL President Xanana Gusmão:

We from the *La'o Hamutuk Institute* are writing this letter to you to share our thoughts about the Penal Code approved by the Constitutional Government of RDTL on 6 December 2005. According to published information, this Penal Code is a Decree-Law which considers defamation as a crime. This decree-law has raised much discussion and dissatisfaction in Timorese society. *La'o Hamutuk* knows that you now have this document at hand, waiting for you to study and promulgate it.

As a civil society organization whose work is based on principles of democracy and human rights, *La'o Hamutuk* also disagrees with this law. Consequently, we urge and request you as President of RDTL, to review this law before promulgating it. According to our observations, this law should not be approved for the following reasons:

1. This Decree-Law violates the RDTL Constitution, Article 6 which speaks about the goals of the state, Article 40 about freedom of expression and information, and also Article 41 about freedom of the press and other communications media.
2. This Decree-Law violates the Universal Declaration of Human Rights, Article 19, which guarantees all citizens the right to express their opinions and the freedom to receive information. Timor-Leste has already ratified this Declaration.

3. This Decree-Law violates the International Convention on Civil and Political Rights, which has also been ratified by the Government of RDTL.

4. This Decree-Law shows the lack of commitment of RDTL to Vision 2020, which states that it will promote freedom of the press.

5. This Decree-Law will stifle the creativity of civil society and our people to offer criticism and self-criticism of the sovereign organs of Timor-Leste in the entire development process.

6. This Decree-Law violates the democratic principles and human rights that our new nation struggles to promote, as a democratic nation which respects human rights.

Based on these observations and reasons, as a civil society organization, we urge your Excellency, President of the Republic of Timor-Leste, to use your right guaranteed by Article 85.c of the RDTL Constitution to veto this Decree-Law, and to ask the Court of Appeals to give their opinion on this law, before promulgating it.

We trust that with this power, you will make a decision which is satisfactory and just for all the people. And show that you respect and are committed to promote democratic principles and the right of freedom of the press for everyone to participate in the development process of this country.

In conclusion, we thank you for your consideration, and we hope that you will make a decision which is best for all the people of Timor-Leste.

Developing our Resources for the Benefit of all Timorese

By Prime Minister Mari Alkatiri

The Timor-Leste Government has gone to extraordinary lengths to develop one of the best regimes for the development of petroleum resources and management of related revenues in the world. It is a great shame that La'o Hamutuk did not do the same when writing and researching its nine-page commentary in the November issue of the *La'o Hamutuk Bulletin*.

I find it very disturbing to say that least that La'o Hamutuk published what is presented as a definitive analysis of our petroleum regime without putting a single question to anyone in my Government, and without asking anyone in my Government for comment on a draft of the article.

This represents a serious lapse of professional standards, and I sincerely hope that other NGOs in Timor-Leste do not follow this example. Prior to publication it is standard journalistic practice to ask relevant people or organizations for comment, and this is especially the case when publishing a detailed article that makes a series of sweeping observations and assertions. I am advised that the article was sent to a multilateral institution for comment, which I have to inform La'o Hamutuk does not have institutional responsibility for this regime.

The article claims that under Article 139 of the Timor-Leste Constitution the resources belong to the State, but "not to a particular Government at a particular time". This really is nonsense. The RDTL Government is a constitutionally elected administration that has the right and responsibility to develop our nation's resources to their fullest potential. La'o Hamutuk seems to have a problem with a government that has pursued economic development. Under the Constitution, the elected government the right to develop petroleum resources that belong to the State. These resources offer Timor-Leste the best opportunity to secure economic independence and long-term prosperity. Without them the people of Timor-Leste would be totally dependent on foreign donors and lenders in developing this nation.

In the lead article on 'petroleum dependency' La'o Hamutuk portrays the projected influx of petroleum revenue in a completely negative way, and as though you are telling the people of Timor-Leste about this for the first time. I have been entirely open about the dangers of petroleum dependency and have discussed them at great length. In fact my Government, as part of its public consultation process, has been going around the country telling people about them. This awareness has been very much at the forefront of our thinking in developing the Petroleum Fund.

And without these revenues what is the alternative? In La'o Hamutuk's four pages of commentary about

petroleum-dependency you do not put forward a single alternative. The answer is that, other than aid dependency, there isn't an alternative. And this is why we have put a major emphasis on developing a model for the prudent, transparent and long-term management of our petroleum revenues.

This is what is completely lacking in La'o Hamutuk's commentary. There is actually no explanation whatsoever of how Timor-Leste has devised a system to manage its petroleum revenues so that we can develop and avoid the resource curse. You do not explain how the Petroleum Fund works, which makes me think that this article is more about misinformation than making a constructive contribution to our country's development.

You state in this article that during the consultation in the districts that people received "little information". Please note that in addition to giving detailed presentations on the Petroleum Fund during the consultation phase, I now have a team of people visiting every one of the sub-district centres in Timor-Leste to explain the petroleum fund in detail. To date they have visited more than 55 sub-districts, with an average of more than 50 people attending these briefings that often run for 3 hours or more.

Let me tell you briefly what people in the districts and sub-districts have been told, given that La'o Hamutuk did not think this was sufficiently important to its readers.

The Petroleum Fund has the following key design features to help Timor-Leste avoid the resource curse:

- √ More than 90 per cent of the assets must be invested in low-risk US Government bonds. This avoids the problems experienced by many oil-rich nations of inflating their domestic economy and making it uncompetitive by bringing back most or all of the revenue
- √ All petroleum revenues are paid directly into the Fund via an earmarked bank account held by the Banking and Payments Authority with the US Federal Reserve Board in New York. The number of the account is 021080973. This is an additional transparency feature that even goes beyond what Norway has established
- √ All withdrawals from the fund must be approved by the National Parliament and they must be accompanied by a statement from an independent auditor regarding the Estimated Sustainable Income from Timor-Leste's petroleum wealth. This process is also overseen by a Consultative Council made up of eminent persons which again is an additional transparency measure compared to the Norway model

I note that you say in the second article on the regime that the *Petroleum Fund Act* is excluded from La'o Hamutuk's analysis. This is completely arbitrary and it makes no sense. It means excluding an Act that is an integral part of our regime. The Government has always included it in our discussion of our regime because this Act includes a raft transparency and accountability measures. Somehow, conveniently, these measures are not important to La'o Hamutuk's assessment of our regime. Only by excluding this Act can you go on to make bald assertions such as "Timor-Leste's petroleum regime is filled with dangerous loopholes, omissions, conflicts of interest and other fundamental problems".

In the section on transparency you wrongly conclude that we replaced the mechanism of a Public Register. In fact we maintained the same standard for release of information in the final version of the law, which is for the release of "all Authorizations and amendments thereto".

Contrary to La'o Hamutuk's claim that any variations to authorizations "are not publicly announced", Article 30 (a) (ii) requires "details of exemptions from, or variations or suspensions of, the conditions of an Authorization under Article 21". In addition, we are required under the law to provide summaries of development plans. Any fair assessment of our regime would concede that this level of public disclosure goes well beyond international practice. La'o Hamutuk has in the past received copies of Production Sharing Contracts, which are now available on our website www.transparency.gov.tl. The section on transparency fails to mention the existence of this website which I pledged in my address to the Extractive Industries Transparency Initiative meeting in London earlier this year. This is another serious omission that forces me to seriously question the motives of La'o Hamutuk.

Further, La'o Hamutuk wrongly asserts that the draft of the law allowed private landholders to reject petroleum facilities on their land. The draft did not say this. To state otherwise would contravene s139 of the Constitution because the resources belong to the State. But the draft and the law states clearly that landholders are entitled to receive "fair and reasonable compensation" from the developer.

Contrary to La'o Hamutuk's claims about environmental protection, the Petroleum Act requires protection of the environment, and details of this, including Environmental Impact Assessments will be dealt with in the regulations. Also note that the Norwegian technical assistance project has already run a full EIA

workshop for the civil service, in order to prepare Timor-Leste for capacity to manage this part of the development process.

This commentary on local community involvement only leads me to conclude that La'o Hamutuk is completely out of touch with the people of Timor-Leste. This is the fundamental basis of La'o Hamutuk's analysis. You don't want development to happen, or if it does only after the endless workshops that involve international consultants and foreign-funded NGOs, such as La'o Hamutuk.

When my advisers go out to the districts to give briefings they constantly report back to me on comments from village chiefs and other community representatives about why the Government hasn't brought a pipeline and LNG plant to Timor-Leste. They know that the resources of the Timor Sea lie very close to our island, almost half the distance as to Australia. The people of Timor-Leste actually want to see their resources developed, and they want to see them developed now. They are not fearful of seeing development happen in their localities – in fact they would welcome this.

It has already been 3½ years since the restoration of independence and while we have accomplished a great deal – most notably the new petroleum regime – many people are growing impatient. They want to see things happen fast. It is the case that the Petroleum Act gives the Minister some discretion, but as mentioned all of this must be fully disclosed under the law.

As a new country, with a new petroleum regime, we need flexibility. We live in a competitive world and we are up against many other countries. We do not have a long track record in petroleum development. It is worth remembering that some of the most successful developing countries in the world are those with governments that have a clear vision of where they want to take the country, and they are those with governments that can be decisive and actually govern on behalf of the people who elected them.

The people of Timor-Leste have been held back for too long. Independence has not meant the end of hardship and we still have intolerably high mortality rates for our young people. We owe it to those who have suffered, and to those who have given up their lives for our independence, to move forward and make economic development a reality for all people in this country. I am deeply proud of the Timor-Leste petroleum regime because it clearly established a framework to achieve this objective. ❖

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Interviews and commentary on the issues we investigate -- and more!

In Tetum and Bahasa Indonesia

Every Sunday at 1:00 pm on Radio Timor-Leste

La'o Hamutuk Comments on the Prime Minister's article

La'o Hamutuk appreciates the response from the Prime Minister to last November's *Bulletin* articles. We're pleased that he reads what we have to say, and we believe that our views and his are more in agreement than in disagreement. We welcome this opportunity to continue the dialogue and clarify some of the issues.

People confronted with unpleasant information sometimes attack the messenger. We sense some of that in the Prime Minister's article, which is unfortunate from a government which would like to make defamation a criminal offense. (See page 13.) In this comment, and in all our articles, *La'o Hamutuk* focuses on substance – on what is being said or done rather than who is saying it. We encourage others in Timor-Leste, both in and out of Government, to do the same.

La'o Hamutuk is not opposed to petroleum development for Timor-Leste. We recognize that selling oil and gas is the only way, for the next few decades, that Timor-Leste can free ourselves from dependency on donors and provide much-needed economic development and services to our citizens. We appreciate the Government's work in this area, and the more than \$500 million that has already been deposited in the Petroleum Fund. We agree that the current Government has the legal authority and moral responsibility to develop laws for oil and gas development and revenue management for Timor-Leste, and have tried to offer constructive suggestions where we think the Government's policies are less than perfect, and warnings when we think aspects of this industry could be dangerous to Timor-Leste.

Timor-Leste's petroleum and revenue management laws are indeed better than those of most other developing countries, and we applaud the Government's work in making them so. Unfortunately, the experiences of nearly all developing countries with the international petroleum industry have been negative. As *La'o Hamutuk* wrote in our submission to the Government in 2004, and again in our *Bulletin* last November, Timor-Leste's citizens deserve strong protection of our human rights, environment, and long-term economic security. Although the Government's petroleum laws provide some protection in these areas, they could be significantly stronger, as those in many rich countries are. But even rich countries' laws often do not provide enough protection; last January, for example, the *New York Times* exposed collusion between natural gas companies and U.S. government regulators allowing the companies to cheat the government of billions of dollars in gas royalties.

La'o Hamutuk strongly supports the Petroleum Fund and the efforts the Government has made. We engaged with the Government throughout the legislative process, making many suggestions to strengthen the Fund's objective to safeguard the benefit to future generations from our petroleum resources. Our December 2005 *Bulletin* included an article about the Fund's first quarterly report.

Our November 2005 *Bulletin*, to which the Prime Minister is responding, was our fourth *Bulletin* focusing on oil and gas issues. Since 2000, *La'o Hamutuk* has pub-

lished more than twenty articles about petroleum development in Timor-Leste. We do extensive research and interviews, including many with officials responsible for oil and gas development in Timor-Leste, to obtain information for our reports, which are available in Bahasa Indonesia and English from our office or on our website. We do not claim to have a "definitive analysis," but simply to offer information and perspectives to complement those given by the Government and others.

Our November 2005 *Bulletin* was about petroleum dependency and the petroleum laws, but we continue to write about other parts of this complex and technical issue – maritime boundaries, economic and social impacts, environment, transparency, oil companies, revenue management, etc. It would be impossible to discuss all of these issues every time we write about one element of them. The November articles were about the "regime" — the laws which regulate petroleum projects, especially the relationship between RDTL and foreign oil companies which come here to make money from our resources. The Petroleum Fund Act, while also important, defines responsibilities and procedures within and between parts of the Government of Timor-Leste. Our separate discussions of the regime and the Fund parallel the separate public consultations conducted by the Government in 2004 and 2005.

We agree with the Prime Minister that public consultation, good revenue management, transparency, community involvement and environmental protection are essential to successful petroleum development, and we appreciate the efforts his Government is making in these areas. But Dr. Alkatiri will not be Prime Minister in 20 or 30 years, and Timor-Leste needs to be protected by strong and clear laws which will apply to future governments which may not share the perspectives, commitment or wisdom of the current administration. We also do not agree that his mandate as current head of the RDTL government is to extract all of Timor-Leste's oil and gas as rapidly as possible, but rather to ensure that regulations for petroleum management in coming years will protect and provide for future generations of Timor-Leste citizens.

Our cover article on petroleum dependency highlighted the fact that 89% of Timor-Leste's GDP and 94% of its Government revenues will come from oil and gas within five years. We share the Prime Minister's view that this will enable Timor-Leste to be economically as well as politically independent. Like the Government, *La'o Hamutuk* has worked for Timor-Leste to maximize its benefit from Timor Sea resources claimed by Australia but closer to Timor-Leste.

Of course people across Timor-Leste want oil money and the services it may make possible, just as people in Nigeria, Ecuador, Congo, Angola and other oil-producing countries do. We hope that the efforts of Dr. Alkatiri's Government, supported by *La'o Hamutuk* and others in civil society, will make Timor-Leste more successful than these other countries in achieving this. But we should not underestimate the difficulty of the task.

Responses to some points raised by the Prime Minister's article

- *La'o Hamutuk* apologizes for erroneously writing that exemptions granted to companies by the government under Article 21 of the Petroleum Act are not publicly announced – the Prime Minister is correct that they are. However, we remain concerned that they can be arbitrarily granted and are not subject to appeal.
- As the Prime Minister wrote, *La'o Hamutuk* asked for and was given the Production Sharing Contracts for Bayu-Undan, although the versions we received (which are the same as on the Government's transparency website) have 13 important paragraphs "deliberately omitted." We have also asked repeatedly for the Production Sharing Contract for Greater Sunrise signed several years ago, but we have not received it and it is not on the website.
- Regarding the rights of private landowners to reject petroleum facilities, Article 14.1 of the draft Petroleum Act circulated for public consultation in 2004 reads: "An Authorised Person shall not exercise any of its rights under an Authorisation or under this Act: ... (c) on any private immovable property without the written consent of the owner." Although the Prime Minister now writes that this violates Section 139 of the Timor-Leste Constitution, *La'o Hamutuk* remains concerned that landowners should have some rights about facilities such as pipelines, roads, factories, or other facilities used in petroleum extraction but located in a different place from the resources in the ground. Both the draft and the final Act discuss "fair and reasonable compensation," leaving it to the Petroleum Ministry to decide what is fair and reasonable.
- We wrote that the Petroleum Laws do not adequately protect the environment. The regulations the Prime Minister mentions have not yet been written, and will probably not be subject to the same public consultation, review and Parliamentary discussion as the Laws were. Our main point was that the Laws do not require public disclosure, review or consultation about environmental issues prior to a project being undertaken, and there is no mechanism for anyone outside the ministry to bring an environmental problem to the attention of authorities other than those responsible to develop petroleum. We applaud the current Government for preparing to conduct environmental impact assessments, and hope that future governments will be required to take such measures.
- Regarding local community consultation, the government has indeed made extensive efforts to teach people about the benefits of petroleum development. We believe that people also need to learn about potential risks, as required for informed decision-making. Consultation requires two way communication, with decision-makers listening to people's ideas as well as providing the public with information and answering questions. Most importantly, communities should have a say in projects that may directly affect them. We can see alternative results in Aceh, Bougainville, Nigeria or West Papua. ❖

NGOs Elect Representatives to Petroleum Fund Council

The Petroleum Fund Consultative Council is in the process of being formed. According to Petroleum Fund Act Article 25.2, the Council's role is to advise Parliament on the performance and operation of the Petroleum Fund, as well as appropriations from the Fund, to see if they are being used effectively to benefit current and future generations.

The Consultative Council will include two members elected by Parliament, two representatives of Non-Governmental Organizations (NGOs), a representative of religious organizations and a representative of the private business sector, for five-year terms. In the future, it will also include former Presidents of the Republic, former Presidents of Parliament, former Prime Ministers, former Ministers of Finance and former Directors of the Central Bank (BPA). Since Timor-Leste does not yet have such

people, the President of the Republic, President of Parliament, and Prime Minister will appoint stand ins for the first three positions respectively.

On February 24, the Timor-Leste NGO Forum (FONGTIL) facilitated an election to select the two NGO representatives to the council. The nominated candidates were Cecilio Caminha Freitas (ETPA), Thomas Sebastião Freitas (Luta Hamutuk), Henriqueta Maria da Silva (TIDS) and Maria Dias (PAS Clinic, representing Rede Feto), with Maria Dias and Thomas Freitas being elected. The participation of NGO representatives in the Consultative Council gives NGOs a way to make suggestions to Parliament. The representatives are also expected to help two-way information and communication between civil society and officials in Parliament and Government responsible for managing and appropriating Fund resources. ❖

Gender Analysis Training in Yogyakarta

La'o Hamutuk staff member Yasinta Lujina participated in a gender analysis training, held in Yogyakarta, Indonesia from 23-29 January. The training, which was organized by Yogyakarta based NGO USC-Satunama, had around 30 participants from various religious groups, NGOs, media groups, academics and women organizations from both Indonesia and Timor-Leste.

The objective of the training was to increase the capacity of the participants in analyzing gender in its conceptual frameworks and then to equip the participants with methods of analysis, so that the participants can apply these methods to their community organizing and empowerment work. The training also provided the participants with a critical understanding of the conditions in which gender relations take place and the impacts resulting from these relations.

The follow up of the training was the establishment of the Gender Satunama Group, a forum that is designed and dedicated to those who underwent the same training. In Timor-Leste, people interested in these issues can contact Yasinta Lujina at *La'o Hamutuk*; elsewhere contact the Gender Satunama Group at gender_satunama@yahoo.co.id. ❖



Public Hearing on Timorese WW II Comfort Women

The HAK Association, in cooperation with the Japanese Coalition for East Timor, held a two-day public hearing session on World War II sex slavery at the Canossian convent in Becora, Dili on 6-7 February. The objective of the public hearing was to reveal the truth about the imperial Japanese military occupation in Portuguese Timor, which was accompanied by many cruel and inhuman war-related atrocities, including forced sexual slavery (*jugun infu*, *romusa* and *heiho*). The hearing encouraged Timorese women, particularly victims and their families, to speak

out so that the Timor-Leste public will become aware of the sexual slavery during the Japanese occupation from 1942-1945.

The public hearing also featured a panel discussion with Bishop Goro Matsuura of Osaka, Yasushi Higashizawa (law professor and a lawyer in cases of sexual violation), members of the Timor Leste Parliament Lucia Lobato (PSD) and Vicente Faria (Fretilin), and Father Martinho Gusmão, Director of the Justice and Peace Commission of the Diocese of Baucau.

Participants in the hearing urged the Japanese government to acknowledge the inhuman and cruel behavior of its soldiers during WW II. The participants asked the Japanese government to apologize to victims in then Portuguese Timor, and to pay compensation to victims of sexual slavery.

The hearing followed a year of research by the HAK Association in close cooperation with the Japanese Coalition for East Timor. ❖



Survivors of Japanese sex slavery give public testimony. Left to right: Virginia da Costa, Aniceto Neves (translator), Mariana Araújo da Costa Marques and Alicia Prego.

mended that the UN establish an international tribunal if other options for justice have been ineffective and Indonesia continues to obstruct justice.

CAVR recommended that Indonesia and other countries and businesses which supported the occupation pay Timor-Leste to provide reparations for the most vulnerable victims of human rights abuses. Suitable forms of reparations include compensation, restitution of the pre-violation situation, medical and psychological rehabilitation, restoration of victims' dignity, and measures to ensure that such violations will not be repeated.

CAVR recommends that members of the UN Security Council and governments which cooperated with the Indonesian military apologize to the people of Timor-Leste for failing to follow "international law and human rights which the international community was duty bound to protect and uphold." However, CAVR believes that prime responsibility for human rights violations rests on the government of Indonesia.

With regard to truth and justice, CAVR recommends that all serious crimes committed in East Timor between 1975-1999 be investigated by the Serious Crimes Unit (SCU) and tried at the Special Panels for Serious Crimes (SPSC). For that purpose, the UN must renew the mandate and increase the resources of the SCU and SPSC. The vast majority of crimes were committed before 1999 but have "received, regrettably, far less attention" from the international community. CAVR also recommends that the international community urge Indonesia to cooperate and asks the Indonesian military to disclose all relevant information to the SCU and SPSC.

Concerning the Commission for Truth and Friendship (CTF) established by the governments of Indonesia and Timor-Leste, CAVR recommends that the governments guarantee that the commission is independent, impartial and objectively makes recommendations that are proper, including criminal trials of perpetrators and reparations for victims.

To the organs of the UN, especially the Security Council, CAVR recommends that they continue to follow closely

the justice process for as long as necessary and be prepared to establish an international tribunal when all other avenues for justice have been exhausted.

La'ó Hamutuk supports the recommendations of CAVR, and urges the international community to implement those which relate to it. President Xanana Gusmão submitted the report to the UN Secretary General on 20 January 2006, but we are concerned that it has not yet been passed on through the UN system. CAVR recommended that its report be forwarded to the Security Council, General Assembly, and other UN bodies, each of which should hold a special session to study and draw lessons. On 24 March, several Timor-Leste and international human rights organizations (including *La'ó Hamutuk*) wrote to the Secretary General urging him to distribute the CAVR report to the wider UN community, as part of the UN's responsibility to find ways to end impunity for crimes against humanity during the Indonesian occupation.

The CAVR recommendations reinforce advocacy for a credible and independent court to try crimes against humanity committed in Timor-Leste. The Timor-Leste government believes that geopolitics make it impossible to establish an international tribunal, and prefers to forego prosecution in the interest of good relations with the Indonesian government. But these were crimes against humanity amounting to serious violations of international law, not just acts that violated the national laws of Indonesia or Timor-Leste. Because of this, establishing a process of justice is not only the responsibility of the governments of Timor-Leste or Indonesia, but the responsibility of the entire international community.

Many of the recommendations of CAVR reflect the aspirations of victims and witnesses who gave testimony. *La'ó Hamutuk* thinks that the report should be widely disseminated both inside and outside Timor-Leste, as soon as possible, and its recommendations implemented. Some victims have waited more than three decades for the truth of their experiences to be acknowledged and those responsible to be called to account. They should not have to wait even longer. ❖

Who is La'ó Hamutuk?

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Editorial: CAVR Recommendations Deserve Attention

The Commission for Reception, Truth and Reconciliation (*Comissão de Acolhimento, Verdade e Reconciliação* – CAVR) has completed its mandate. CAVR's final report, which includes a set of recommendations, gives hope to the people of Timor-Leste that their desire for justice will be realized. *La'ó Hamutuk* supports the recommendations of the CAVR report, although *La'ó Hamutuk* has criticized the Commission's processes in the past (see *LH Bulletin* Vol. 4, No 5, November 2003).

CAVR's mission officially ended on 31 October 2005, with a ceremony to hand over the 2,500-page final report by Commission chair Aniceto Guterres Lopes to RDTL President Xanana Gusmão.

The mandate of the Commission was to find the truth, organize the process of community reconciliation, and make recommendations. There are two important parts to the report: findings and recommendations. While carrying out the mission, CAVR found a massive pattern of human rights violations committed in Timor-Leste between April 1974 and October 1999.

CAVR estimates that 102,800 civilians died unnecessarily from causes related to the conflict. Of this number, 18,600 were forcibly killed, while 84,200 died from hunger and sickness caused by military operations. Most deaths occurred in the first eight years after the 1975 invasion, with a significant number of people killed in 1999. CAVR found that the vast majority of the unlawful killings and disappearances were perpetrated by Indonesian security forces.

CAVR found that large-scale displacement was repeatedly carried out by Indonesian security forces, and most Timor-Leste people alive today have been displaced at least once. These displacements caused serious disruption to the economy and frequently caused major loss of life.

The Commission found widespread non-fatal violations: detention, torture, and ill-treatment. These violations were most frequent in the periods immediately after the 1975 invasion and during 1999. Even between 1985-1999, when Timor-Leste was deemed a normal province of Indonesia, these violations occurred on a daily basis.

Rape was the most common form of sexual violation by Indonesian military forces. Sexual harassment, other forms of sexual violations and sexual slavery were also frequently perpetrated. The Commission found that the TNI military command accepted and encouraged such practices, resulting in nearly total impunity for perpetrators.

Children's rights were severely violated during the occupation through killings, sexual violations, detention and torture, forcible displacement and forcible recruitment for Indonesian military activities. The pattern of abuse mirrored violations committed against adults.

CAVR has made recommendations concerning justice, responding to those who testified at CAVR public hearings and gave statements. The Commission also recom-

(Continued on page 19)



On 17 March, *La'ó Hamutuk* organized a public discussion on the CAVR recommendations. L-R: Guteriano Nicolau (moderator), CAVR Commissioner José Estevao, and lawyer Adérito de Jesus Soares.

What is La'ó Hamutuk?

La'ó Hamutuk (*Walking Together* in English) is an East Timorese non-governmental organization that monitors, analyzes, and reports on the principal international institutions present in Timor-Leste as they relate to the physical, economic, and social reconstruction and development of the country. *La'ó Hamutuk* believes that the people of Timor-Leste must be the ultimate decision-makers in this process and that this process should be democratic and transparent. *La'ó Hamutuk* is an independent organization and works to facilitate effective Timorese participation. In addition, *La'ó Hamutuk* works to improve communication between the international community and Timor-Leste society. *La'ó Hamutuk's* Timorese and international staff have equal responsibilities, and receive equal pay. Finally, *La'ó Hamutuk* is a resource center, providing literature on development models, experiences, and practices, as well as facilitating solidarity links between Timorese groups and groups abroad with the aim of creating alternative development models.

La'ó Hamutuk welcomes reprinting articles or graphics from our *Bulletin* without charge, but we would like to be notified and given credit for our work.

In the spirit of encouraging greater transparency, *La'ó Hamutuk* would like you to contact us if you have documents and/or information that should be brought to the attention of the Timorese people and the international community.