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Submission to the

State Secretariat for Natural Resources Democratic Republic of Timor-Leste

from

La'o Hamutuk

regarding the

Draft Decree-law to establish a

National Petroleum Authority

10 June 2008

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Summary of key recommendations

- This public consultation is so late and short that it borders on tokenism.
- The TSDA should be extended again to allow time to develop an effective and safe NPA law. It will be impossible for the NPA to effectively regulate by July 1, given its lack of personnel, officials, budget and regulations.
- This should be a Parliamentary Law, not a Decree-Law passed by the Council of Ministers in secret session.
- A comprehensive legal framework should precede these specific laws, which do not easily transplant into our mixed Timor-Leste/UN/Indonesian legal regime. In particular, overall laws on transparency, dispute resolution and conflicts of interest, as well as the organic law for the State Secretariat for Natural Resources (SERN) should be enacted first.
- This law must comply with existing legislation, especially the Petroleum Fund Act, the Petroleum Act, the structure of Government, etc.
- The National Petroleum Authority should be involved in upstream operations only, and not have its mandate expanded to downstream operations. Downstream and distribution have different objectives and dangers and are new to Timor-Leste, and should be the subject of separate legislation. Midstream and downstream licenses for businesses are different from exclusive upstream access to state-owned natural resources.
- The NPA should be a regulatory body only, with policy-making reserved for the Government and Parliament.

- This law should define many technical and legal terms. The lack of definitions leads to an overly broad scope of activities to be regulated.
- Decision-making power, appointments and access to information are too centralized in the President of the NPA and should be distributed to create checks and balances.
- The NPA Board of Directors should be appointed from diverse sources, as should the single auditor. Qualifications and disqualifications for Directors and other officials should be in the law.
- There should be an independent oversight body for the NPA. Independent oversight by Parliament, the courts, the Provedor, the Prosecutor-General and other state agencies and other independent bodies is also necessary.
- Provisions to avoid conflicts of interest need to be greatly strengthened.
- Transparency is almost entirely lacking, and this law should be changed or augmented to ensure that important information is available to the public and that the public has meaningful input on decisions which affect them.
- The NPA should be a government agency, not a semi-autonomous *instituto público*. Its expenditures should be exclusively through the State budget approved by Parliament.
- The NPA should work together with other government organs to accomplish its mission. In particular, the relationship between the NPA, SERN and the Government is unclear in many areas, as is the relationship between regulation inside and outside the Joint Petroleum Development Area.
- Revenues from petroleum-related activities are required to be deposited in the Petroleum Fund, and cannot be diverted by the NPA.
- The NPA's primary responsibility is to safeguard the public interest, not the economic concerns of the petroleum industry. Its mandate must give adequate attention to environment, sustainability, good governance, worker safety, and community and human rights.
- The NPA Single Auditor should be appointed independently of the Authority and SERN, and NPA financial and other activity should be subject to outside audit.
- The NPA needs effective processes for dispute resolution and due process for administrative and enforcement decisions and appeals.
- NPA personnel should have the same rights and benefits as other public servants in Timor-Leste, under civil service and labor laws.
- All authorizations for upstream petroleum activities must conform with the open bidding processes for Production Sharing Contracts defined by the 2005 Petroleum Act.

Introduction

La'o Hamutuk appreciates the opportunity to provide input to this draft decree-law, which creates an agency with responsibilities which are critical to the survival and prosperity of future generations of Timor-Leste citizens.

However, with only five working days between when the draft was first made available and the deadline for submissions, we wonder if this is merely a token consultation, without any real intention for input from ourselves and others to be considered before this law is put into effect. The proponents of this law established an artificially rigid deadline of 30 June for establishing the NPA, and then waited until less than one month before that date before allowing people to see the draft law.

Indeed, we doubt that even this inadequate consultation would have occurred if La'o Hamutuk had not appealed to higher authorities in our open letter of 23 May 2008.[1] Although we are grateful that Secretary of State for Natural Resources Alfredo Pires responded to our request for public consultation, we wish that response had been more genuine, with adequate time and translation provided so that the public could participate in a substantive way.

We only had access to a "Non-Official English Translation," which makes it impossible for us to comment on the actual law or consult others in civil society. Furthermore, some translation anomalies would appear to change the law. For example "notwithstanding" seems to have been used to mean "subject to the requirements of" in articles 8.1(c), 11(c), 15.1 and 15.4, but in article 7.2 it apparently means "however."

Nevertheless, La'o Hamutuk analyzed the draft legislation as best we could in the limited time available, although we were unable to consult outside experts or Timorese civil society. We found many serious flaws in both the concepts and the details of the draft decree-law which could seriously harm future petroleum operations. We believe it will take more than a couple of weeks to fully analyze the legislation, including meaningful consultation and sincere redrafting.

In December 2007, SERN presented a 2008 work plan to Parliament which included public consultation on the NPA law in February, with approval by the Council of Ministers in March. Since this timetable has slipped by four months, we urge the relevant authorities in Timor-Leste and Australia to extend the life of the Timor Sea Designated Authority (TSDA), as has been done several times before, usually shortly before its mandate was to expire. The TSDA has been prolonged for more than two years after its initial three-year mandate, and there is no reason not to give it another six months. If this is not done, we fear for the future of petroleum regulation in Timor-Leste.

In March 2007, the RDTL Ministry of Natural Resources, Minerals and Energy Policy (MNRMEP) circulated a draft legislative package on reorganizing petroleum industry activities in Timor-Leste,[2] including the creation of a National Regulatory Authority for Petroleum, Natural Gas and Biofuels (ARNP), whose mandate was similar to the cur-

[1] Available at http://www.laohamutuk.org/Oil/PetRegime/NPAlaw/LH-SERN-NPA23May08En.pdf.

[2] The 2007 draft legislation, together with analyses by La'o Hamutuk and others, is available at http://www.laohamutuk.org/Oil/PetRegime/Restruc/07RestructIndex.htm.

rently proposed National Petroleum Authority (NPA). We were the only Timorese organization to make a submission during the brief time available, and urged that the consultation be extended. The Government followed our suggestion, and MNRNMEP accepted more input in July 2007, including a second La'o Hamutuk submission and others from the World Bank and several international experts. The many issues raised caused the Government at that time not to enact the legislation, and it has since been redrafted into its current form.

We appreciate that some problematic aspects of the draft ARNP decree-law have been removed in the current NPA draft, and that some of the flaws mentioned during public consultation have been addressed. However, a number of critical problems remain to be addressed, and several new issues have arisen.

This submission consists of two parts. This narrative section discusses some overall concerns, general concepts and suggestions for additional material to be included in the NPA decree law. Following that, an article-by-article analysis table contains La'o Hamutuk's suggested changes, questions and commentary about many of the clauses in the draft. Although some overriding concerns are mentioned in the two parts, many are in only one, so that both parts should be read together to fully understand our concerns.

This law should help Timor-Leste avoid the resource curse.

Timor-Leste has avoided the resource curse so far, which is relatively easy to do when oil prices are at record highs and only one field is in production. But this will not be the case forever, and consistent efforts and insight are necessary to keep our country from following the path of almost every cash-poor, oil-rich developing nation. This will take more creativity, checks and balances, decentralization, public involvement, stability, transparency, independent oversight, accountability and legal effectiveness than is in the current draft law, and we again urge a careful and conscientious effort to learn from problems elsewhere to enact laws which will truly protect current and future generations of Timor-Leste citizens.

Effective, transparent regulation is an essential part of both the rule of law and successful development of petroleum projects. When transnational oil companies are free to do as they choose, the results are almost always disastrous. Without clear rule, consistently applied, corrupt officials in governments and companies abuse the public trust and the people's mineral birthright for personal gain. Signs of this are beginning to emerge in Timor-Leste – secret agreements between companies and officials which transcend legal processes – but it could get much worse.

Our petroleum regime must be founded on a deliberative, consultative process which is supported and understood by citizens across the nation. It should prioritize social justice and intergenerational equity for Timor-Leste's people above the short-term economic needs of those who wish to profit from our resources.

This law should be passed by Parliament, not the Council of Ministers.

These should be a Law enacted by Parliament, not a Decree-Law approved by the Council of Ministers. La'o Hamutuk raised this in our 2007 submissions, and it was seconded by many others.

Although some believe that these matters are technically within the competence of the Government (and could therefore be adopted as a Decree-Law), there is no doubt that they are also within the competence of the Parliament. For many reasons, it is appropriate for this law to go through the Parliamentary process:

- **One of the 2002-2007 Government's proudest achievements was transcending party differences to achieve a unanimous parliamentary vote for the Petroleum Fund Act.** This consensus model should be emulated, not circumvented. Involvement of elected representatives from both the governing parties, and the opposition is essential to provide stability for the future.
- **Timor-Leste's young democracy is experiencing a crisis of public confidence in our institutions.** Whether justified or not, many citizens and partisans accuse the previous and current Governments of being undemocratic, corrupt, arrogant and secretive. In the energy sector, with its huge amounts of money and temptations to misuse power, it is important to avoid even the appearance of corruption. Parliament's deliberations are open and involve all political factions, creating an intrinsic debate and restraint on arbitrary authority.

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

  Timor-Leste is under coalition rule, with the possibility of more frequent changes of Government. In this context, a law passed openly by the people's elected representatives is more durable than a secretly-debated decision by the Government of the day. Such stability is not only in the interests of Timor-Leste's people, but will be more attractive to international petroleum companies, purchasers of our petroleum product exports, and others concerned about transparency, accountability, corruption and long-term economic growth.
- **Parliament has the Constitutional competence to deal with these matters by Law.** According to Article 95.1 of the Constitution, "It is incumbent upon the National Parliament to make laws on basic issues of the country's domestic and foreign policy." Petroleum activities comprise more than 80% of Timor-Leste's economy and will provide more than 90% of government revenues within a few years. It is hard to imagine an issue more "basic" to Timor-Leste. This law also deals with foreign policy, in that managing projects in the JPDA involves Australia.
- **This law may be outside the *exclusive* competence of Parliament** as enumerated in Article 95.2 of the Constitution. It has major implications for (p) tax policy and (q) the budget system. In fact, we believe that the NPA budget should be part of the National Budget, which would help resolve its contradictions with the Petroleum Fund Act. But even if parts of this law are not *exclusively* within Parliament's jurisdiction, Parliament still has the competence to pass them.
- **Under Article 96 of the Constitution, Parliament has the power to authorize the Government to make laws** regarding "(d) General rules and regulations for the public service…", "(e) General bases for the organization of public administration" and "(h) Definition of the bases for a policy on environmental protection and sustainable development," among other areas. The proposed decree-law clearly covers these matters, yet there is no authorization from Parliament to Government to enact this legislation.

- **If this decree-law is enacted under Constitution Article 115.1(e), thirteen Members of Parliament could demand a Parliamentary review** under Constitution Article 98, possibly suspending its implementation. As this law may be controversial, this is likely to happen if it is adopted without Parliamentary approval. It would be bad for both the nation and the Government if these issues became embroiled in a power struggle between the Council of Ministers and some Members of Parliament.
- **The preamble to this draft law invokes Constitution Article 115.3 which reserves exclusive competence to the Government** on matters which relate to "its own organization and functioning." This would be a dangerously overbroad interpretation of this concept, opening the way to cronyism and corruption in many areas. Fortunately, Timor-Leste's legislative practice over the last five years has not followed this model.
- **Under Constitution Article 115.2(a), the Government is authorized "to submit bills and draft resolutions to the National Parliament."** This would be the best way to enacting the NPA law, as well as the expected law to establish a National Oil Company. The Government should continue revising them, in consultation with advisors from many sectors, experts, the public and others. Then they should be submitted to Parliament for hearings, deliberation, amendment and approval, prior to promulgation by the President. This is the most democratic and Constitutional approach. It is also the only way to get the broad public and political support necessary for the stability of this new legal regime.
- **The statute contradicts or amends Parliamentary laws,** including the Petroleum Fund Act and the Petroleum Act. The NPA law changes structures created by the Timor Sea Treaty, which was approved by Parliament. Only Parliament can change or repeal a decision made by Parliament.
- **The NPA will be** empowered to contract with international companies for projects which will last for generations. It deserves the strongest, most democratic, and most stable foundation possible, which can only be provided by Parliamentary law.
- **International experience shows that the petroleum sector, especially in countries which depend on it for most of their revenues, is particularly vulnerable to mismanagement, corruption and abuse of power.** Such accusations (true or not) are already a part of Timor-Leste's political discourse and are likely to increase as onshore and domestic petroleum operations grow. It is therefore important to use the strongest, most transparent, most democratic, most inclusive and most deliberative process to establish the foundations of future petroleum development and regulation.

The NPA needs a mission.

La'o Hamutuk suggests the following be incorporated into this decree-law to define the mission and general objectives of the NPA:

> "The National Petroleum Authority is responsible to manage and regulate petroleum development in Timor-Leste and the Joint Petroleum Development Area with the highest degree of professionalism, good governance and expertise, having regard to the health and safety of all personnel, protection of the environment, economic efficiency, transparency, the development of the institutional and human resource capacity of the Timor-Leste petroleum sector, and good oil field

practice, for the benefit of the State of Timor-Leste, companies who invest in our resources, and current and future generations of Timor-Leste and Australian citizens."

One decree-law cannot fill a legal vacuum.

Other legal provisions are necessary to make this system workable, and the enactment of this law without that foundation is likely to lead to legal confusion. Timor-Leste relies on 1999 Indonesian law where no other law has yet been passed. Consequently, this law would not be implementable on its own. (The foundational structure used for the NPA, the *instituto publico*, is not defined in Timor-Leste or Indonesian law.) Furthermore, many gaps, as elaborated below, have not yet been filled, providing legal loopholes which could enable corruption or worse.

Where other related laws do exist, this draft law often contradicts them. It is inconsistent with parts of the Petroleum Act and the Petroleum Fund Act. In addition, an organic law for the State Secretariat for Natural Resources should be enacted prior to this law. This would define the internal structure of the Secretariat, perhaps incorporating much of the draft NPA law. We elaborate further on these problems in relation to particular articles below.

Upstream and downstream have different needs and objectives.

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

Furthermore, the Government has almost no experience in regulating the downstream sector, as there has been very little downstream petroleum activity in Timor-Leste, and distribution and retail sales have not been regulated to date. The mandate of NPA should be limited to upstream and mid-stream operations (such as an LNG plant).

Policy-making and regulation are different functions.

In most cases, it's clear that the NPA will be a regulatory agency, and does not make policy, which is appropriate. Unfortunately, many of the policies it is expected to implement have not yet been made explicit, and we strongly urge the Government and Parliament to adopt legislation spelling out such policies, especially for the midstream and downstream sectors which are not discussed by the Petroleum Act. In addition, the fourth introductory paragraph of the NPA, which reads in part "The Government now creates the NPA in order to establish … the enacted rules and regulations …" seems to imply a policy-making role, which would be better served by a body more accountable to democratically elected officials.

For a regulatory function, the NPA should be staffed entirely by professionals, without political influence. However, as illustrated by the recent public consultation on Technical

Regulations for the Designated Authority, it is often difficult to separate rule-making from political decisions.

Many key terms are not defined.

The draft law does not contain definitions, but uses many terms whose meaning is unclear, making it impossible to administer or enforce in a consistent and predictable manner. Definitions of some terms could be inherited by reference or incorporation from the 2005 Petroleum Act, but others are new and nebulous. Do "derivatives" and "products" of petroleum and natural gas include plastics, butane (e.g. cigarette lighters), fertilizers, petrochemicals, LNG, kerosene and/or asphalt?

Article 2 of the 2005 Petroleum Act defines "petroleum" as all naturally occurring hydrocarbons (including natural gas), but this NPA law apparently considers gas distinct. The Petroleum Act definition excludes products derived from refining, processing or liquefying petroleum, but this law appears to use a different definition. Other terms which should be clarified by specific definitions include "petroleum authorisation" (which may have a broader meaning in this law than in the upstream-limited Petroleum Act), "upstream," "downstream," "midstream," "petroleum operations," "commercialization," "derivatives," and "petroleum products."

The draft law centralizes power and fail to protect against corruption.

NPA is largely a power unto itself, with the only oversight being provided by the Joint Commission for activities within the JPDA. In Timor-Leste territory, Article 3.1 gives full responsibility to the NPA, with Article 2 loosely defining annual "tutelage" by the Secretary of State for Natural Resources (SERN). The NPA budget is apparently separate from the Government budget and Parliamentary oversight, and there is no provision for independent audit, public information or regular reporting to external authorities.

Under this law, SERN appoints other officials, is the final decision-maker, and is the only recipient of reports and information. Within the NPA itself, the President also chairs the Board of Directors and the Management Committee, and is the external face of the organization. This excessive centralization characterizes much of Timor-Leste's petroleum legislation, and is dangerous for many reasons. Checks and balances, consultation, and transparency are essential not only among ministries (within Government), but also with other State institutions (President, Parliament, Provedor, judiciary) and with non-governmental actors (business, civil society, local communities).

The NPA Board of Directors should be appointed by diverse sources. In our comments on Article 7.6 below, we propose that SERN appoint one (the President of the NPA), the Parliament appoint one, and the President of the Republic appoint one. Since the Parliament includes a range of political parties and meets in open session, this would be more transparent and democratic than a process run by the SERN and the Council of Ministers, and is essential to ensure broad public and political acceptance for the decisions of the NPA. We also suggest that a different person chair the Board of Directors than the President of the NPA, who could perhaps be a non-voting participant in Board meetings.

Similarly, the Single Auditor should be appointed independently of SERN to provide meaningful accountability, and his/her reports should be provided to the Parliament and public.

It would improve accountability to create an additional oversight/advisory body, analogous to the Petroleum Fund's Investment Advisory Board or Consultative Council. This would include representatives of various sectors, appointed by diverse organs. It would have the right to access NPA information, including "confidential" information from contractors, and to request the NPA Board or President to take particular actions. If this Advisory Committee believes the NPA is betraying the public trust, it could refer an issue to the Council of Ministers, Provedor, Court, or anti-corruption commission. A body would help implement the principles inherent in this year of Administrative Reform

There would be no need for laws if everybody was well-intentioned and performed their tasks flawlessly – the purpose of conflict-of-interest legislation is to help ensure that human greed or fallibility do not cause serious consequences for the people and the State. Article 7.9 takes a small step toward preventing conflicts of interest, but a much deeper, more comprehensive approach is needed.

Timor-Leste should have a government-wide conflict of interest code, applied to all decision-making officials (including the NPA Board of Directors, Management Committee and Single Auditor). In addition to prohibiting involvement with businesses whose interests overlap their regulatory duties, such a code should require them to declare their assets before starting their service, annually thereafter and when their service is completed.

Transparency and public information are essential.

The draft law contains very little about public consultation or transparency. In previous submissions, La'o Hamutuk has suggested many mechanisms for accountability, openness, developing relations with citizens and communities, and providing information to the public.

We propose a comprehensive, government-wide, legally-binding policy of public information based on the principle that all information should be public unless there is a compelling reason (such as national security) for it to be kept secret. In particular, the protective instincts of petroleum companies, often claimed as "commercial confidentiality," should not override the rights of citizens to understand the exploitation of our resources and the performance of our public servants, to prevent corruption, collusion and nepotism.

At present, the TSDA publishes annual reports and monthly information about revenues received from petroleum projects and passed on to the governments of Australia and Timor-Leste, and we hope that the NPA will do at least as well, consistent with the goals of the Publish What You Pay campaign and the Extractive Industries Transparency Initiative. This transparency should be written into the NPA statute, rather than left to the good will of its personnel. We also request that the TSDA 2007 annual report be published soon, even if the TSDA has ceased to exist.

This law cannot go into operation instantaneously.

The NPA is expected to be in operation three weeks from today, regardless of whether or not this decree-law has been promulgated, according to Article 32. It has no budget, no Board of Directors, no President, no personnel, no regulations and no mandate. Yet the existing TSDA structure for overseeing Bayu-Undan and other projects will "cease to ex-

ist on June 30, 2008." This creates a dangerous regulatory gap which could have disastrous consequences for consumers, citizens and the environment. We pray that ConocoPhillips and other companies will be on good behavior during the weeks and months before the NPA is able to effectively carry out its tasks.

Government must oversee the NPA, especially its budget.

The draft law creates a public institute *(instituto público).* Although we do not understand all the implications of such a structure, it is less integrated with the Government than a government department, such as the current National Directorate of Petroleum and Gas (DNPG). We hope that the wording can be made clear, and urge that the need for such an autonomous agency be carefully considered.

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

Since the principal purpose of the proposed National Petroleum Authority (NPA) is to effectively manage the State's petroleum resources "for the benefit of the people of Timor-Leste as a whole," a semi-autonomous agency may not be the best way to represent the perspective of a democratically-elected Parliament and Government. To advance that goal, we suggest including a mechanism for oversight by Parliament in Article 2, rather than only by the Secretariat (SERN).

The budget of NPA should be part of the State budget, (just as the budget for the Public Institute for Equipment Management is part of the budget of the Ministry of Infrastructure), rather than being approved and implemented independently, The NPA should not receive revenues from sources other than those described in Article 17(d), the State budget. Articles 17(a), (b), (c), (f) and (g) violate the Petroleum Fund Act's Article 6.1, which requires that all income "…from any Petroleum Operations, including prospecting or exploration for, and development, exploitation, transportation, sale or export of petroleum, and other activities relating thereto;… from direct or indirect participation of Timor-Leste in Petroleum Operations;… relating directly to petroleum resources" be deposited directly into the Petroleum Fund.

Furthermore, all NPA expenditures should be authorized as part of the State budget, although the NPA Board of Directors should manage its portion of the State Budget and make the smaller allocations within Parliament-approved categorical expenditures.

The public interest must be protected.

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

Article 3.1 includes 18 clauses about the jurisdiction of the NPA, nearly all of which relate to business activities of the industry. We strongly believe that regulation of the petroleum industry needs to be more comprehensive, including such responsibilities as protecting and restoring the environment (an afterthought in 3.1(j)), providing for sustainability, safeguarding worker health and safety, land rights, human rights, intergenerational equity and guaranteeing company responsibility for decommissioning. Most of these are recognized (albeit sometimes inadequately) in the Petroleum Act and the Model Production Sharing Contract, but Article 3 of the draft NPA decree-law omits many. Since the NPA will inherit petroleum-sector regulatory responsibilities currently exclusively assigned to the Secretariat, we are troubled that it prioritizes short-term, commercial concerns over long-term, public interests. Commercial companies will watch out for their own economic wishes, but who else will protect the land and people of Timor-Leste?

Conclusion

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

DEMOCRATIC REPUBLIC OF TIMOR-LESTE **GOVERNMENT** **Decree-Law no. ___ / 08 _____ of _____ 2008** **NATIONAL PETROLEUM AUTHORITY**	**COMMENTARY FROM LA'O HAMUTUK** **10 June 2008**
Under Timor-Leste's Constitution the State is entitled to all natural resources that are vital to the economy that exist in the soil and subsoil of Timor-Leste, including petroleum. These resources are to be efficiently managed for the benefit of the people of Timor-Leste as a whole. In order to manage and supervise the exploration, development and production of these resources, Timor-Leste has enacted the Petroleum Activities Law for the areas under Timor-Leste's exclusive jurisdictional area and the Petroleum Mining Code in the Joint Petroleum Development Area.	Environmental protection is also within the responsibility of the NPA, and "efficiently" in this paragraph should be expanded to include wording from RDTL Constitution Article 139.3: "The exploitation of the natural resources shall preserve the ecological balance and prevent destruction of ecosystems," as well as to safeguard human and local community rights.
Considering that the petroleum resources owned by Timor-Leste are a strategic component of its economy, and have a high value potential that if managed properly will generate significant revenues and direct benefits to the economy of the country.	This sentence discusses only the benefits Timor-Leste can receive from petroleum development. A more balanced view is essential, and we suggest adding the following: "Recognizing that in many other countries, petroleum development often leads to corruption, collusion, conflict, war, human rights violations, militarism and environmental destruction. Because of the high levels of money, political pressure, and corporate greed involved, it is essential for Timor-Leste to manage these resources to avoid or minimize these negative effects and other impacts of the "resource curse."
Noting the importance of regulating this sector prudently and supervise the activities in such a way that all petroleum exploration, development and production contribute to maximise the overall benefit to the country and its people.	
The Government now creates the National Petroleum Authority (NPA) in order to establish and supervise compliance with the enacted rules and regulations covering the exploration, development, production, transportation and distribution of petroleum and natural gas resources. Once it is fully operational, the NPA will be able to ensure the petroleum and gas security of the country by managing the country's minimum strategic fuel stock requirements and ensure minimum quality standards for petroleum products available in the domestic market and minimum standards of compliance with consumers security.	The first three paragraphs are about upstream development, but downstream has been inserted here, without explicit justification.
The Government accordingly decrees as follows, in accordance with paragraph "e" of no. 1 and no. 3 of article 115º of the Constitution of the Democratic Republic of Timor-Leste:	This should be a Parliamentary Law, not a decree-law, as explained in the narrative part of this submission.

CHAPTER I. GENERAL PROVISIONS	
Article 1. Nature	
1. The National Petroleum Authority is a public institute vested with administrative and financial autonomy and property rights of its own, the object of which is to act as the regulatory authority for the petroleum and gas and related products industry, in accordance with the provisions of the Petroleum Activities Law, Petroleum Mining Code and Timor Sea Treaty, and this Decree-Law.	The Petroleum Fund Act should also be listed, as should the legal basis for defining the structure and powers of a "public institute."
2. In matters relating to the Joint Petroleum Development Area (JPDA) this Decree Law shall be interpreted and applied consistently with the Timor Sea Treaty.	Add ", the Sunrise IUA and the CMATS Treaty." These create special rules for Greater Sunrise and modify the Timor Sea Treaty.
Article 2. Control and Tutelage	
Without prejudice to its administrative and financial autonomy, the NPA shall operate under the tutelage of the Secretary of State for Natural Resources (SERN), and the following shall be submitted for ministerial approval:	Which minister gives approval, as there is no longer a Minister for Natural Resources, Minerals and Energy Policy? The Prime Minister? See discussion of centralization and lack of accountability in the narrative part. Many RDTL decree-laws use the phrase "tutelage and supervision," is SERN expected to supervise the NPA?
a) The annual activities plan and budget;	The NPA budget should be part of the overall State budget, approved by Parliament after public debate. As per the Petroleum Fund Act, all petroleum-related revenues to RDTL go into the Fund, so the NPA cannot receive any other revenues. A special provision may have to be made for Australia's share of JPDA revenues, but this should be as specific and limited as possible. Contractors should pay Timor-Leste's 90% share directly into the Petroleum Fund, not to the NPA.
b) The activities report and the budgetary implementation report.	These reports should be published regularly, and subject to independent audit, as are those of other public institutes.
CHAPTER II. POWERS AND FUNCTIONS	
Article 3. Powers and Functions	
1. The NPA shall be responsible for the regulation, contracting, supervision and control of the activities of the petroleum operations in the upstream, midstream and downstream areas, and shall:	Will the NPA oversee the future National Oil Company, or only to the extent it does to other contractors? Policies for managing midstream and downstream operations are not set out in the Petroleum Act, and requires another Parliamentary Act to establish them. Given that they are very different from upstream activities, it would be advisable not to try to combine them in a single decree-law or regulatory body. There is also no urgency in bringing distribution activities under a legal regime. "Petroleum operations" as defined in the Petroleum Act don't include LNG or refined products; what is intended here?

(a) implement the national policy in the petroleum sector, within the exclusive jurisdictional areas of Timor-Leste, with emphasis upon guaranteeing the supply of petroleum, natural gas and their products throughout the country and upon the protection of the interests and security of the consumers in relation to the price, quality and supply of products;	In addition to guaranteeing supply and quality, the NPA should be responsible to safeguard environment, transparency, accountability, health and safety through principles of good governance and preventing corruption. This can be expressed in a Mission Statement in this legislation, as suggested in the narrative part of this submission. Other priorities should include preventing violations of land rights and human rights, ensuring inter-generational equity. If "exclusive jurisdictional areas of Timor-Leste" include the land territory this could be made clearer, perhaps by using "territory" instead of "exclusive jurisdictional areas."
(b) promote and enact regulations and administrative measures that require the entities in the petroleum industry to create a greater participation of Timor-Leste nationals in the industry, and the use of goods and services from Timor-Leste;	This could include using the industry to build Timorese capacity for regulatory or corporate work in the petroleum sector.
(c) promote studies with a view to create blocks for the purpose of the award of exploration, development and production agreements, within the exclusive jurisdictional areas of Timor-Leste and in the Joint Petroleum Development Area (JPDA), in accordance with the Timor Sea Treaty;	If this is also intended to cover onshore exploration in Timor-Leste's territory, it should be made explicit. The word "authorization" rather than "agreement" is used elsewhere for upstream operations; this could open a loophole for such operations without an authorization like with the model Production-Sharing Compact and should be closed. This is already problematic, as some onshore explorations have been initiated based on MOUs, without a public bidding process.
(d) regulate the execution of geological, geochemical and geophysical services applied to petroleum exploration, with a view of collecting technical data within the exclusive jurisdictional areas of Timor-Leste and in the JPDA;	
(e) draft notices and conduct the auctioning of the award of exploration, development and production contracts and to sign the corresponding contracts and supervise the performance thereof both within the exclusive jurisdictional areas of Timor-Leste and in the JPDA;	This should be conducted according to the procedures in the Petroleum Act, PMC and Model PSC.
(f) authorise refining, processing, transport, import and export, stocking, distribution, resale and commercialisation, in accordance with this Decree-Law and its regulations, within the exclusive jurisdictional areas of Timor-Leste;	Downstream activities open a new mandate not in the Petroleum Act, model PSCs or PMC. This requires new Parliamentary legislation. "In accordance with this Decree-Law" is inadequate since this decree-law contains very little about the policy for regulating such activities. These concerns about downstream activities also refer to sections (n), (p), (q) and (r). This doesn't define the substances covered – as written it covers every kind of commercial activity, even kids selling tangerines or cigarettes. In addition, "resale and commercialization" includes everybody who sells bottles of petrol by the side of the road, as well as electricity generation, LPG bottling, retail petrol sales, etc. Article 3.1(f) and (g) only refer to "exclusive jurisdictional areas of Timor-Leste," which excludes the JPDA. If a floating LNG plant or other processing facility were built within the JPDA, it would not be covered.

(g) establish criteria for the calculation of tariffs for transport by oil pipeline within the exclusive jurisdictional areas of Timor-Leste and to fix the level thereof, in the event that an arbitration opinion is requested by the parties interested in this economic activity;	This should implement a policy for calculating such tariffs, based on published criteria for pipeline transport rates and consistent across all projects and companies. Why is this singled out for arbitration, rather than coming under the general dispute resolution provisions of this law?
(h) supervise the activities carried on by the petroleum and natural gas industry and impose the administrative and pecuniary sanctions provided in the law, regulations or contracts;	This should also include the application of criminal penalties (including prison, as specified in Chapter VIII of the Petroleum Act) when appropriate, referral to the judicial system, and other sanctions strong enough to deter multi-billion dollar companies and potentially corrupt officials from inappropriate or illegal activities.
(i) delimit and expropriate areas required for exploration, development and production of petroleum and natural gas, and the construction of processing plants, pipelines and terminals within the exclusive jurisdictional areas of Timor-Leste;	To some extent, this overlaps with (e). If the NPA is to "expropriate areas required" for petroleum activities, it must be done according to legal procedures, including notice, consultation, protection and compensation of landowners, residents and traditional owners. This is a broad and problematic subject which would be better handled as part of a comprehensive government policy on eminent domain, perhaps implement by another agency (such as the Ministry of Justice) with greater capacity to consider local situations and rights.
(j) ensure good practices in the conservation and rational use of petroleum, natural gas and their products and the preservation of the environment;	The goal should be more than "ensure good practices," but to protect and preserve the local and global environment, and to remediate damage thereto from both normal and accidental activities. In some cases, bad practices will need to be prohibited. This clause should be separated into several clauses, spelling out mandates to ensure conservation, sustainability, "rational use" and environmental preservation. It should also include Timor-Leste's responsibilities as residents of planet Earth, considering ways to minimize emission of greenhouse gases and keep our carbon footprint small.
(k) stimulate research and the use of new technologies in development, production, transport, refining and processing;	"new <u>and improved</u> technologies"
(l) organize and keep all of the information and technical data regarding the regulated activities of the petroleum industry;	This should also include financial data, in cooperation with the Ministry of Finance. This clause should refer to another clause detailing dissemination and publication of information, in addition to collection and storage, which could be done in collaboration with a university to build capacity and knowledge about these issues, as well as to improve communications with the public.
(m) annually, consolidate the information regarding the national petroleum reserves provided by the undertakings and to be responsible for the dissemination thereof;	This should also include the JPDA, with reports of reserves published annually or more often. A standard for "dissemination" should be defined in this law, as it's unclear what other public information requirements apply to the NPA. There needs to be another section spelling out public information in more depth.
(n) establish and supervise the proper working of a national fuel stocks system and an annual strategic fuel stocks plan;	

(o) collaborate with other regulatory authorities in the energy sector with regard to matters of common interest;	Delete "in the energy sector" to enable wider collaboration. This would be a good place to spell out how NPA relates to other organs of the State and civil society.
(p) regulate and authorise activities related to the national fuel supply and supervise them directly or in collaboration with other Government agencies;	
(q) require regulated agents to submit information regarding production, import, export, refining, improvement, treatment, processing, transport, transfer, storage, stocking, distribution, resale, allotment and commercialisation of the products subject to its control;	There's no clear description of which agents are to be regulated. This could include every shop or kiosk which sells kerosene, LPG bottles, plastic chairs or butane cigarette lighters. A clearer and more limited definition of distribution activities to be regulated by the NPA is essential. In this and the next line, "products" needs to be defined.
(r) specify and certify the quality of petroleum and natural gas products;	
2. In matters relating to the Joint Petroleum Development Area established by the Timor Sea Treaty, the NPA, as Designated Authority, shall be responsible to the Joint Commission and shall carry out day-to-day regulations and management of petroleum activities.	"regulations" should be "regulation" to use the language of Timor Sea Treaty Article 6(b)(iv).
3. The powers and functions of the NPA, in its capacity as Designated Authority for the purpose of the Treaty, shall include:	Articles 3.2 and 3.3 list the jurisdiction inside the JPDA, but Timor-Leste should not relinquish jurisdiction over other areas disputed with Australia where no maritime boundary has been established. (The 2002 Timor Sea and 2006 CMATS treaties are petroleum revenue sharing agreements, specifically without prejudice to a future maritime boundary settlement.) This Decree-Law should, in this Article (including 3.2(i)) or elsewhere, refer to the territorial claims made in RDTL Law No. 7/2002 (Maritime Boundaries). Are these powers only intended to apply within the JPDA? If so, some of them (e.g. (f-i)) should also be spelled out for Timor-Leste territory.
(a) day-to-day management and regulation of petroleum activities in accordance with the Treaty and any instruments made or entered into under the Treaty;	And monitoring, including ensuring that operators follow their plans.
(b) the preparation of the annual estimates of income and expenditure of the NPA regarding activities connected with the Joint Petroleum Development Area for submission to the Joint Commission;	This should be integrated into the government budgetary process as well, and income comes only from the State budget. Timor Sea Treaty (TST) Annex C, clause (b) also requires that the JC approve expenditure estimates before money can be spent; should this be mentioned here?
(c) the preparation of annual reports to be submitted to the Joint Commission;	Annual reports to the Joint Commission should also be presented to the RDTL Government and be published, including the TSDA report for 2007.
(d) requesting the assistance of the appropriate Australian and Timorese authorities, consistent with the Timor Sea Treaty	"Timorese" should be "Timor-Leste"
i. for search and rescue operations in the JPDA;	
ii. in the event of a terrorist threat to the ships and structures involved in the petroleum operations in the JPDA; and	TST Annex C reads "in the event of a terrorist threat to the vessels and structures engaged in petroleum operations in the JPDA; and" which is slightly different, in that it includes helicopters and is more specific.

iii. for air traffic services in the JPDA;	
(e) requesting the assistance of the appropriate Australian and Timorese authorities, or other bodies or persons, in connection with anti-pollution preventive measures, equipment and procedures;	TST Annex C reads "(e) requesting assistance with pollution prevention measures, equipment and procedures from the appropriate Australian and East Timor authorities or other bodies or persons;" If possible, this should be expanded to include recovery from accidents and spills, as well as decommissioning, emergency response, and alleviation of environmental damage from normal and exceptional operations.
(f) establishment of safety zones and restricted access zones, consistent with wit international law, in order to ensure the safety of navigation and petroleum operations;	
(g) controlling movements into within and out of the JPDA of vessels, aircraft and structures and other equipment employed in exploration for and exploitation of petroleum resources in a manner consistent with international law;	
(h) subject to the customs, quarantine and migration provisions of the Timor Sea Treaty, authorise access to the JPDA by employees of concessionary companies and companies to which contracts have been awarded and by their subcontractors, and other persons;	
(i) issuing regulations and giving directions, in accordance with the Timor Sea Treaty, on all matters related to the supervision and control of petroleum activities, including on health, safety, environmental protection and assessments and work practices, pursuant to the Petroleum Mining Code applicable to the JPDA;	As there are different PMCs for different areas of the JPDA, this should be more explicit.
(j) exercising such other powers and functions as may be identified in Annexes to the Timor Sea Treaty.	TST Annex C (i) adds "or as may be conferred on it by the Joint Commission," which is repeated in TST Annex D 1(b). If this is still operative, it should be included – and perhaps other language needs to be added to this decree-law to explain how the Joint Commission interacts with RDTL law and sovereign organs.
Article 4. Powers and Prerogatives	
1. The NPA shall be vested and exercise State powers and prerogatives in order to comply with its regulatory and supervisory functions, which are limited to:	
a) Supervision of facilities, equipment and documents of entities operating in the petroleum and natural gas industry and its derivatives;	This probably intends to say "entities operating in the industries of petroleum, natural gas and their derivatives." Both "entities" and "derivatives" need to be defined. Also, if the NPA is responsible to supervise the products (i.e. quality) and activities of such entities, this should be spelled out.

b) Collection of the tariffs due as a consequence of its regulatory and supervisory activity;	Articles 4.1(b) and 4.1(d) potentially violate the Petroleum Fund Act; they should specify that any money collected in relation to petroleum operations must be deposited into the Petroleum Fund. If the NPA is responsible for establishing tariffs and setting their levels, this should be stated. But it would be better if the types and levels of tariffs, as a policy matter, were established by a policy-making body. Also, is the NPA responsible to ensure that petroleum companies make other payments (i.e. per their contracts, and tax laws) which are not a consequence of NPA regulatory activity?
c) Within the limits of general law, coercive enforcement of its decisions regarding the petroleum and natural gas industry by requesting the intervention of other administrative authorities including police if necessary;	NPA should also be able to coercively enforce the Petroleum Act and other relevant decisions by other agencies. In addition to the police, it should be able to use the General Prosecutor, Provedor, Inspector General and judicial system. These oversight agencies should be empowered to enforce the law even without NPA request, if they believe that the NPA is not performing its tasks appropriately, and to ensure that NPA officials obey the law.
d) Imposition of sector regulated fines whenever a breach of normative or contractual obligations occurs.	Does "sector regulated fines" mean "fines in the sector regulated by the NPA"? Other penalties (suspension of licenses, restriction of activities, prison, etc.) might be appropriate at times. The mechanism for setting fines should be defined, perhaps in Article 4.2. "Normative" usually means commonly understood, unwritten standards. Although these can be difficult to enforce (and may violate the right to due process in Article 4.3), this clause should be clarified to ensure that violations of laws and regulations are also subject to penalty. See comment under 4.1(b) regarding the Petroleum Fund.
2. The NPA shall issue, in the exercise of its regulatory powers, regulations which establish the administrative procedures and obligations to be complied with by entities in the petroleum and natural gas industry and its derivatives, operating in the regulated sector.	Insert "consistent with policies established by the Government through laws" after "regulations."
3. The NPA shall apply the principle of due process in enforcement proceedings and in so doing shall ensure that the offender is entitled to make representations in their own defence.	There should be an administrative judicial body outside or within the NPA to provide due process. The defender should be entitled to an attorney, and there should be a mechanism for appeals. Also, if someone is victimized as a result of petroleum activities authorized by the NPA (such as agricultural land being damaged by an oil spill), they should be able to ask the NPA to help them receive compensation, as well as to enforce its rules. Give the vagueness of Article 5, it's important to give more specifics about how legal rights of companies, residents and the State are to be protected.

Article 5. Resolution of Disputes	
The regulations approved by the NPA shall make provisions regarding the procedures to be adopted in order to resolve disputes between the parties involved, with an emphasis on conciliation and arbitration.	This should explicitly include disputes among companies, between companies and the NPA, and between companies and workers or local residents. If conciliation and arbitration (and perhaps compensation) fails, there should be another mechanism available, or an appeal if arbitration is rejected by one party. The vagueness of this article does little to clarify the situation, and may contravene the Parliament-approved Petroleum Act. Article 20 of the 2005 Petroleum Act contains a mechanism to resolve disputes between Authorized Persons (PSC holders) and the State of Timor-Leste, using negotiation, followed by arbitration or a court. Other disputes are decided by the "Ministry" alone if the parties consent. For example, onshore petroleum operations are likely to come into conflict with local farmers and residents, or with people who the company wants to displace. Mishandling of such disputes has led to disastrous results in other countries.
CHAPTER III. STRUCTURE OF THE NPA	In general, this section is not well-written, and not explicit enough to clearly define the structure and the separation of powers and responsibilities among the different organs. Other public institutes in Timor-Leste are better structured, with more accountability and internal and external checks and balances. These should be used as models for the NPA.
Article 6. Organs	The Management Committee (Article 10.3) is also an organ of the NPA.
1. The NPA shall have the following organs:	
a) Board of Directors;	
b) President of the NPA/Chairman of the Board of Directors;	
c) Single Auditor.	
Article 7. Board of Directors	
1. The Board of Directors, is the collective organ in the organisation responsible for the defining of the general direction of the organisation in accordance with sector related policies issued by the Government of Timor-Leste; approving regulations and directives; approving the NPA's Consolidated Work Program and Budget.	The Consolidated Work Program and Budget should be published. According to Article 2(a), and are subject to "ministerial approval." Their overall allocations should also be approved by Parliament as part of the General Budget of the State.
2. For avoidance of doubt, the Board of Directors, will pass the Budget for JPDA operations after it has been approved by the Joint Commission. Notwithstanding that any delay in the external approval of that subcomponent of the national consolidated budget will not interfere with the national process of approving the NPA's budget without the JPDA's component.	Are there to be two separate budgets, one for JPDA operations and one for other activities? If the Board of Directors, the Minister, and Parliament are not allowed to change the budget after it has been approved by the Joint Commission, this would violate democratic processes and Constitution Articles 95(d) and 145, with Parliamentary budgetary approval required by Article 115.1(d).

3. Following approval by the Joint Commission, budgetary items referred to in the preceding paragraph shall be included in the consolidated budget.	If the NPA is to begin operations in July 2008, it needs a transitional process to approve its budget for July-December 2008, which should be part of the mid-year update of the State Budget. The only apparent NPA allocation in the State Budget approved by Parliament in December 2007 is a DNPG expenditure of $114,000. The TSDA's budget for 2008 is around $5 million (it has not been published), presumably this must be allocated to the "JPDA component" of the NPA budget.
4. The Board of Directors is comprised by its Chairman (the President of the NPA) and four other directors.	
5. The President of the NPA will automatically chair the Board of Directors.	In the BPA and other agencies, the Board of Directors is led by a different person from the President or General Manager, and we suggest a similar distribution of power in the NPA, to share responsibilities and improve checks and balances.
6. The President of the NPA and two other directors will sit on this Board following their designation by the Government and the other two will be exofficio members of the Board because of positions held as NPA's executive directors responsible for the upstream and downstream divisions.	The NPA Board of Directors should be appointed by diverse sources, since their work is so critical to the economy and future to Timor-Leste. Rather than having all members appointed by the Government and NPA President, we propose that SERN appoint one (the President), Parliament appoint one and the President of the Republic appoint one, in addition to the ex-officio members. They should all be confirmed by the Parliament (perhaps following confirmation by the Council of Ministers). Since the Parliament includes a range of political parties and meets in open session, this would be more transparent and democratic than a process run by the Government in closed meetings. An open process is essential to prevent cronyism and to ensure broad public and political support for the actions of the NPA.
7. The Government designated members shall be nominated and appointed by the member of the government cabinet in charge of petroleum resources for a renewable 4-year term of office, upon approval of their designation by the Council of Ministers.	This section should include qualifications and disqualifications for the NPA Board of Directors, to ensure professionalism and prevent conflicts of interest. In addition to requiring expertise and excluding known criminals, a provision similar to the one in the BPA statute should be included: "No person shall serve on the *Governing Board* while he or she is a member of the *National Assembly*, or the Council of Ministers, an official of a ministry, or an official or employee of a *Bank* operating through offices in East Timor or is a beneficial owner of five percent or more of an equity interest in a *Bank*."
8. The two exofficio members of the board will have their term of office set according with the duration of their employment contract as executive directors for the upstream and downstream divisions/departments, but under no circumstances, can the duration of their mandate as board members ever exceed a 3-year term, renewable.	

9. The members of the Board of Directors shall not have any financial interests or holdings in undertakings in the regulated sector while they are in office and for the period of 1 (one) year after they cease to be board members.	This should include the President, all the executive directors and the single auditor. It should be part of a strong, comprehensive, government-wide conflict of interest and anti-corruption law. But until that exists, it needs to be spelled out here. Close relatives of Board members and EDs should also be barred from having financial or other interests in companies in the regulated sector, as well as in companies outside the sector which are significantly affected by NPA decisions. For example, NPA decisions about fuel prices could impact on an automobile dealer or a taxi business, and such conflicts of interest should be avoided. NPA directors and officials should be barred from working or subcontracting with companies in the regulated sector for one year after they leave their positions, as should members of their families. Similar provisions should apply to Executive Directors and the NPA Single Auditor. It may also be wise to preclude them from holding other Government or political party positions will serving with the NPA.
10. Any board member might be dismissed under the following circumstances:	The BPA rules specify clear grounds for dismissal, as well as who is responsible to decide on dismissals, and should be paraphrased here. Also, "might" is too vague, and should be "shall" with specific actions listed.
a) adjudication of judicial decision;	Would be better as "Convicted by a judicial court of criminal activity." Or does it mean something else?
b) exoneration of government appointees by government decision on grounds of serious misconduct, gross negligence or merit evaluation of his/her performance;	Exoneration is a mistranslation; what is intended here?
c) forced termination of contract (dismissal) as executive director of upstream or downstream following due disciplinary process.	Can other directors or the President be dismissed by a disciplinary process? Who is responsible for making such a decision, and how does the process work?
Article 8. Powers and Functions of the Board of Directors	
1. The Board of Directors shall:	
a) Define the mission and general orientation and direction of the NPA, within the limits of the public nature of the Institution;	The overall NPA mission and direction of NPA should be set by this statute or Parliament, as suggested in our narrative submission, rather than the Board. Although the Board of Directors can define strategy to achieve that mission, its role should be regulatory, not policy-making.
b) Approve strategic and business plans and ensure compliance therewith;	Such plans should be published.
c) Approve the internal regulations of the NPA and external regulations necessary for the Authority's supervisory and regulatory activity notwithstanding number 2, paragraph i), of article 3;	The cross-reference is incorrect.
d) Approve for submission the annual work plan and budget.	
2. Whenever consensus is unattainable the Board of Directors shall deliberate by using the simple majority rule and the chairman will have the power to exercise his/her casting vote.	This should be part of Article 9, since it relates to proceedings rather than powers of the board. It would provide better separation of powers if the Chairman did not vote, with one more director added to create an odd number.

Article 9. Proceedings of the Board of Directors	
The Board of Directors shall meet ordinarily once a month and extraordinarily whenever convened by its Chairman or at the request of its other members or the Single Auditor.	This should also cover quorum, minutes, procedures for convening the meeting, who is allowed to participate (i.e. Single Auditor, Management Committee), etc?
Article 10. President of the NPA/Chairman of the Board of Directors	
1. The President of the NPA is the executive organ of the NPA in charge of day-to-day management and administration of the organisation.	See comment under Article 7.5. The NPA structure centralizes too much power in one person – the President also chairs the Board of Directors and the Management Committee, and is responsible for operations and administration, yet there is little oversight of this person or accountability to any other authority. It is dangerous when someone is their own supervisor, and facilitates corruption.
2. The President of the NPA will be assisted by several directors to help him/her in carrying out his/her duties.	These are Executive Directors (EDs), not members of the Board of Directors. Perhaps a different term can be used. Since two of them sit on the Board of Directors, it's confusing. This NPA law should enumerate the areas of responsibility for each Executive Director position: JPDA, upstream, downstream, and whatever others are planned.
3. The President of the NPA shall establish a Management Committee which will consist of all executive directors.	
4. The position of President of the NPA is entrusted by the government under the contract of mandate; in that capacity, the President, public manager of the NPA, can have his/her mandate revoked by Government.	Does Government mean the State Secretary for Natural Resources, the Prime Minister or the Council of Ministers? Given the tremendous amount of power the President has, this should not be a political decision, and dismissal should follow due process. However, there should be qualifications for selecting this person, as described in our comment to article 7.9 above.
5. For the purpose of the paragraph 10.4 above, the Government can only revoke the mandate on grounds of serious misconduct, gross negligence or merit evaluation of his/her management performance.	
Article 11. Powers and Functions of the President of the NPA/Chairman of the Board of Directors	
The President of the NPA/Chairman of the Board of Directors shall:	
a) Represent the NPA in court or other legal proceedings;	
b) After seeking the views of the Joint Commission, appoint an executive director with exclusive responsibility for the JPDA matters;	
c) After competitive procurement of positions of Director, appoint the executive Directors of the NPA, notwithstanding the transitional one year provision under article 31 of this Decree-Law;	"notwithstanding" should be "consistent with"

d) Head and supervise the day-to-day operations of the NPA;	The President should not be his own boss. This has been a problem in the past, when the same person was Executive Director (President) of the TSDA and a member of the Joint Commission.
e) Chair all meetings of the Board of Directors and Management Committee and assure proper implementation of all deliberations and decisions;	See comment to 10.1.
f) Coordinate the activities of the Board and the Executive Directors, including allocation of responsibilities to its members, and ensure hierarchical compliance with decisions taken;	
g) The President of NPA/Chairman of the Board of Directors has a casting vote privilege in the Board of Directors deliberation process.	
Article 12. Single Auditor	
The Single Auditor is the organ responsible for monitoring legality, regularity and proper financial and patrimonial management of the NPA.	
Article 13. Appointment and Term of Office	
The Single Auditor shall be appointed by a joint order of the Secretary of State for Natural Resources and the Minister of Finance for a renewable 3 (three) year term of office, and can only be removed from office on grounds of serious misconduct or gross negligence.	If the auditor is to provide semi-independent oversight, he/she should be appointed by people outside of the State Secretariat for Natural Resources. Especially when the SERN and Minister of Finance are related, this offers essentially no safeguard against collusion. The Auditor should be appointed through a process external to the Secretariat for Natural Resources or other ministries of the Government (since all Ministers serve at the pleasure of the Prime Minister), such as by the Inspector General or Banking and Payments Authority with approval by Parliament. to improve independence and fiscal responsibility.
Article 14. Functions of the Single Auditor	
1. The Single Auditor shall:	
a) Audit and control the economic, financial and patrimonial management of the NPA;	Annual audit reports should be provided to Parliament and published, as well as other reports the as Parliament or the Auditor requests. The auditor should also oversee contracting and bidding processes to ensure that they conform to the law.
b) Periodically inspect the books and accounting records of the NPA;	The auditor should also have access to the books, records and production reports of companies operating under PSCs or other authorizations in the JPDA or Timor-Leste territory.
c) Issue recommendations prior to the acquisition and disposal of immovable assets;	
d) Produce technical opinion on the NPA's budget and budgetary execution and draw technical recommendations to be submitted to the board of directors;	

e) Issue recommendations on procedures in place regarding internal control.	If the Auditor finds anything irregular, he/she should be authorized to bring it to the attention of the Provedor, the Inspector General and/or the General Prosecutor, in addition to the Board of Directors and President of NPA, the Minister of Finance and SERN.
2. The functions of the Single Auditor are without prejudice to the appointment of auditors under the Timor Sea Treaty for the purposes of that treaty.	
CHAPTER IV. CONDITIONS OF EMPLOYMENT, PATRIMONY AND FINANCE	
Article 15. Employment of Staff	
1. The NPA's staff, other than statutory appointed board members and auditor, are subjected to competitive procurement in their recruitment process in accordance with best practice in the sector without prejudice of their contractual conditions being ruled by agreement of parties within the limits of the labour law of the country and the administrative and financial autonomy of the NPA, notwithstanding the transitional one year provision under article 31 of this Decree-Law.	Insert "best <u>worldwide</u> practice in this sector." However, NPA staff recruitment should follow the same laws and procedures as other Timor-Leste civil servants.
2. Contracts of employment shall be primarily governed and interpreted by the rules of the contract and complemented by the Timor-Leste labour law.	Delete "primarily" and add "civil service and" before "labour." Laws should be the primary determinant, with "rules of the contract" secondary. As written, this encourages the signing of contracts which violate Timor-Leste laws.
3. The current employees of the Designated Authority may become employees of the NPA upon the cessation of the TSDA, subject to agreement between the NPA and each individual employee on the terms and conditions of their employment.	If it is intended that most TSDA employees move to the NPA, this should be "shall", as "may" is vague as to who decides. Do current employees of DNPG also migrate into the NPA through a similar process, if their positions have been eliminated? Given that there is only one ED for the JPDA, what happens to the other current TSDA Executive Directors?
4. Notwithstanding with the paragraph 3 above, the NPA shall not be the TSDA's successor as employer.	
Article 16. Patrimony	
1. The official patrimony of the NPA shall comprise the assets and all of the technical data of the Designated Authority together with transfers by State Institutions and agencies, including the Secretariat of State for Natural Resources.	
2. Parties to the Timor Sea Treaty shall have access to the technical data referred to in paragraph 1.	This allows Australia to access all technical data mentioned in 16.1, which includes Timor-Leste's sovereign territory, and should be changed.

Article 17. Revenues	The collection of revenues and authorization of expenditures must be consistent with the Government budget and the 2005 Petroleum Fund Act and conform to policies set by Parliament in an open and democratic manner.
The following are NPA's revenue:	The NPA should not receive any revenues other than those described in Article 17(d) from the State budget. Articles 17(a), (b), (c), (f) and (g) violate Petroleum Fund Act Article 6.1. The NPA should not receive any income from petroleum-related activities, although some provision needs to be made for the 10% that is paid to Australia. Perhaps, in a process analogous to the Sunrise redistribution described in CMATS Article 5.9, Timor-Leste could receive all revenues (into the Petroleum Fund), with a quarterly payment to Australia of the 10% of JPDA revenues it is entitled to
a) The sums in respect to the tariffs payable for the provision of services within the ambit of its powers and functions;	Should go into the Petroleum Fund.
b) The sums with regard to authorisations, certificates, approvals and other licences granted in the exercise of the NPA's powers;	Should go into the Petroleum Fund.
c) The proceeds of fines imposed for breaches of the laws, regulations and technical requirements applicable to the regulated sector;	Should go into the Petroleum Fund.
d) Budgetary allocations by the Government;	
e) Grants, inheritances or legacies;	The NPA should not be allowed to do its own fundraising, outside of the government budget.
f) Income and proceeds from its own assets and the disposal thereof or from the establishment of rights over such assets;	Should go into the Petroleum Fund.
g) Any other income arising from its activity, or which belongs to it by law, internal regulation or contract.	Should go into the Petroleum Fund, if petroleum related. This and the other general provisions in this article risk corruption, as there is no oversight. How are they to be distinguished from bribes? Right now, the TSDA earns interest due to delays in passing on payments from companies to the two governments. Is this intended to be included here? It would be a step backwards, as the interest is now paid to Australia and TL.
Article 18. Expenditures	
1. The NPA's expenditures shall be all expenditure which the Board of Directors internally approves as necessary for the performance of its functions and the exercise of its powers, the operation of its services, and the management of publicly owned assets.	Expenditures should be according to the State Budget developed by the Government and approved by Parliament, and not left to the Board of Directors, "internally" or otherwise. Small details of expenditures are not in the State Budget, but Parliament should set overall amounts and categories, which should be overseen in the same way as expenditures by other Government agencies. Just as all NPA revenues should come from the budget, all expenditures should follow democratic decisions. Article 145.2 of the Constitution prohibits "the existence of secret appropriations and funds" requiring publication of the budget, as well as approval by the National Parliament.

2. All fees paid by contractors in relation to the JPDA shall be expended in accordance with the budget for the JPDA, approved by the Joint Commission.	Such fees should go into the Petroleum Fund, with their expenditure incorporated into the normal budgetary process.
CHAPTER V. DEVELOPMENT AND PRODUCTION OF PETROLEUM, NATURAL GAS AND THEIR DERIVATIVES	
Article 19. Legal Entitlement to Rights	
1. Timor Leste's petroleum exploration, development and production rights in the exclusive jurisdictional areas of Timor-Leste shall be administered by the NPA.	This should reference the Timor-Leste Maritime Zones Act (RDTL Law No. 7/2002) which defines Timor-Leste's claimed EEZ, as well as onshore territories.
2. The petroleum exploration, development and production rights in the JPDA are shared between Timor-Leste and Australia and shall be administered by the NPA in accordance with the Timor Sea Treaty.	Add ", the CMATS Treaty and the Sunrise IUA."
Article 20. Nature of the Technical Assets	
The technical assets, which comprise the data and information regarding the sedimentary basins of Timor-Leste are also considered to be an integral part of the national petroleum resources, shall be collected, maintained and administered by the NPA.	There should be a comma after "Timor-Leste" and an "and" after "resources,".
Article 21. Petroleum Contracts/Agreements	
The NPA will enter into the Contracts/Agreements for exploration, development and production of petroleum and natural gas in accordance with the Petroleum Activities Law and its subsidiary regulations in the Timor-Leste's exclusive jurisdictional areas, and the Petroleum Mining Code for the areas in the JPDA;	What agreements other than contracts are permitted? The Petroleum Act has a process for upstream authorisation exclusively through Production Sharing Contracts; does this decree-law anticipate something else? Recently, the Government has signed secret MOUs with several foreign companies, including East Petroleum, Petronas and Korea Gas. To avoid this dangerous practice, all such agreements should be public and through an open bidding process, as envisioned by the Petroleum Act.
CHAPTER VI. REFINING OF PETROLEUM AND PROCESSING OF NATURAL GAS	
Article 22. Submission of Bids	
1. Any undertaking or consortium, which complies with the legal requirements and regulations may submit bids to the NPA for the construction and operation of petroleum refinery or its products, oil and natural gas processing and stocking units, and to expand the capacity thereof.	Open bidding should be mandatory for all contracts, as per Government procurement laws. Refineries and other downstream processing operations will purchase crude oil, raw gas or other materials from an upstream contractor, so they should be regulated as businesses, which is different from contracting with the Government to share state-owned resources. This section should describe an application process for licensing, rather than a bidding process for using state-owned resources.

2. The NPA shall establish technical, commercial and socio-economic requirements, such as level of employment creation or use of local goods and services, to be complied with by bidders; and requirements of Projects in terms of environmental quality, industrial safety and the safety of the public at large.	These local content and other concerns should be applied to all aspects of petroleum operations, not only to refining and processing. Overall local content, environmental and safety policies should be established by Timor-Leste law, not simply by the NPA, and should apply to all industrial projects. There should also be a requirement for clean-up and decommissioning at end of the project's life. The NPA, as regulator, must insure that the laws are followed, but it should not write them.
3. The provisions of the preceding number having been complied with, the NPA shall grant the authorisation.	"Authorisation," as the word used for upstream contracts where only one contractor has rights to a particular area, does not apply here. It should be "license" or "operating permit," as there is no limit to the number of such permits which could be granted. It might be appropriate to require the permit applicant to demonstrate that they have rights to the crude oil or other inputs to their refinery.
4. Authorisations may be transferred to other persons with prior express approval of the NPA, provided that the new holder of the authorisation complies with the requirements given.	
CHAPTER VII. TRANSPORT OF PETROLEUM, NATURAL GAS AND THEIR DERIVATIVES	
Article 23. Transport Authorisations	
1. Provided that the provisions of the relevant laws are complied with, any undertakings or consortium of undertakings, which comply with the legal requirements and regulations may be granted permission by the NPA to construct facilities and effect any form of transport of petroleum, petroleum products or natural gas, whether for domestic supply or import-export.	The word "facilities" needs to be defined, and this article in general needs to be clearer. It also needs to specify open bidding, environmental and land use rules, and reference Constitutional rights and other laws. The drafters of this statute may have something more specific in mind, but the article itself is very vague, and the concerns we expressed for Article 22 also apply to this one.
2. The NPA shall approve the rules regarding qualification and approval of interested parties and conditions for the grant of authorisation and for the transfer thereof, in accordance with environmental protection and traffic safety requirements.	Is the NPA responsible to write the rules, or only to approve them?
Article 24. Use of Pipelines	
1. The NPA may permit any interested party to use the excess capacity of pipelines and sea terminals, which exist now or are to be constructed in the future, in exchange for the payment of an appropriate sum to the owner of the facilities.	This article appears to be an inappropriate intervention by the NPA into what should be a strictly commercial negotiation between the companies. Perhaps it's a reaction to a specific situation, which could be better handled by a general statute about privately-owned public utilities (such as sea terminals) which, within the limit of their capacity, can be used by anyone for a fee.
2. In the event that there is no agreement between the parties, the NPA shall fix the appropriate amount and payment method and shall confirm that the referred amount is compatible with the market.	

3. The NPA shall regulate the preference to be given to the proprietor of the facilities with regard to the handling of its own products, in order to, under paragraph 1, promote the maximisation of the use of transport capacity by the means available.	
CHAPTER VIII. IMPORT/EXPORT AND COMMERCIALISATION OF PETROLEUM, NATURAL GAS AND THEIR DERIVATIVES	
Article 25. Grant of Authorisation	
The NPA may grant to any undertakings or consortium of undertakings, which comply with the legal requirements and regulations, an authorisation to import, export and commercialise, petroleum and its derivative products and/or natural and condensed gas.	Is such an authorization (which should be called a license) required before a business can engage in such activities? Under what law? This is another example of the problems of putting downstream regulation in the NPA without a prior Parliamentary law defining what is to be regulated, how and by whom.
CHAPTER IX. FINAL PROVISIONS	
Article 26. Transfer of Powers and Functions	
1. Powers and functions of a regulatory nature, and rights and obligations related to petroleum and gas and related products industry, which were originally granted to the Ministry in charge of Petroleum sector shall vest in the NPA, including but not limited to, Articles. 9 to 14, except paragraph b and c of article 13, 18 to 21, 23, 24, 27 to 32 and 38 of the Petroleum Activities Law;	Since a Parliamentary law assigned powers to a Ministry (and Minister), a decree-law cannot reassign them to an autonomous agency. Petroleum Act Articles 25 and 26, regarding data and inspections, describe functions which should also be transferred to the NPA. We have not checked the entire Petroleum Act for consistency with the draft NPA decree-law, but there are likely to be other inconsistencies. Petroleum Act paragraphs 13(b) and (c) allow the Minister to award Authorisations without open bidding. Is the exception in this clause intended to allow the Minister to retain such power, while transferring all other authorization-related powers to the NPA? It seems an odd division of labor.
2. All powers, functions, rights and obligations of the Designated Authority pursuant to the Timor Sea Treaty shall vest in the NPA on July, 1, 2008.	How can NPA start work on July 1 if as of yet it has no Board of Directors or President, and consequently no budget or work plan? Is there a transitional plan for this?
3. The assets and technical data of the TSDA become the assets and technical data of the NPA on July 1, 2008 .	
4. Consistent with the Timor Sea Treaty and the agreements between the Governments of Timor-Leste and Australia on the postponement of the TSDA cessation, the TSDA will cease to exist on June 30, 2008.	

Article 27. Legislative Changes	
Proposed new legislation or amendments, which affect the rights of economic agents or of consumers and users of goods and services of the petroleum industry shall be preceded by a public hearing convened and conducted by the NPA.	Enacting or amending legislation which relates to setting policies rather than to regulating particular projects, is not within the competence of the NPA as a regulatory body. Article 27 illustrates the unfortunate focus of this law on economic benefits for people in the petroleum business and consumers of their products, to the exclusion of others who may be affected by petroleum operations. As a regulator responsible to protect the human and property rights of all citizens of Timor-Leste, the NPA can facilitate consultation with community residents and other stakeholders who might be impacted in any way (environmental, economic, land use, accident risk, urbanization, etc.) by activities or regulations relating to the NPA's mandate. In particular, local public consultations (not only hearings) should be held in communities which could be affected, with adequate notice, information, languages, time and opportunity for participation. Projects and regulations should be modified (or, in the extreme, cancelled) based on information and ideas which emerge from the consultation process.
Article 28. Transposition of JPDA Regulations and Publication	
1. Upon approval by the Joint Commission, the JPDA regulations binding to private legal entities and third parties, will be transposed to the Timor-Leste legal system by decree-laws.	Specifically list which regulations are included, as it's unclear which are "binding to private legal entities and third parties." Is this intended to happen by this decree-law, or will there be others to accomplish it?
2. The JPDA regulations approved before June 30, 2008, by the Joint Commission, binding to private legal entities and third parties are to be maintained in force and being of the responsibility of the National Regulatory Authority (NPA) during the execution of activities in its capacity as Designated Authority, to act in conformity to these regulations.	This presumably refers to the Technical Regulations currently being discussed by the Joint Commission. As La'o Hamutuk wrote in our submission and discussed with the TSDA, they contain many flaws and should not be adopted without further consultation and discussion. These regulations don't only apply to private legal entities and third parties, but also to the regulatory authorities. However, the JPDA Technical Regulations to date only apply inside the JPDA. Are they intended to also apply to Timor-Leste's sovereign offshore areas, including near the coast, or to onshore areas? If so, they will require significant revisions. "Regulatory" should be "Petroleum."
3. All regulations issued by the National Petroleum Authority (NPA) within its scope of normative power are to be published in the official gazette.	All NPA regulations, authorizations, budgets, decisions and public reports should be published, both in the official gazette, on the NPA website, and available on paper from the NPA office. This applies to areas both inside and outside the JPDA, and should be under a different article.
Article 29. Transition of Regimes	
Undertakings, which are, on a lawful basis, already operating in Timor-Leste any of the activities described in articles 23 and 25 when this Decree enters into force, shall register with the NPA within the next 120 days.	How about those not on a lawful basis? 120 days from when? What is required as part of registration? Ongoing reporting or oversight?

Article 30. Preservation of Rights	
The provisions of this Decree shall not affect prior third party rights acquired pursuant to contracts made with the Designated Authority in accordance with the laws in force, and shall not invalidate, the acts of the Member of Government in charge of Petroleum/Secretary of State for Natural Resources, within the ambit of the exclusive areas contracted.	Is this an effort to give ex post facto legality to MOUs which have already been signed? We suggest adding "lawful" prior to "acts of the Member of the Government… ." The phrase "within the ambit of the exclusive areas contracted" is unclear – does this apply only upstream authorizations (PSCs)? Otherwise areas are not exclusive.
Article 31. The Initial Staffing of the NPA	
1. The initial staffing of the NPA for a transitional period of 1 year, will be formed by former TSDA staff under new or revised contractual conditions upon the cessation of this organisation, and other staff from the Secretariat of Natural Resources assigned by the Secretary of State under the public service mobility regime after consideration of their technical and professional skills.	
2. Except for the above initial 1 year, competitive recruitment procedures will be used at all times when employing staff to work in the NPA.	
Article 32 Entry into force	
This Decree-Law shall come into force on the day following the day on which it is published in the official gazette, without prejudice of the effects referred to in article 26, paragraph 2, 3 and 4 of this Decree-Law.	What if it isn't published before 30 June? It will take longer than that to revise and enact a law which effectively and safely regulates petroleum activities for the benefit of the state and people of Timor-Leste.
Confirmed and approved in Council of Ministers, on the _ day of _ 2008 The Prime Minister, Kay Rala Xanana Gusmão The Minister of Finance, Emilia Pires The Secretary of State for Natural Resources, Alfredo Pires Promulgated on __, To be published. The President of the Democratic Republic of Timor-Leste, Jose Ramos Horta	This should be a Parliamentary law, amended and passed after open debate.