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Submission to the

National Directorate for Environment and

National Petroleum Authority

Democratic Republic of Timor-Leste

from

La'o Hamutuk

regarding the draft

Environmental Impact Statement and

Environmental Management Plans for

Exploratory Drilling in Timor-Leste Exclusive Area:

(PSC S06-03)

to be conducted by

Eni Timor-Leste S.p.A.

15 October 2010

Introduction

La'o Hamutuk has participated in several recent public consultation processes closely related to the current one, especially regarding the Terms of Reference (TOR)¹ for this Environmental Impact Statement (EIS) and Environmental Management Plan and Monitoring Program (EMP) and the EIS and EMP for the Cova-1 well² in the same contract area. We appreciate that Eni and National Directorate for the Environment (DNMA) agreed with and implemented some of our recommendations, and we are disappointed that others were not accepted.

Although this submission was invited by DNMA, La'o Hamutuk is also submitting it to the National Petroleum Authority (ANP) for reasons discussed on the next page, and we hope that ANP will consider it as the Authority evaluates the health and safety aspects of the EIS and EMP for the proposed exploration drilling campaign in S06-03.

We are gratified that DNMA and Eni have recognized and improved some of the problems we pointed out in the public consultation process, and we appreciate that the TOR for this EIS was circulated, although apparently this was done after the TOR has been finalized.

For the current consultation on Eni documents TL-HSE-RP-006 and TL-HSE-PL-010, 200 pages were distributed with only 11 days for comments. We asked Eni for electronic copies on the day we received the draft documents, but they weren't provided for more than a week,³ even though DNMA and Eni agreed months ago that this would be done automatically. Furthermore, the TOR says that "Eni would be happy to ... provide electronic copies of documents that can be uploaded to websites..." If public consultation processes are to be engaged in seriously, respondents must be given enough time and support to analyze and prepare meaningful submissions.

Many of the concerns La'o Hamutuk raised in our submission¹ on the TOR for this drilling campaign, especially regarding baseline data, blowout preventer specifications, national jurisdiction over Manapa and not rushing the approval process, continue to be relevant to the EIS and EMP, and we will not repeat them in detail here.

Similarly, some of the unaddressed concerns that La'o Hamutuk raised in our submission² on Cova-1 EIS and EMP are still relevant, particularly regarding the following:

- Communication with stakeholders as well as regulators as the project progresses.
- Information about improved processes of Blowout Preventer (BOP) testing and inspection to implement lessons learned from Montara and Macondo. Although Eni's response to stakeholder comments⁴ says that such information could be summarized in the final version of the Cova-1 EIS, we cannot find it there.
- Consultation with Indonesian or West Timor authorities, both because spills could affect their territory and because the Manapa field may extend beyond the contract area and across the yet-to-be-defined maritime boundary between Timor-Leste and Indonesia.

¹ Our submission on the Terms of Reference is available in English at <http://www.laohamutuk.org/Oil/Project/Cova/LHSubManapaTOR03Sep10En.pdf> and in Tetum at <http://www.laohamutuk.org/Oil/Project/Cova/LHSubManapaTOR03Sep10Te.pdf>

² Our submission on Cova-1 is available in English at <http://www.laohamutuk.org/Oil/Project/Cova/LHsubCovaDrillingEIA23July10En.pdf>

³ La'o Hamutuk published the documents the night we received them (12 October). They are linked from <http://www.laohamutuk.org/Oil/Project/Cova/10EniCova.htm>

⁴ Attachment to 20 September 2010 letter from Eni Exploration Manager Marina Biancone to DNMA (page 9), available at <http://www.laohamutuk.org/Oil/Project/Cova/EniCovaResptoLH10Aug2010En.pdf>

In addition to the above, La'o Hamutuk would like to briefly raise a few concerns specific to this Exploration Drilling Campaign and the regulatory process

DNMA and ANP overlapping jurisdiction and consultation

This is the third public consultation in our nation's history on an EIS and EMP for exploratory drilling in Timor-Leste's exclusive area. During the first two, companies and regulatory agencies defined and refined their roles, processes and procedures. Many things have become clearer and more efficient, but some contradictions and limitations have emerged.

La'o Hamutuk believes that the division of roles between the DNMA and ANP is confusing, and we are concerned that issues may fall between the cracks. Furthermore, as ANP does not provide information to stakeholders or conduct public consultations prior to approving a project, this excludes many brains and perspectives from commenting on draft EIS and EMP documents, which reduces the quality of the final versions. Timor-Leste cannot afford this.

The problem is most severe for projects within the JPDA, as DNMA is not involved and there is essentially no transparency before activities are conducted. For projects like this one in Timor-Leste's exclusive area, ANP and DNMA divide responsibilities, with DNMA taking care of environmental effects of normal operation, while ANP looks at "health and safety" which includes environmental consequences of abnormal operation and accidents. This is an arbitrary distinction which reduces regulatory effectiveness and creates complications for stakeholders, companies and regulators. Even though ANP provides informal technical support to help DNMA fulfill its environmental mandate, the divided responsibilities and lack of consultation on health and safety are problematic and should be repaired.

Article 3.2(b) of Decree-Law 20/2008 says that the ANP is responsible "to ... supervise the technical and economic performance of operators in the areas under exclusive jurisdiction of Timor-Leste **while observing principles of transparency...**" Article 3.5(b) says ANP is "to ensure that the **best practices** regarding conservation and the rational and sustained use of petroleum and its derivatives are adopted, in accordance with the legal requirements for the protection and preservation of the environment that are in force."

There is nothing in the Decree-Law that prevents ANP from distributing draft documents or inviting stakeholder and public consultation, and we believe that ANP could perform its mandate more effectively and with better governance if it engaged in such processes. In June 2008, La'o Hamutuk pointed out⁵ the need for public consultation and transparency provisions in the draft ANP decree-law. Although some of our suggestions are not required by the decree-law as enacted, they are also not prohibited by that law.

Consequently, we are submitting this petition to ANP as well as DNMA, and hope that ANP will consider it seriously. We urge ANP to conduct public consultations prior to approving HSE-related proposals for projects in both the TLEA and JPDA. Such consultations are also required for projects in Australian territory, and the peculiar historical circumstances that created the JPDA should not be a cause for regulatory practices not to follow today's best practices of consultation, transparency and prior public information.

Flaring

La'o Hamutuk's submission on the Cova-1 EIS expressed our concerns about flaring, and Eni modified the final EIS to state that no flaring will take place other than for short periods during an emergency, which we appreciate.

⁵ Our submission is available at <http://www.laohamutuk.org/Oil/PetRegime/NPALaw/LHSubNPAJun08.pdf>

However, the current draft EIS for the additional exploration drilling states that "During testing of the well, a limited inventory of hydrocarbons would be flared for up to three days."

In our submission on Cova-1, La'o Hamutuk wrote that flaring gas "should require explicit future permission and public announcement from DNMA and ANP, and should permit only specifically-defined quantities and times. DNMA's acceptance of the current EIS and EMP must not be considered approval of future flaring." This applies to the current project as well.

Paragraph 2.6 of the current draft EMP says that "a limited inventory of hydrocarbons would be flared..." This is meaningless, and the maximum amount should be specified.

Well depth

Lupal will be in the deepest water ever drilled in the TLEA and JPDA, more than 2,000 meters below the surface. Extending more than 4,200 meters below the seabed (about the same as Cova-1), it will be under more pressure than any well yet drilled in Timor-Leste. We do not believe that this rushed EIS/EMP process, with a drilling program tacked on to Cova-1, gives adequate time and consideration to the unprecedented risks of this program.

Oil Spill Response Manual

In Eni's responses to comments on Cova-1, the company promised to provide the Oil Spill Response Manual (OSRM) to stakeholders prior to the start of drilling. The current draft EMP says that the OSRM is "under preparation", yet drilling at Cova-1 will happen very soon. Once again, we ask Eni to distribute a draft OSRM before drilling, and to amend it in response to comments from stakeholders. No drilling should take place in area S06-03 before the OSRM has been distributed and finalized.

Modeling oil spills

In revising the Cova-1 EMP, Eni responded to stakeholder comments and expanded its oil spill modeling at 1,800 m³/day from a 5-day to a 56-day duration, which is reflected in the Risk Register (Table 4.4 of the revised Cova-1 EMP) as a 100,000 m³ maximum spill size.

Although the longer-duration spill model increases the probability of oil reaching Timor's coast from "1-5%" to 20%, the revised Cova-1 EIS, as well as the new draft for S06-03, still say only that 75% of the oil will have evaporated. It would be more useful to estimate how much oil would reach the coast and near-coastal waters, as well as how large an area of coastline could be contaminated. Given the increasing frequency of anomalous weather patterns, it is not appropriate to assume that winds will only blow in certain directions during certain months of the year.

The larger spill model is not reflected in all parts of the current EMP, such as the first line in table 4.4, which posits a maximum spill size of only 9,000 m³. Eni has already agreed that they need to plan for much larger possible spills, but we are concerned that the planning may not be undertaken thoroughly, as is indicated by its omission in this table.

La'o Hamutuk is grateful to Eni, DNMA and ANP for your consideration, and we look forward to continuing dialogue and improvements of these documents, processes and projects.