

Timor-Leste and the Extractive Industries Transparency Initiative

An Overview from Civil Society

By Santana Soares¹ and Thomas Freitas²

to the Extractive Industries Transparency Initiative conference

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This paper gives an overview from civil society in Timor-Leste about how our nation is relating to the goals and practices of the Extractive Industries Transparency Initiative (EITI). Our country is one of the newest in the world, developing not only its petroleum management system but all its laws and governmental institutions, from scratch. We are also one of the most petroleum-dependent nations on earth; within a few years more than 90% of our economy and 95% of our government revenues will come from petroleum extraction. We hope that we can utilize the EITI, Publish What You Pay, and similar initiatives, as well as the experiences of other countries, to help Timor-Leste avoid the “resource curse” that afflicts so many other countries whose economies and political development are comparable to Timor-Leste, and who are dealing with the same international petroleum industry that has arrived on our seas and shores. Thank you for your support.

Both of the authors of this paper are members of the Core Group, a network of Timor-Leste civil society organizations established in late 2005 to monitor and analyze our national budget, including income from oil and gas development and the management of our new petroleum fund. The Core Group Transparency includes: HAK Association, ETADEP, Luta Hamutuk, La’o Hamutuk, Mata Dalan Institute, NGO Forum and Oxfam Australia. This Coalition hopes to promote transparency and accountability in government.

Santina Soares works with La’o Hamutuk (the Timor-Leste Institute for Reconstruction Monitoring and Analysis), which has closely followed petroleum development in Timor-Leste since 2001. La’o Hamutuk (“Walking Together”), whose main focus is monitoring international institutions active in Timor-Leste, has written on many facets of Timor-Leste’s natural resources, preparing detailed submissions and lobbying extensively as Timor-Leste’s Petroleum regime and Petroleum Fund Act were enacted in 2005. Unfortunately, many of the dangers we warned about are not adequately protected against in our legislation.

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We appreciate the opportunity to share some of our perspectives and analysis with you, and would like thank everyone who has involved in the process of inviting and preparing us to come to Oslo. We hope to learn from your experiences and insights, and hope that our ideas will help EITI and each of you

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increase our effectiveness in controlling some of the disastrous economic and political effects of extractive industry development.

Timor-Leste is the second-newest nation in the world and one of the poorest, with the second lowest Human Development Index in Asia.³ We overcame 24 years of deadly, illegal Indonesian occupation in 1999, and our first elected, constitutional government took sovereignty from the United Nations just four years ago. Until a few months ago, we have been peacefully building our government, our economy and our petroleum development from almost zero. But this year, our progress has been interrupted by crisis, causing many people to lose their homes and become refugees in our country, violence which continues today. The roots of this crisis, which forced the resignation of our Prime Minister, are many and complex, relating to poverty, social jealousy, and our leaders' and people's inexperience in democratic self-government. International institutions – the United Nations, the World Bank, and others – share responsibility with our own government and security forces for the hasty and ineffective experiment in nation-building in our country.

As our three-month-old Second Constitutional Government engages with the new UN Mission⁴ in Timor-Leste, we are mindful that lust for petroleum revenues played a role in Indonesia's invasion of our country in 1975, and in Australia's support for that invasion. Petroleum resources may be key to enabling us to escape from the poverty trap, but they have already inflicted tremendous damage on our people. In this next phase of our history, our government and people are strongly committed to equitable, peaceful, accountable development, but it will be difficult to avoid the pattern of political, economic, social and environmental devastation oil and gas development has caused in developing countries worldwide. But we must try, and appreciate your efforts to help all people struggling with these nearly intractable problems.

We have come to this EITI conference as representatives of civil society to share our comments and analysis regarding the process of implementing the principles of EITI in Timor-Leste. Timor-Leste's government is now receiving about US\$45 million per month from the Bayu-Undan gas and oil project, whose development was enabled by the Timor-Sea Treaty signed by Australian and Timor-Leste when we gained our independence in 2002. Although this may not seem like a lot of money, in our small, impoverished country it is 50% more than the entire rest of our economy. These revenues are being deposited into a Petroleum Fund which was established last year and contains more than \$800 million dollars.

The London EITI Conference last year was addressed by our Prime Minister, Mari Alkatiri, who also expressed Timor-Leste's commitment to transparency and EITI at the founding conference in 2003. Mr. Alkatiri, who was forced to resign last June, described the goals of his government for public consultation, transparency, and audits to ensure that information provided by oil companies and government officials is accurate. Since then, his government has enacted the Petroleum Fund Act and several laws which comprise Timor-Leste's Petroleum Regime.⁵ The Petroleum Fund has been established, and Timor-Leste has conducted its first bidding round for new licenses under the new regime.

One of our coalition, La'o Hamutuk also presented a paper at the March 2005 EITI conference in London,⁶ as we did at the World Bank EITI meeting the previous month in Paris.⁷ We expressed

³ Timor-Leste's 2005 UNDP Human Development index rank was 140, while Yemen's was 151, out of 177 countries. Except for Haiti, these are the worst in the non-African world.

⁴ UNMIT was established in August 2006, the fifth UN Mission in Timor-Leste. UNAMET conducted the 1999 referendum, UNTAET was the transitional government from 1999-2002, UNMISSET provided advisors and technical support from 2002-5, and UNOTIL was phasing out in 2005-6. UNMIT is larger than UNMISSET or UNOTIL, and contains military and police components.

⁵ The texts of these laws, submissions during public consultations, and other reports and analysis can be accessed from <http://www.laohamutuk.org/Oil/OilIndex.html>

⁶ Our recommendations from 2005 EITI meetings, most of which are still relevant, can be accessed at <http://www.eitransparency.org/UserFiles/File/londonplenary2005/laohamutuklondon2005.pdf>

concerns that the practices of the government did not always live up to its lofty principles, and that some of the provisions of the then-draft legislation fell short of what was necessary. Over the past year and a half, some of our fears become reality. Although Timor-Leste's laws and practices are better than most other resource-rich, cash-poor countries, they are not good enough to protect us from the resource curse.

Last October, after the Petroleum Laws were passed, La'o Hamutuk published two articles in our Bulletin,⁸ one describing the reality and dangers of petroleum dependency in Timor-Leste, and the other pointing out some of the loopholes in the just-passed Petroleum Regime, including that only 16% of the 243 suggestions made in submissions from NGOs and the World Bank were fully or partially implemented in the Petroleum Act. Prime Minister Alkatiri responded defensively, writing that "Lao Hamutuk is completely out of touch with the people of Timor-Leste ... You don't want development to happen."⁹

Our article did not mention that the government has established a transparency website,¹⁰ as the Prime Minister had pledged to the EITI conference, an omission that he said "forces me to seriously question the motives of La'o Hamutuk." That website has indeed been established, and its structure indicates that it could significantly aid in the achievement of transparency. However, the "latest news" listed on its home page is almost a year old, a speech by the Prime Minister on 17 November 2005. To be fair, a few newer documents have been posted sporadically, including the quarterly reports of the Petroleum Fund. Another government website, that of the Oil, Gas and Energy Directorate,¹¹ contains some information about the recent licensing round, including the report of the evaluation commission. Virtually everything on these websites is in English or Portuguese, languages not understood by the vast majority of our people, and most Timorese have no access to the internet, especially the 80% who live outside the capital. We hope that public information can be made more complete and more accessible, both linguistically and geographically. Compounding the problem, most of our journalists have little understanding of petroleum and financial issues, and no tradition of investigative reporting.

In March 2005, Prime Minister Alkatiri reiterated that he has publicly released the production-sharing contracts for Bayu-Undan project, Timor-Leste's principal source of oil revenues for this decade. Most of these contracts have been released, and they are posted on the Government's Transparency website. However, 13 important paragraphs are "deliberately omitted." The PSCs for Greater Sunrise, the largest gas and oil field being considered for development, remain secret.

Last June, Prime Minister Alkatiri was forced to resign, and he has been replaced by former Foreign Minister José Ramos-Horta, who the UN has said "pledged his intention to place the highest importance in ensuring transparency and accountability in the conduct of his administration." The new Prime Minister has not, to our knowledge, commented specifically on petroleum revenue transparency or EITI. The abrupt, premature transfer of state power reinforces a concern civil society has frequently stated – that practices of transparency and accountability must be enshrined in law, not up to the discretion of individual office holders. The violence and instability which has plagued our country in recent months results, in part, from public distrust of some of our leaders, and we hope that the leaders will strengthen and expand legal requirements for accountability and transparency. One important step would be for Timor-Leste to implement the specifics of the EITI initiative, going beyond expression of rhetorical support.

We share the government's hope and optimism that the Petroleum Fund will guarantee that future generations will share in the benefits of our petroleum resources, and we applaud the existence of that fund and the regular issuance of quarterly reports. However, the public consultation required by the

⁷ <http://www.laohamutuk.org/Oil/Transp/05toWB%20EITI%20.pdf>

⁸ The articles are available in English at <http://www.laohamutuk.org/Bulletin/2005/Nov/bulletinv6n4.html>

⁹ La'o Hamutuk published the Prime Minister's article in full, as well as our response, at <http://www.laohamutuk.org/Bulletin/2006/Apr/bulletinv7n1.html#PM>

¹⁰ www.transparency.gov.tl

¹¹ <http://www.timor-leste.gov.tl/EMRD/index.asp>

Petroleum Fund Act is still very limited, and has tended to be one-way socialization rather than two-way consultation. The Petroleum Fund Consultative Council, which provides advice to Parliament on management of the Petroleum Fund, was required by the act to be operational by January 2006; although civil society has selected our representatives, the Council has still not been established. Parliament has already approved our new national budget, about 82% of which is financed with a \$260 million withdrawal from the Petroleum Fund. It is important to note that even if the Council were functioning as designed, it has no oversight responsibilities over fund income, company operations, or fund management – in fact, it does not advise the Government at all, being limited to consultation on Parliamentary decisions about how much money to withdraw each year.

We are concerned about the sincerity of the commitment to transparency in the Petroleum Fund Act. Although the act enshrines “transparency as a fundamental principle” it lists ten broad categories of information which may be arbitrarily exempted from disclosure. In fact, the word “confidential” appears in the Petroleum Fund Act thirteen times, far outnumbering “transparency” (five) and “accountability” (zero). The Petroleum Fund Act also contains inadequate protection against overspending, no guidelines for ethical investment or usage of fund money, and an unsustainable model of a constant annual withdrawal (sustainable income) in a nation whose population doubles every 17 years.

However, as a new nation, our government has taken some efforts to implement the goals of EITI. The oil companies, on the other hand, are reluctant to. Although Woodside says they support EITI, they have not allowed the Sunrise PSCs to be disclosed. ConocoPhillips, the operator of the Bayu-Undan project, has not signed onto EITI. However, they say that “ConocoPhillips supports transparency of revenue payments to and expenditures by governments involved in extractive resource development **so long as it is directed by the host government** and applies equally to all parties, whether private or state-owned, involved in resource development activities.” (emphasis added).¹² But if a company wanted to be more transparent than the Government required, for example to comply with Publish What You Pay principles, the model PSC with Timor-Leste prohibits them from disclosing information “except with the consent of the Petroleum Ministry” or as required by law or by a recognized stock exchange.”¹³

As civil society organizations, we are trying to work with our Government to development the country in the interests of all its people. We appreciate the chance to present our views today, and look forward to future exchanges with our Government and people from other countries to advance our common goal of ensuring that petroleum development is good for our citizens, and not only for the companies that profit from our resources and people who live in countries that purchase and consume them. Thank you.

Recommendations¹⁴

To petroleum companies operating in Timor-Leste and the Joint Petroleum Development Area

1. Provide, public, quarterly reports on all payments made to Timor-Leste and the Timor Sea Designated Authority for taxes, royalties, rents, fees, bonuses, etc. The report should include the date, amount, payer, payee, project and reason for each payment.
2. Consent to uncensored publication of existing production-sharing contracts for Bayu-Undan, Greater Sunrise and other projects.

¹² Email from James W. Godlove, ConocoPhillips Manager of Federal Relations – International, to Global Witness, 21 March 2005. Mr. Godlove wrote that this position was “as we have stated publicly and to you directly.”

¹³ RDTL Model Production Sharing Contract, articles 15.2(e), 15.6(b) and 15.8. JPDA Model Production Sharing Contract, articles 13.2(e) and 13.6(b). Accessible from <http://www.laohamutuk.org/Oil/PetRegime/05PetrolActPassage.htm>

¹⁴ The information La’o Hamutuk submitted to the 2005 EITI meetings, most of which is still relevant, is at <http://www.eitransparency.org/UserFiles/File/londonplenary2005/laohamutuklondon2005.pdf> and <http://www.laohamutuk.org/Oil/Transp/05toWB%20EITI%20.pdf>

3. Conoco-Philips and its Bayu-Undan partners should establish an office in Timor-Leste, a long-standing, unrealized promise. This would help make them more accessible to the people of Timor-Leste, and other oil companies operating projects in our territory should also have offices in our country. Each office should include a public information center with resources in languages understood by most citizens of Timor-Leste.

To the government of Timor-Leste

4. Establish the Petroleum Fund Consultative Council, and broaden its mandate to consult on all aspects of the Petroleum Fund, including relations with the contractors, revenue receipts and investment management.
5. Follow the Petroleum Fund Law, especially Article 8 “ No transfer shall be made from the Petroleum Fund in the Fiscal Year unless the Government has first provided Parliament with reports: (a) specifying the Estimated Sustainable Income for the Fiscal Year for which the transfer is made; (b) specifying the Estimated Sustainable Income for the preceding Fiscal Year; and (c) from the Independent Auditor certifying the amount of the Estimated sustainable in paragraphs (a) and (b) above.”
6. Inform the companies that Timor-Leste gives permission for full compliance with Publish What You Pay principles, including the information listed in recommendation #1 above.
7. Amend Article 15.6 of the Timor-Leste Model PSC, Article 32.2 and other provisions of the Petroleum Fund Act, and Article 13 of the JPDA Model PSC to comply with principle of transparency, keeping secrecy to an absolute, well-defined minimum.
8. Expand the quarterly reports of the Petroleum Fund beyond the current very limited, aggregated information on receipts. These reports should include, from government sources, reports on all payments made by oil companies to Timor-Leste and the Timor Sea Designated Authority, including the date, amount, payer, payee, project and reason for each payment.
9. Establish a public information center on petroleum development and resources, which would include information and reports about oil and gas extractive activities and payments from the companies to be accessible to many levels of people: researchers, academics, student, journalists, local leaders and the general public.
10. Publish the external audit report on the Petroleum Fund in a timely and complete matter, including individual payments as well as aggregated amounts.
11. Involve civil society actively in the process of petroleum development, revenue management and oversight.

To the EITI implementation process

12. Provide technical support and advice to help Timor-Leste’s government implement the EITI. To date, such advice has come from the World Bank, IMF UN agencies and bilateral cooperation, but it would be better from someone familiar with EITI mechanisms who would prioritize this.
13. Inform Timor-Leste that it will no longer be listed as an “EITI implementing country” until it implements all the “sign-up” indicators and commences the “set up” actions listed on pages 17-22 of the EITI sourcebook, as well as developing a “country work plan” as described by the EITI International Advisory Group.