HABURAS FOUNDATION

Rua Celestino da Silva, Farol-Dili Ocidental, East Timor. PO Box 390.
Telp: (3310103)
E-Mail: haburaslorosae@yahoo.com / haburass@hotmail.com

17 September 2004

The Director,
Timor Sea Office

Dear Catherine,

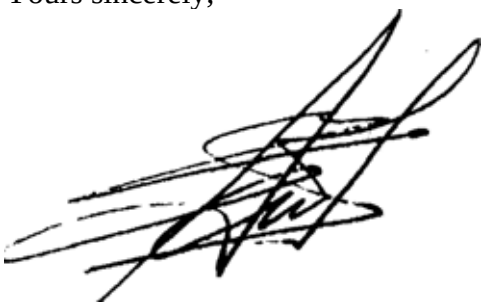
Re: comments on proposed petroleum regime

Thank you for the opportunity to participate in the public consultations about the proposed petroleum regime for Timor-Leste. Following the information session, we have developed a comment paper, which focuses on the draft Petroleum Act and the draft production Sharing Contract.

We have invited endorsements for our comment paper from other interested NGOs and their endorsements are attached.

If you have any questions about our comment paper, please do not hesitate to contact us. Thank you again for the opportunity to provide input,

Yours sincerely,



Demetrio do Amaral de Carvalho
Executive Director
Haburas Foundation

Comment Paper on the Draft Petroleum Regime for Timor-Leste, (Draft Petroleum Act and Draft Model Production Sharing Contract)

prepared by Haburas Foundation

1. General Comments

Petroleum resources are of great strategic importance to the economic future of Timor-Leste, so it is vital that they are managed sustainably for the benefit of the Timorese people. In seeking to make investment in developing these resources attractive, this proposed petroleum regime focuses more on the interests of potential investors than it does on the interests of Timor-Leste. These petroleum resources are publicly owned. Any private investor making a profit from access to these resources has a responsibility to protect the environment and ensure that their profit does not come at a long-term environmental cost to the owners of the resource.

The Draft Petroleum Act itself has no requirement for Environmental Impact Assessment, nor for an ongoing program of environmental rehabilitation after operations have been completed, nor does it allocate responsibility for clean up operations in the event of any oil spills. Although the proposed Production Sharing Contract does have a requirement for Environmental Impact Assessment, it is written so this is a mere formality and proposed petroleum developments will proceed whatever the outcome of the EIA.

It is important that this proposed legislation is consistent with other legislation, both existing and draft. In particular, the draft Environmental Impact Assessment Act, the draft Pollution Control Act and the draft Investment Act. The draft Environmental Impact Assessment Act, dated 21 March, clearly states that Environmental Impact Assessment will be required for all development projects involving petroleum. This should be reflected in the proposed Act which will regulate petroleum development in Timor-Leste.

This proposed petroleum regime is both strategically important and very complex, however there has been too little time allowed for the public to understand and respond to it. To follow principles of good public consultation, the Ministry should have allowed for a further stage of questions and initial feedback following the detailed explanation of the clauses of all the draft Acts and Contracts. This would then be followed by a longer period for the preparation of comment papers.

2. Comments and Recommendations about specific clauses

2.1 Regulations - Draft Petroleum Act article 27

2.1.1 Comments

Article 27, (clauses 27.1(a),(vi) and (ix)) of the Draft Act gives the Ministry power to make regulations about protection of the environment and remedying the effects of escaped petroleum. The responsibilities of the authorised contractor to protect the environment and prevent and clean up oil spills should also be clearly specified in both the Draft Act and the Production Sharing Contract. These important issues cannot be left entirely at the discretion of the Ministry, particularly as we do not yet know the content of any potential regulations.

2.1.2 Recommendations

The clauses of Article 27 of the draft Act about environmental protection and remedying the effects of escaped petroleum should be amended to say 'the Ministry *shall* make regulations...' (as opposed to 'the Ministry *may* make regulations...').

In addition to the Ministerial power to make regulations, clauses should be inserted into both the Draft Act and the draft Production Sharing Contract which make the authorised contractor responsible for environmental protection and any required clean up and rehabilitation after operations have finished and in the case of any spills or other accidents. Clause 5.1 of the proposed Production Sharing Contract does not adequately meet this requirement, as it only allocates responsibility for the costs of clean up, not for actually doing the clean up work.

2.2 Environmental Impact Assessment - PSC article 4.11(v)

2.2.1 Comments

The proposed Production Sharing Contract requires an Environmental Impact Assessment, but only after a commercially viable discovery has been made. There is no requirement for EIA for exploration, even though exploration can have significant environmental impacts both direct (eg. animal deaths from seismic testing) and indirect (eg. damage caused by access infrastructure). This is inconsistent with the draft environmental impact legislation, which requires Environmental Impact Assessment and an Environmental Management Plan for any proposal which involves petroleum.

Environmental Impact Assessment must be done by independent experts. If the authorised contractor does the assessment themselves, or can choose their own consultants, the assessment will be biased by conflict of interest. The Ministry, ultimately responsible for the sustainable management of the resource, must be satisfied of the independence and expertise of any consultant doing environmental impact assessments.

2.2.2 Recommendations

A clause must be inserted into the draft Petroleum Act which requires independent Environmental Impact Assessment and an Environmental Management Plan before all petroleum exploration and extraction activities.

The proposed Production Sharing Contract must also be amended to require Environmental Impact Assessment and an Environmental Management Plan before any exploration activities.

Both The Act and the PSC should specify that Environmental Impact Assessment must be done by independent expert consultants. To ensure no conflict of interest, the approved contractor should select an independent consultant from a pool approved by the Ministry.

Article 10.3 (b), concerning application for Authorisations, provides for the consideration of applicants' proposals for protecting the environment, preventing and minimising pollution and other environmental harm. This can be amended to require the consideration of preliminary Environmental Impact Assessment reports in selecting applicants, with full assessment to be completed by the selected contractor.

2.3 Decommissioning and Rehabilitation - Draft Petroleum Act article 20.1; Draft Production Sharing Contract article 5.1(b) (v)

2.3.1 Comments

In this proposed petroleum regime, the environmental responsibilities of the authorised contractors will stop when operations have finished and been decommissioned. However, best practice demands that any Environmental Management Plan for a mining operation includes an ongoing rehabilitation program, as some environmental impacts will continue after then end of operations. If the authorised contractors are not held responsible for ongoing rehabilitation, then the government and people of Timor-Leste will be left to bear these costs.

2.3.2 Recommendations

Articles 20.1 of the Draft Petroleum Act and 5.1(b)(v) of the Draft Production Sharing Contract should be amended to require that authorised contractors include an ongoing rehabilitation program in Environmental Management Plans for both exploration and extraction. There must also be a requirement that these rehabilitation programs are implemented following any accident and following the completion of operations and decommissioning.

2.4 Recoverable Costs - Production Sharing Contract Annex C, articles 3.7, 3.15

2.4.1 Comments

Under the arrangements in the proposed Production Sharing Contract, Recoverable Costs would include all costs of meeting environmental responsibilities: Environmental Impact Assessment surveys, surveys to identify and protect cultural sites, costs of pollution mitigation equipment, costs of pollution clean up and costs of environmental restoration. The authorised contractor will be making a profit from the publicly owned natural resources of Timor-Leste. They have an obligation to protect those natural resources and the cost of meeting this obligation must be borne by them, not by the people of Timor-Leste. Including environmental protection costs as Recoverable Costs effectively means that the government of Timor-Leste will pay half, as they are deducted from the revenue before the government is allocated its share.

If the costs of environmental protection are Recoverable Costs, authorised contractors will have less incentive to operate with care for the environment. If they had full responsibility for the prevention and rehabilitation of any accidents, they would be more likely to maximise environmental safeguards.

Genuine Environmental Impact Assessment, consistent with the draft Environmental Impact Assessment Legislation, allows for the Ministry to stop a project from going ahead if the environmental impacts will outweigh the benefits. When Environmental Impact Assessment is considered a recoverable cost, the assumption of future profits pre-determines the outcome of the assessment. Including Environmental Impact Assessment as a Recoverable Cost makes it meaningless.

Article 3.15 of Annex C opens a loophole to include ‘any other’ expenditures as Recoverable Costs, placing no limits on how much profit the authorised contractor can take before allocating a share to the government of Timor-Leste. This also creates a loophole for ‘creative accounting’. All costs that are Recoverable must be limited to those pre-defined in the Production Sharing Contract.

2.4.2 Recommendations

Remove clause 3.7 ‘Ecological and Environment’ and clause 3.15 ‘Other Expenditures’ from annex C of the draft Production Sharing Contract; and insert a clause which limits Recoverable Costs to those written into the Production Sharing Contract.

2.5 Audit and Inspection and Penalties - Draft Petroleum Act articles 22.1 and 30

2.5.1 Comments

Article 22.1 of the Draft Act allows the Ministry to appoint ‘a person’ to be an Inspector for the purposes of the Act. Any audit of the provisions of this Act would cover a wide range of technical expertise and would be more effectively done by a team of technical experts in the related fields. It is also important when dealing with such a strategically important resource and inspections can result in penalties , that the opportunities for corruption are minimised.

2.5.2 Recommendations

Article 22.1(a) should be amended to read ‘The ministry shall...appoint a panel of independent experts to act as Inspectors for the purposes of this Act.

This Comment Paper is Endorsed by:

Signed by sixteen people from the Haburas Foundation (11), CIITT (1), Sahe (3), and Dosen ARI (1).