

La'o Hamutuk

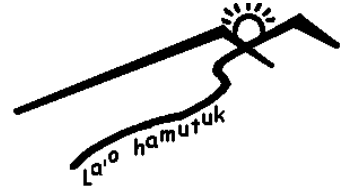
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Dili, 4 February 2011

His Excellency Dr. José Ramos-Horta
President of the Democratic Republic of Timor-Leste (RDTL)
Dili, Timor-Leste

Re: Promulgation of the General State Budget for 2011

Your Excellency, with our respect,

As you know, on this past 28 January the National Parliament approved the General State Budget for 2011, totaling \$1,306,018,000. Of this amount, \$1,055,000,000 will come from the Petroleum Fund.

Your Excellency must soon decide whether to promulgate the Budget Law, and we believe you should use your authority under Article 88 of the Constitution of RDTL to consider some fundamental concerns about the Constitutionality and Legality of this Budget Law.

More specifically, we ask you to use your powers under Article 85(c) of the RDTL Constitution *"To exercise the right of veto regarding any statutes within 30 days from the date of their receipt"* and Article 85(e) *"To request the Supreme Court of Justice to undertake preventive appraisal and abstract review of the constitutionality of the rules, as well as verification of unconstitutionality by omission"* to this 2011 state budget.

We hope that you will make a careful determination, with wisdom based on the RDTL Constitution and existing Timor-Leste law, before your promulgate this law, to ensure that it guarantees the allocation of the people's money to benefit the people of Timor-Leste today, tomorrow and in the future.

With this letter, we from *La'o Hamutuk*, as a Timor-Leste institution which has monitored the development process here for a decade, express some important concerns about the State Budget which require attention, and may be a reference for you before you promulgate it. These include the following issues:

Unsustainable spending threatens the goals of the Petroleum Fund Law

Timor-Leste will spend \$1,306 million dollars this year, including \$1,055 million transferred from the Petroleum Fund during 2011 and \$141 million carried over from unspent appropriations in the 2010 Budget, money which also comes from the Petroleum Fund.

The 2011 Budget is a huge increase in spending which will increase suffering and endanger our future, especially when Timor-Leste's petroleum reserves are exhausted and our country has no other income. The first two exploratory wells in our exclusive maritime

territory, which both came up dry this month, are a signal that our nonrenewable resources are not as large as we wish they were. That demonstrates how spending at this level disregards financial sustainability and the future livelihoods of our state and our people.

This level of spending is 98% higher than the \$660 million original 2010 budget which you promulgated only fourteen months ago. Of the total of \$838 million authorized by the mid-year rectification, the Government only executed \$688 million.

We have already seen that in 2009 and 2010, the Government withdrew more than the 3% Estimated Sustainable Income (ESI) from the Petroleum Fund. And for the last several years, the Government has taken more from the Petroleum Fund than it could spend, and left the surplus in the State treasury account. We believe that this violates Article 7.2 of the Petroleum Fund Law, which says that *“The total amount transferred from the Petroleum Fund for each Fiscal Year shall not exceed the appropriation amount approved by Parliament for the Fiscal Year. (O montante total das transferências do Fundo Petrolífero para cada Ano Fiscal não excederá o montante da dotação aprovada pelo Parlamento para esse Ano Fiscal.”)* Therefore, money authorized for a particular year which was not spent during that year must be returned to the Petroleum Fund. If it is to be applied to a budget in a future year, it should be considered as money to be transferred from the Petroleum Fund subject to a new Parliamentary authorization.

In addition, a transfer higher than the \$734 million ESI during 2011 will violate Article 9 of the Petroleum Fund Law. Although Parliament approved the budget and added more than the Government requested, we do not have the detailed explanation which Article 9(d) of the Petroleum Fund Law requires the Government to provide to Parliament before money above the ESI is transferred from the Fund. We suggest that the President ask the Government for this explanation before promulgating the budget, in order to know if the Government will actually be able to use this money for the long-term benefit of Timor-Leste’s people. Although Parliament passed the budget, it is the Government which will be responsible to use the money to implement actual programs and projects.

The Infrastructure Fund is a bad precedent.

Nearly half of this year’s budget is allocated for the Infrastructure Fund and the Human Capital Development Fund. The Government says it is establishing these Special Funds according to Article 32 of the 2009 Budget and Financial Management Law.

This Article gives the Government great power to shift money within a Fund from one project to another or one year to another, as long as Parliament is informed. We believe that this interpretation of the Budget and Financial Management law undercuts the Constitutional responsibilities and powers of Parliament as expressed in Article 95.3 *“d) To deliberate on the State Plan and Budget and the execution report thereof; and e) To monitor the execution of the State budget.”*

In addition, the appropriation for the Infrastructure Fund is to pay for the implementation of the National Strategic Development Plan (PEDN) which the Prime Minister socialized across the country last year. However, until today the Government has not published this plan, and Parliament itself has never seen it.

Therefore, we believe it is too soon to allocate funding to execute this plan. Although Parliament approved the budget last month, they cannot abrogate their Constitutional responsibilities while creating a dangerous precedent of breaching the Constitutional principle of Separation of Powers.

The Heavy Oil Electricity Project could be a black hole.

Although this Budget allocates \$448 million for the heavy oil power plants and transmission lines, we think the Government has not provided enough information about this project. For the last two years, the project has been plagued by misguided concepts, lack of planning, irregular procurement, unreliable contractors, unmet promises, environmental negligence and pervasive secrecy. Before Timor-Leste spends a half-billion dollars more on this boondoggle, we encourage the President to examine it carefully. La'o Hamutuk has published some information and analysis at <http://www.laohamutuk.org/Oil/Power/10PowerPlant.htm>.

Timor-Leste has already spent more than \$100 million of our people's money on this project. Therefore, it is important for the Government to provide detailed, complete and comprehensive information about the project and the benefits it will provide to our communities.

We encourage you to read the monthly progress reports from the company ELC/Bonifica on this project, a few of which have recently become public. They will help you make wise decisions about whether to spend good money after bad – and how to ensure the efficacy and efficiency of this expenditure.

Imprudent oil price predictions

In the 2011 State Budget, the Government made assumptions about future oil prices that are about 50% higher than they assumed for the 2010 budgets. They assumed that oil prices will go up every year, to \$114/barrel (nominal) by 2025, and estimate a sustainable income of \$734 million for 2011.

We believe that these assumptions violate the requirement of Annex I of the Petroleum Fund Law that *“All assumptions made shall be prudent, reflect international best practice and be based upon internationally recognized standards.”* Everyone knows that the world market price of oil fluctuates every day, and nobody can accurately predict what it will be in the future. No expert or institution foresaw that in 2008 the price would soar to \$145/barrel, and then fall to \$30.

Therefore, we should use the assumptions in the EIA Low Case from the U.S. Energy Information Administration (EIA), which climbs to \$71/barrel by 2025, and calculate to an ESI of \$585 million. Policies based on wishes rather than prudence could squander the nonrenewable resource birthright of our children.

The “Resource Curse” and future stability

We believe that the level of spending in the 2011 budget brings Timor-Leste into the “resource curse” and threatens our future financial stability. The institutions of our State provided for in this budget are responsible to ensure that the people’s resources are used for the people’s benefit – not for narrow election objectives. If our one-time oil and gas windfall is not invested in human capital and infrastructure which will provide long-term returns to benefit the public, we have betrayed our promise to our children.

Therefore, we believe that you, as *“the Head of State and the symbol and guarantor of national independence and unity of the State and of the smooth functioning of democratic institutions,”* as described in Article 74.1 of our Constitution, should use your power to rescue our state from economic instability and future poverty, as financial insecurity also threatens our national independence and unity, which the Constitution assigns you to protect.

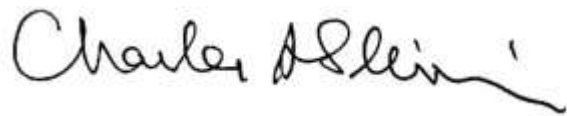
We also hope you will ensure that, as described in Constitution Article 145(c), *“The Budget law shall provide, based on efficiency and effectiveness, a breakdown of the revenues and expenditures of the State, as well as preclude the existence of secret appropriations and funds.”*

Thank you for your attention. We hope that this information helps you determine the best course of action, and we are always ready to provide additional information or analysis on the issues discussed in this letter.

With respect,



Juvinal Dias
Natural Resource Team, La’o Hamutuk



Charles Scheiner