

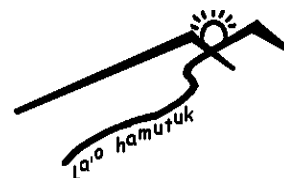
La'ó Hamutuk

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Dili, 15 July 2015

To: Shirley Uchenna Emehelu and Barbara Ward
Office of the U.S. Attorney
District of New Jersey
970 Broad Street, Suite 700
Newark, NJ 07102 USA
by email to shirley.emehelu@usdoj.gov and barbara.ward@usdoj.gov

cc: RDTL Prime Minister Dr. Rui Maria de Araújo
President of the RDTL Court of Appeal Guilhermino da Silva
RDTL Minister of Finance Santana Cardoso
RDTL Anti-Corruption Commissioner Adérito Tilman
RDTL Prosecutor-General José da Costa Ximenes
U.S. Ambassador to Timor-Leste Karen C. Stanton

re: Case # 3:15-cr-0196-FLW-1, United States v. Bobby Boye

Dear Ms. Emehelu and Ms. Ward:

As we wrote to the U.S. Attorney nearly one year ago, La'ó Hamutuk is a Timor-Leste civil society organization which analyzes public finances, transparency and accountability. We have followed the activities of Bobby Boye since 2010, and met with him many times in Timor-Leste. After his arrest, La'ó Hamutuk researched and published extensively on Boye's crimes and their impacts, putting most of our findings on our website.¹ We believe that it is important for the Court to understand the full scope of his conspiracy, which extends far beyond the wire transfers to his non-existent company.

Congratulations on getting Bobby Boye to acknowledge that he defrauded Timor-Leste and to agree to "make full restitution [to Timor-Leste] for all losses resulting from the offense of conviction or from the scheme, conspiracy, or pattern of criminal activity underlying the offense." Although global justice would have been better served by trying Boye in open court, we applaud your victory. We continue to encourage you to share information and

¹ See <http://www.laohamutuk.org/econ/corruption/Boye/14BoyeCase.htm>, which includes information about Boye's long history of proven deceit, scams, crimes and occasional sanctions -- forgery, false medical leave claims, disqualification from stock exchange trading, lying on employment applications, fraudulent bankruptcy, and his criminal conviction for embezzlement. La'ó Hamutuk's 21 July 2014 letter to the U.S. Attorney is at <http://www.laohamutuk.org/econ/corruption/Boye/LHBoyeProsecutor21July2014.pdf>.

evidence with Timor-Leste and Norwegian authorities so that they can appropriately enforce the laws of their countries, exposing Boye's conspiracy and making it more difficult for a future fraudster to emulate his misdeeds.

Although the amount of money that Boye admitted that he wired totals \$3,510,000, the material losses to Timor-Leste from his scheme are many times larger than that; our estimate is \$176,080,000. We encourage you and Judge Freda L. Wolfson to impose a sentence which, as far as is possible, provides restitution to the people of Timor-Leste, more than half of whose citizens live below the poverty line. Timor-Leste is one of the poorest and most oil-export-dependent countries on earth, and our petroleum reserves will soon be exhausted.² The loss of money from Boye's crimes further cripples inadequate education, health care and other basic services.

As you probably know, Boye laid the foundation for his fraud over several years, obtaining his position through lies and carefully plotting to gain the confidence of Norwegian and Timorese officials. Even today, Timor-Leste continues to pay for his crimes.

Boye prompted Timor-Leste to make dubious tax assessments against international oil companies, knowing that the companies would pay under protest while appealing the initial judgements.³ He then boasted that he had brought in hundreds of millions of dollars in new revenues and promised billions more, thereby "proving" his skills and the incompetence of his predecessors, and earning the unquestioning trust of Timor-Leste officials. The scheme also reinforced his recommendation that Timor-Leste needed to tighten its tax regulations, opening the way for the fraudulent contracts and wire transfers resulting from his conspiracy.

Company appeals from these tax assessments are pending arbitration rulings in Singapore, and Timor-Leste may lose most or all of them. In addition to having to return the payments, Timor-Leste could be ordered to pay interest, the companies' legal costs, and perhaps penalties for frivolous assessments. Timor-Leste has also spent millions of dollars for its own attorneys in an attempt to limit the damage from Boye's actions.

Boye's scheme has inflicted or will inflict financial losses in excess of one hundred and seventy million dollars, as estimated in the following table. More accurate data will be available after the arbitration panel issues its decisions, as well as from the governments of Timor-Leste and Norway.

² See <http://www.laohamutuk.org/econ/model/OilSustain2June2015.pdf> and <http://www.laohamutuk.org/Oil/curse/2015/OilGoingFast15Apr2015en.pdf>

³ <http://www.laohamutuk.org/Oil/tax/10BackTaxes.htm>

Date paid	Activity	Estimated loss to Timor-Leste
2010-2012	Salary and consulting fees paid to Boye by the Norwegian government	\$250,000
2011-2013	Salary and consulting fees paid to Boye by the Timor-Leste government (some were paid while he was also being paid by Norway)	\$500,000
2012	Wire transfers to Boye's fraudulent company	\$3,510,000
2012-2015	Estimated amount Timor-Leste paid (to law firms DLA Piper, Arent Fox and others) for legal and other expenses to assess and control damage from the unfounded tax cases initiated by Boye	\$10,000,000
2015	Interest and penalties on the portion of \$440 million in tax assessments ⁴ that companies paid under protest in 2010-2012 which the arbitration panel could order Timor-Leste to return (assumed to be \$400 million for this estimate). This assumes the same rate of interest and penalties that Timor-Leste assessed the companies for underpayment, 1%/month. It could be more or less.	\$172,310,000
2012-2015	Minus interest Timor-Leste earned by investing \$400 million in its Petroleum Fund from mid-2012 to mid-2015, during which the Petroleum Fund earned a cumulative return of 16.37%	-\$65,490,000
2015	Legal fees paid by oil companies to defend against excess assessments, which the arbitration panel may direct Timor-Leste to reimburse	\$15,000,000
2015	Additional penalties for negligence which the panel could assess against Timor-Leste (assumed at 10% of disallowed amount). Timor-Leste charged companies a 100% penalty for underpayments it said were grossly negligent. This amount could be higher, or zero.	\$40,000,000
Total		Approximately \$176,080,000

Bobby Boye probably does not have sufficient assets to make restitution for all of these losses. However, he should not be allowed to replicate his 2004 scam, when he concealed about \$250,000 in stolen money while convincing Bankruptcy Court to release him from

⁴ Although we do not know the exact amount, ConocoPhillips's 2015 SEC Form 10-Q describes this Contingency: *"ConocoPhillips served a Notice of Arbitration on the Timor-Leste Minister of Finance in October 2012 for outstanding disputes related to a series of tax assessments. As of March 31, 2015, ConocoPhillips has paid, under protest, tax assessments totaling approximately \$237 million, which are primarily recorded in the "Investments and long-term receivables" line on our consolidated balance sheet. The arbitration hearing was conducted in Singapore in June 2014 under the United Nations Commission on International Trade Laws (UNCITRAL) arbitration rules, pursuant to the terms of the Tax Stability Agreement with the Timor-Leste government. Post-hearing briefs from both parties were filed in August 2014. We are now awaiting the Tribunal's decision. Future impacts on our business are not known at this time."*

ConocoPhillips owns 57% of the Bayu-Undan joint venture, so other partners' assessments are about \$179 million more. Boye also assessed back taxes from other companies, including \$25 million paid under protest by Woodside Australian Energy in relation to a different project.

about \$100,000 in personal debts.⁵ Timor-Leste's losses are 700 times greater than Boye's previous embezzlement, and its people will suffer far more from non-restitution than the shareholders of the company he stole from a decade ago.

In addition to these financial losses, Boye's crimes caused incalculable damage to the rule of law in Timor-Leste. Last October, Timorese leaders blamed the impending loss of Boye-initiated tax cases on Portuguese prosecutors and judges in Dili District court. A Parliamentary resolution used "the set of legal proceedings, under which the contractors on oil exploration Bayu-Undan sued the State in more than 50 complex processes related with international taxation matters and those procedures has been brought before the national court as well" to validate then-Prime Minister Xanana Gusmão's breach of separation of powers by illegally firing all non-Timorese judges and prosecutors, undermining the Constitution of this young democracy.⁶

Another inestimable loss resulting from Boye's scheme is the time and attention it took from many high-level Timorese officials, including the Prime Minister, Minister of Finance, Minister of Petroleum and Mineral Resources, and Minister of State for the Council of Ministers. This reduced their credibility and their effectiveness to carry out other responsibilities. It also damaged public confidence in and efficacy of revenue collection, especially from the oil and gas activities which provide more than 90% of the nation's income.

In addition, this conspiracy has damaged Timor-Leste's reputation in the international investment community, making it more difficult to attract the businesses and capital needed to develop the country. At the same time, Timor-Leste has been marked as a possible easy target for scammers and thieves who want to steal part of the country's \$17 billion Sovereign Wealth Fund.

⁵ Case # 2:04-bk-30552-EC

⁶ As described in the Timor-Leste 2014 Human Rights Report from the U.S. State Department Report:
"On October 24, the parliament voted in closed session to cancel the contracts of all foreign staff in the courts including judges, personnel in the Public Prosecutor's Office, Public Defender's Office, Anti-Corruption Commission, and Legal Training Center, although some were eventually permitted to return to work. Independent observers and civil society organizations criticized the resolution as an unconstitutional violation of separation of powers and an attempt to intimidate national judges. Credible sources suggested that some of the foreign employees affected by the decision lacked sufficient legal ability and that others, including judges, colluded with parties to pending criminal or civil actions."

La'o Hamutuk has compiled relevant materials at <http://www.laohamutuk.org/Justice/2014/14Judges.htm>. The first line on that web page under "Government responses and explanation" shows the direct link between Boye's fraud and the Prime Minister's removal of prosecutors and judges. The Prime Minister used the presentations at <http://www.laohamutuk.org/Justice/2014/PUBLIC-PROSECUTOR-ERRORS.pdf> and <http://www.laohamutuk.org/Justice/2014/COURT-ERRORS.pdf> to explain his actions, blaming foreign legal personnel for not understanding petroleum tax law.

We do not know who else was complicit in Boye's crimes. The only person who has been named so far is Tiago Guerra, a Portuguese consultant and businessman who lived next to Boye in Dili. Last October, Guerra was arrested for money-laundering, imprisoned for six months without charges, and is still barred from leaving the country. However, Guerra has not yet been tried, while other co-conspirators enjoy impunity and may continue to steal from the country's citizens.⁷

Judge Wolfson's recent acceptance of your request to delay sentencing until October allows time to develop a more complete and accurate accounting of "all losses resulting from the offense of conviction or from the scheme, conspiracy, or pattern of criminal activity underlying [Boye's] offense," for which he has agreed to "make full restitution." We hope that you will make a determined, effective effort to convince the judge to implement that part of the plea agreement.

One of our researchers, Charles Scheiner, is currently in New York and will be there through the end of August. He would be happy to meet with people involved with this case, and can be reached at 914-473-3185 or peacefulsystems@gmail.com.

Thank you very much for your attention to this letter and to this case.

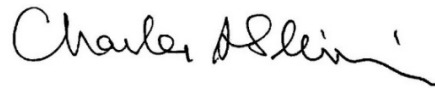
Sincerely,



Juvinal Dias
Researchers at La'o Hamutuk



Adilson da Costa Junior



Charles Scheiner

⁷ After this letter was delivered, we realized that this paragraph is misleading. La'o Hamutuk did not intend to write that Tiago Guerra conspired with Bobby Boye, or that Guerra is guilty of criminal activity. Although Guerra was arrested and imprisoned for nearly nine months and is still barred from leaving Timor-Leste, no formal legal charges have been filed against him. Guerra maintains his innocence and has not had a chance to defend himself in court. Like everyone else, he should be presumed innocent until proven guilty. In a democratic nation under rule of law, "suspicion" that someone is involved in money-laundering does not justify violating their rights. La'o Hamutuk is not aware of any evidence which links Tiago Guerra with Bobby Boye's crimes, and we did not mean to imply that the two were co-conspirators.

However, we wonder if the state's pursuit of Guerra without proper legal process diverts attention from others who were complicit in Boye's crimes and may still be in positions to steal from the country's citizens. On 20 July, Dili District Court sentenced the former Minister of Education to seven years in prison in a separate corruption case, reminding everyone that some Timorese public officials abuse public property for private gain. We continue to encourage a thorough investigation to find out who was involved with Boye's conspiracy.