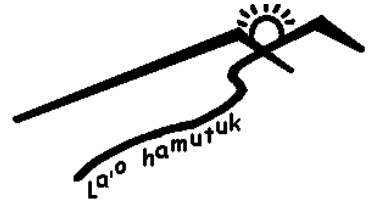


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**Submission to the**  
**Ministry of Natural Resources, Minerals and Energy Policy**  
**Democratic Republic of Timor-Leste**

from  
**La'ó Hamutuk**

regarding the  
**Eni 3D Seismic Survey Environment Plan**

**4 June 2007**

## Summary

- This public consultation is too brief, inadequately publicized and inappropriately conducted. It violates the guidelines of the National Directorate of Environmental Services and unnecessarily rushed.
- The environmental and other laws in effect in the area where the survey will be conducted are Indonesian laws from 1999, not the JPDA Petroleum Mining Code.
- Generic legal framework and oversight mechanisms for such projects should be in place before the projects are conducted. This includes public consultations, environmental regulations, protected areas and enforcement mechanisms.
- Timor-Leste does not yet have the legal framework or the capacity to oversee marine projects like this one.
- Eni's Environmental Plan is generally satisfactory, although we suggest additional safeguards to avoid injury to large marine animals.
- *La'o Hamutuk* raised similar concerns three years ago in relation to the 2D seismic survey, but they have not yet been addressed.

## Introduction

Once again, *La'o Hamutuk* appreciates this opportunity to participate in an important public consultation by the Ministry of Natural Resources, Minerals and Energy Policy (MNRMEP). To our knowledge, this is the first time the public has been asked to comment on an environmental plan for petroleum-related activities. Although the proposed 3D Marine Seismic Survey (MSS) involves less environmental risk than most other petroleum exploration and production projects, we are gratified that the Ministry has circulated it for public consultation.

In this submission, we discuss some general concerns about public consultation and legal framework, as well as the Environmental Plan itself. Future public environmental consultations may be based on this precedent, so *La'o Hamutuk* believes it is important to point out ways to improve the process.

## The consultation process

The Environmental Plan for this project was posted on the website of the National Directorate for Petroleum and Gas (DNPG) on 22 May 2007, with a deadline for public comment of 4 June, less than two weeks later. The document was available only in English and only on the internet. To our knowledge there was no announcement, press release or other public information that this consultation was happening. *La'o Hamutuk* learned about it only through an informal conversation with an advisor at DNPG, and through a coincidental meeting we had with Eni.

Eni plans to start this seismic survey later this month; such a hasty public consultation allows very little time for revisions in the Environmental Plan or other desirable changes which could result from the consultation.

In mid-December 2006, Eni and some “stakeholders” in the RDTL Government and the TSDA held several meetings to discuss this project, and they agreed on the consultation process, with “no outstanding issues.” Five months elapsed before it began. As members of civil society, *La'õ Hamutuk* is not persuaded that this is a genuine effort to receive public input; our skepticism is magnified by the sentence “Confidentiality shall be maintained at all times” at the bottom of every page of the Environmental Plan.

The National Directorate of Environmental Services (DoNES) in the RDTL Ministry of Development and Environment has developed a series of Guidelines for environmental plans, management and consultation. Guideline #5 on “public engagement” spells out components of an effective consultation process, none of which were employed for this consultation.

The Guideline states that “The public has the right to participate in the decision-making process, and it is the responsibility of the Proponent and Directorate of Environmental Services to ensure that the public has adequate opportunity to do so.” This consultation does not meet that standard, and should have been conducted by Eni or DoNES, not by DNPG.

If DNPG is to carry out future public consultations, we strongly recommend several components:

At least one month should be available for public comment. At this stage in Timor-Leste’s development, many in both government and civil society rely on advice from outside experts, and it takes time for them to be available.

An effective notice system is essential, including newspaper, radio and television announcements; letters to people and organizations likely to be interested (the list could start with those who have made submissions to past public consultations) and a single web page listing current public consultations from throughout the government.

Documents should be available in English, Portuguese and either Tetum or Bahasa Indonesia. They should be available on paper (at the DNPG and DoNES office) as well as on the internet.

It would be preferable to have a formal regulation defining the public consultation process for environmental plans, which should itself be subject to public consultation before it is adopted. This could be for DNPG, DoNES and any other government agency undertaking projects with environmental impact.

## **Applicable law**

Timor-Leste has not yet enacted laws defining environmental practices (including public consultation). According to the RDTL Constitution Article 165 and RDTL Law No. 10/2003, Indonesian laws in effect on 25 October 1999 are applicable in Timor-Leste in the absence of RDTL law or UNTAET regulations.

Eni writes that “in the absence (of environmental regulations for the offshore petroleum industry), this Environmental Plan is based on industry best practice and is compliant with the JPDA Petroleum Mining Code, and Article 7 of the Timor Sea Treaty.” Apparently DoNES and DNPG officials told Eni that they should comply with laws and regulations applicable to the Joint Petroleum Development Area, although the proposed activity is in Timor-Leste sovereign territory, not the JPDA. Eni seems unaware that

there are laws which currently apply in Timor-Leste; the list of relevant legislation on page 12 of the Environmental Plan does not mention Indonesian law. We do not believe that DoNES or DNPG have the authority to permit a contractor to ignore a Law enacted by Parliament.

The confusion about applicable law and the inadequate *ad hoc* nature of the public consultation process are two examples of a more fundamental problem – undertaking projects before a legal framework is in place to regulate them. By putting the cart before the horse, both Timor-Leste's people and the companies we contract with are in legal limbo, initiating activities which may later be subject to regulation under new laws. At that time, projects will either have to be given grandfatherly exceptions to legal rules, or will have to be modified to conform to the laws as enacted. Both of these can lead to poor results and unnecessarily complex regulation; it would be better for Timor-Leste to enact appropriate legislation before undertaking such projects.

## **Enforcement responsibility and capacity**

A further consequence of this legal confusion is enforcement and regulation. The Petroleum Mining Code is enforced by the TSDA within the JPDA; the TSDA has no jurisdiction in the area where this seismic survey will be conducted. Who will inspect, enforce and supervise the MSS to ensure that it complies not only with this Environmental Plan, but with all laws and regulations applicable in Timor-Leste territory? What laws and court system will they apply? Some in Government appear to believe that Eni's own HSEQ policy and good intentions are adequate; *La'ó Hamutuk* does not share their confidence and believes that effective regulation, oversight and enforcement are essential.

This will be even more critical as potentially more dangerous projects, such as drilling, extraction or on-shore operations, are initiated over the next few years, and we strongly encourage Timor-Leste to define its legal framework and establish enforcement mechanisms before they begin.

Timor-Leste is also late in establishing marine (and terrestrial) protected areas, relying on hastily-done UNTAET Regulation 2000-19. This makes it difficult for Environmental Plans like this one to explain how protected areas will be safeguarded and/or what the impact will be. The only identified areas in Eni's plan are Jaco Island and places in Indonesia and Australia, demonstrating another example of why legislation should be enacted before projects are undertaken. UNTAET Regulation 2000-19 already lists several other protected areas along the south coast of Timor-Leste which could be affected by the MSS; an overdue new national survey and protected areas legislation would undoubtedly come up with more.

We are also concerned that Timor-Leste does not yet have the legal framework, oversight mechanism, enforcement capability or emergency management systems to handle any accidents involving the MSS. Our police and environmental departments have no naval capability, either to monitor MSS operations or to assist in responding to an emergency. The problems with the recent hydrochloric acid spill at the Dili Port illustrated how weak our capacity is to deal with even minor incidents. In approving this MSS, the Government and people of Timor-Leste are placing our faith in Eni and Western Geco's good practices and emergency response; we hope it is justified but are uneasy basing such decisions on faith alone.

## Eni's Environmental Plan

In general, Eni appears to have given satisfactory consideration to the most important risks and concerns, and proposed reasonable measures to minimize them. Unfortunately, *La'o Hamutuk* does not have the technical expertise to conduct a detailed review in the short time available.

About twenty years ago, WesternGeco (then called Western Geophysical) was implicated in a whale pod kill, but their technology has hopefully improved since, as some large oil companies will not hire them without proof that their transponders operate in the lower signal ranges that deter whales, dolphins and sharks from coming too close. However, this is another reason why oversight and enforcement are necessary.

Training the ship's crew to be "marine mammal observers" is not sufficient in itself. Observations must be made continuously, systematically and conscientiously, and we do not see that in the proposed Environmental Plan. We also believe that depending on "observed cetacean distress" to avoid injuring whales and sharks is not adequate. Can the seismic system (or another sonar system) be used to detect large marine animals in the vicinity, without waiting to visually observe them on the surface? This would also help avoid damage to whales and sharks, especially if the MSS is to be conducted after dark or when visibility is limited.

## Learning from the past

In September 2004, Timor-Leste signed a contract with Global Geo Services (GGS) and PetroChina (BGP) to conduct a 2D offshore seismic survey in the same area as Eni's proposed MSS. At that time, *La'o Hamutuk* wrote a letter to the DNPG project manager, raising some concerns and asking some questions which are also relevant to the current proposal. We never received a response, and the problems we wrote about have not been addressed.

In that letter (available on request), we discussed the issue of applicable law described above, and we suggested that the Marine Geophysical Safety Manual, published by the International Association of Geophysical Contractors would be an appropriate definition of good industry practices.

We also raised a concern about the financial precariousness of GGS and the lack of offshore experience of BGP. We are gratified that these concerns were not borne out and that the seismic survey appears to have been conducted well and without serious incident.

DNPG made some halting steps toward transparency in publishing a matrix of how the contract was awarded, but so much information was omitted that the matrix is not very informative.

After receiving the Timor-Leste contract and a subsequent one for the JDPA, GGS has now reversed its financial slide and appears to be prospering. However, *La'o Hamutuk* is troubled that Geir Ytreland, the DNPG advisor who brought them to Timor-Leste when they were desperate for business, is now a marketing coordinator for GGS. Although there may be nothing untoward or illegal about Mr. Ytreland's new job, he is not the first international advisor in Timor-Leste's petroleum sector to use contacts made here to advance his career.