

La'o Hamutuk

Timor-Leste Institute for Development Monitoring and Analysis

Rua Martires da Patria, Bebora, Dili, Timor-Leste

Tel: +670 332 1040

email: info@laohamutuk.org Website: www.laohamutuk.org



28 October 2011

**to: Dr. Manuel Tilman, President and members of Committee C
RDTL National Parliament**

re: Opinion of the Court of Appeals on Timor-Leste General State Accounts for 2010

cc: Other members of National Parliament, media, website

Dear Mr. President, with our respect,

Thank you for your invitation to participate in the Public Hearing today regarding the Court of Appeal's Opinion on the General State Accounts for 2010. As always, La'o Hamutuk appreciates the serious approach taken by Committee C and Members of Parliament to the challenging task of authorizing and monitoring the State Budget, and we would like to help in any way we can.

We also appreciate the hard work of the Court of Appeals in performing a task which is the Constitutional responsibility of the High Administrative, Tax and Audit Court. We hope that the latter is established soon, so that the Court of Appeals can focus on its principal mandate. We also expect that the Audit Court will have more technical, financial and accounting capacities and resources than the Appeals Court.

The Court should have been given more information than the Government provided, as the current Opinion points out several times. We encourage Government to be more forthcoming to the Court, Parliament and the public. Although the Transparency Portal is a good initiative which could assist, it is too cumbersome and unreliable. Last year, La'o Hamutuk suggested to the Ministry of Finance and FreeBalance that the Portal could allow users to download the entire budget execution database for a given year as a single Excel file, which could have enabled the Court to do a more thorough evaluation of State Accounts.

During 2010 and early 2011, La'o Hamutuk wrote several submissions and letters¹ on issues related to the 2010 General State Accounts (GSA). We encourage the Court and Parliament to use additional sources when analyzing the 2011 GSA, to increase the information available and to

¹ In addition to <http://www.laohamutuk.org/econ/OR10/10OR2010.htm> (English/Tetum), we have written:

Topic	To whom	Date	Web link (English) Web link (Tetum)
2010 State Budget	PN Committee C	4 Nov. 2009	http://www.laohamutuk.org/econ/OGE10/sub/09LHSubOJE10En.htm http://www.laohamutuk.org/econ/OGE10/sub/LHSubPNComCOGE10Te.pdf
2010 Orsamentu Rektifikativu	PN Committee C	16 June 2010	http://www.laohamutuk.org/econ/OR10/10LHSubOR10En.htm http://www.laohamutuk.org/econ/OR10/LHSubPNComCOR10Te.pdf
2011 State Budget	PN Committee C	11 Dec. 2010	http://www.laohamutuk.org/econ/OGE11/LHSubComCOGE11Dec10En.htm http://www.laohamutuk.org/econ/OGE11/LHSubComCPNOGE15Dec2010Te.pdf
2011 State Budget	President of Committee C	3 Jan. 2011	http://www.laohamutuk.org/econ/OGE11/LHtoCommC3Jan11en.pdf http://www.laohamutuk.org/econ/OGE11/LHtoCommC3Jan11Te.pdf
2011 State Budget	President of the Republic	4 Feb. 2011	http://www.laohamutuk.org/econ/OGE11/LHtoJRH4Feb2011En.pdf http://www.laohamutuk.org/econ/OGE11/LHtoJRH4Feb2011Te.pdf
2012 State Budget	PN Committee C	21 Oct. 2011	http://www.laohamutuk.org/econ/OGE12/LHSubComCPNOJE2012En.pdf http://www.laohamutuk.org/econ/OGE12/LHSubComCPNOJE2012Te.pdf

understand some critical issues better. We apologize for not having sent these documents directly to the Court before they submitted their Opinion.

In summary, we do not understand or agree with the Court's concluding Opinion that the state accounts are valid. The court identified too many fundamental flaws, and we describe several others below, to reach this conclusion.

The court identified some important issues, many of which La'o Hamutuk has pointed out:

- **Rapid budget growth is a symptom of the resource curse.** During 2008-2012, Timor-Leste's State Budget grew faster than any nation in the world except Zimbabwe, and it is not sustainable, manageable or producing good results. The 2010 Orsamentu Rektifikativu was an extreme case, which transferred a lot of money out of the Petroleum Fund without a valid reason, sacrificing future generations for current greed.
- **Taking more than the Estimated Sustainable Income (ESI) from the Petroleum Fund for short-term convenience violates both the Petroleum Fund Law and good policy.** We believe that it is illegal to withdraw money from the Petroleum Fund merely to increase the balance in the Treasury account to be carried over into a subsequent year.² Article 7.2 of the Petroleum Fund Law allows money to be transferred from the Petroleum Fund to be used during a given fiscal year *to close the non-oil fiscal deficit for that year* – a principle which the Court correctly observed was not followed in 2010. Article 7.2 implies that any money not expended in a given fiscal year should be left in (or returned to) the Fund, and does not authorize it to be carried over to future years.

During December 2010, the Ministry of Finance directed the BPA to transfer \$211 million from the Petroleum Fund, notwithstanding that the Treasury Account already contained enough to cover several months' expenses. At the end of 2010, the Treasury Account held \$340 million dollars, the highest amount in Timor-Leste's history. The Court should have pointed out this clear, intentional abuse of the Petroleum Fund's objectives.

- **We empathize with the court's difficulty in obtaining good information** on which to base their Opinion, and support their recommendations for a more disaggregated, comprehensive and accurate system to manage and report on state finances, as well as for better systems for reconciliation and control of cash.

We would like to discuss on a few issues raised by the Court's Opinion:

- **The Court recommended that donor assistance be included in this review and in the State's budget execution reports. We do not share this view,** except for possible future direct budgetary support from donors. Although we agree that donors should be more transparent and accountable regarding money they spend to support Timor-Leste, this money is not managed by State institutions; in fact, nearly 80% of it never even comes to this country.³ Some major donors, such as Cuba and China, provide no financial information; others have their own contracting processes which conceal essential data. Timor-Leste's Courts, Parliament and Ministry of Finance are already addressing many difficult challenges, and we don't believe that this one is likely to yield enough results to justify the additional work. These concerns would be addressed better through Aid Effectiveness processes.

² See Note 1 for links to La'o Hamutuk's early 2011 letters to the Presidents of Committee C and the Republic on this issue.

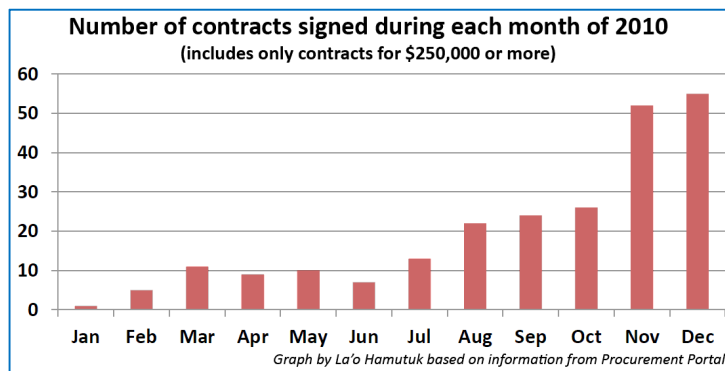
³ See <http://www.laohamutuk.org/Bulletin/2010/Feb/bulletinv11n1-2.html#donor> (English) or <http://www.laohamutuk.org/Bulletin/2010/Feb/bulletinv11n1-2Te.html#donor> (Tetum).

- The Court’s report mentions evidence of **possible criminal and civil violations of law**. We hope that they have provided full information on this to the Anti-Corruption Commission, so that investigations and accountability can be carried out by the competent authorities.
- **The long process to develop this Opinion delays its effectiveness.** Parliament received the Court’s Opinion within the ten month requirement of Article 42.7 of the Budget and Financial Management Law, even though the Government provided the audited accounts to the Court a week late. Last year, the Court’s Opinion on GSA 2009 was delivered in November (a few weeks later than this year), too late to influence state activities during 2010. As a result, this Opinion on GSA 2010 observes that many of the Court’s previous recommendations have not yet been implemented; we expect that 2011 and 2012 will be better.

Unfortunately, the Court’s Opinion left out some serious concerns. Although we understand the Court’s reasoning not to appoint an auditor, this may have been a mistake. An auditor can look at more than figures, and given the complexity and number of issues involved in this process, as well as the short time available, additional expertise would have been helpful. Earlier this year, Deloitte’s non-fiscal audits of EDTL, PNTL and other institutions brought a number of important concerns to light; a similar process could be useful for the General State Accounts. Earlier this year, the IMF published three reports on Public Financial Management and economics here, raising some important issues that the Court seems unaware of.

The end-of-the-year budget execution rush is bad policy, and we wish the Court had mentioned it.

The graph at right shows the 235 contracts over \$250,000 that Timor-Leste signed during 2010, totaling nearly \$700 million. Nearly half (107) were signed during November and December. Some Ministries engaged in last-minute spending to an extreme extent. For example, the



Ministries of Infrastructure and Social Solidarity spent money 9 and 7 times more rapidly during the last six weeks of 2010 than they had during the first 46 weeks.⁴ Hasty spending before the fiscal year ends often leads to waste, corruption and poor outcomes.

The Court should have discussed the largest single outlay in the 2010 General State Accounts, \$90 million spent during 2010 for the multi-annual national electricity project. La’o Hamutuk and others have written extensively about this debacle, but we remain hopeful that Timor-Leste will learn from the irregularities and maladministration that have plagued this project since its inception. We regret that the Court didn’t discuss them.

In particular, Timor-Leste’s second largest contract ever was signed without any public tender process or competitive bidding on 15 September 2010 with Puri Akrya Engineering Ltd⁵ to build the Hera and Betano power stations, for \$330.4 million (later increased to \$406.2 million). Prior to that, Timor-Leste’s largest contract was \$367.1 million on 21 December 2009 with Chinese

⁴ See <http://www.laohamutuk.org/econ/OGE11/exec/11BudgetExecutionEn.htm> (English) or <http://www.laohamutuk.org/econ/OGE11/exec/11BudgetExecutionTe.htm> (Tetum)

⁵ PAE was formed one month before it was given this contract. According to the Deloitte audit of EDTL, 69% of its shares are held by “Dooks Group Holdings” in the British Virgin Islands.

Nuclear Industries Construction Company No. 22 (for the same power plants as well as the national high voltage grid), which was reduced to \$298.5 million when PAE was contracted. These two contracts totaled \$628.9 million at the end of 2010 (they are still increasing; today the total project cost is around a billion dollars and rising).

However, Parliament had not approved the outlays obligated by these contracts, and they far exceed the 2010 budget being discussed by the Court. The 2010 Orsamentu Rektifikativu appropriated \$60 million for this project during 2010 (budget execution reports say that \$90 million was spent on it in 2010), but multi-year cost projections were left out of the Orsamentu Rektifikativu. Annex 4 to the original 2010 budget gives a total project cost for the electricity system of \$48 million, with no expenditures listed for years after 2010.

(This was clearly untrue. The 2009 budget had projected expenditures during 2010-2011 of \$280 million for this project, which would have increased because most of the \$85 million appropriated for it during 2009 was reallocated to Pakote Referendum. Nevertheless, the two budgets enacted during 2010 omitted this information.)

When the Prime Minister presented the 2010 Orsamentu Rektifikativu, he added \$17 million for the national grid (bringing the total to either \$60 or \$67 million during 2010; the documents are inconsistent). He also said that \$10 million would be spent on new generators for Comoro Power Station; on 23 December 2010, the Government signed a contract with CSI Company LDA for \$30.9 million for Comoro station.

Unfortunately, the Court neglected to mention contracts signed during 2010 which legally obligate Timor-Leste to spend ten times more than Parliament was informed in the budget documents, which is invalid and illegal.

To avoid repeating similar violations, we encourage Government to implement a system to provide accurate information to Parliament and the public about total expected costs of multi-year projects and future contractual obligations, including alterations while the projects are being implemented. Without this information, neither Parliament nor the Court can fulfill their Constitutional and legal responsibilities to oversee state finances.

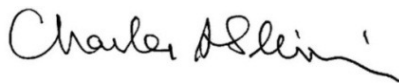
(Today, the Infrastructure Fund allows some additional flexibility and obfuscation of total project costs, which we believe may be misused. However, that Fund did not exist during 2010, and we are disappointed that the Court did not discuss these irregularities. Hopefully Parliament will address them.)

Thank you very much for your attention, and we look forward to continuing this collaboration.

Sincerely,



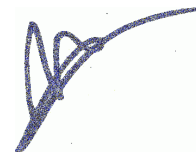
Juvinal Dias



Charles Scheiner



Guteriano Neves



Alexandra Arnassalon

Researchers, Natural Resource and Economy Team, La'o Hamutuk