

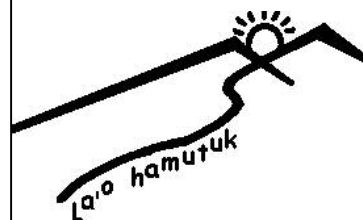
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Comments on the Extractive Industries Transparency Initiative

Submission to the UK Department for International Development's
Extractive Industries Transparency Initiative Conference, London, UK

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By the East Timor Institute on Reconstruction Monitoring and Analysis

Introduction

La'o Hamutuk thanks the UK Department for International Development for inviting us to participate in this conference and to present the perspectives of Timor-Leste civil society on issues – transparency and accountability in the Extractive Industries - of great importance for our nation. We welcome the intentions of the EITI and believe that high levels of transparency and accountability in the Extractive Industries are extremely important. We also believe that this is an initiative that requires effort from all parties to the process: our government, oil companies, International Financial Institutions and the governments of other developing and developed countries.

However, we believe that the EITI needs to be significantly strengthened if it is to be effective. Given that it is an international initiative, it needs consistency across the board in its application, and should not be left to implementation at the national level only. As it stands, it seems unclear whether governments are genuinely – rather than nominally - enacting EITI and hence, it may be impossible to distinguish which governments have striven to implement the initiative and which have not.

Our new nation, Timor-Leste, suffers from the same preconditions as countries that are experiencing the “resource curse” - extreme poverty, few possibilities for non-extractive export income, and an absence of strong traditions of democracy, integrity and accountability. While Timor-Leste's government has made partial efforts to raise levels of transparency, these have not been far-reaching or binding enough in their application. In a few years, more than half our GDP and three-fourths of our national budget will come from oil and gas revenues. Before we reach this level of dependency, we will need

the help of the international community to raise standards and requirements for oil companies and oil-consumers, as well as for our government. At present, benefits for governments for participation, “realised as part of...efforts to improve governance”, and to companies - “mitigating political and reputational risks” - are not by themselves enough to compel countries which sign on to EITI to adopt the guidelines as concrete practise.

At EITI’s founding conference, British Prime Minister Tony Blair stated that “good governance and transparency serve the interests of the business community wherever it operates”. His government, as well as the IMF, highlights poor governance in resource rich countries as a cause of conflict, corruption and poverty. Although good governance is worthwhile in poor countries, it is also necessary in rich countries, who have the mechanisms, power and avarice to extract large profits from resource revenues. The EITI/UK/IFI focus on good governance for impoverished countries allows those most responsible for the resource curse to extract, sell and consume petroleum resources, reaping huge financial benefits while exacerbating poverty, war and debt in countries like ours.

Two tenets of Good Governance as articulated by the IMF¹, are to improve the efficiency and accountability of the public sector, and to tackle corruption. Taken together in the context of EITI, these are important and laudable, although they must be accompanied by equally rigorous scrutiny of the private sector companies that will profit from the exploitation of oil in Timor Leste and other countries. Dealings between the public and private sector, requiring complete transparency due to the huge potential for corruption, must be given as much attention as public sector transparency.

We are concerned too, that policy advice from undemocratic international financial institutions could override the absolute necessity to consult at the local and community level in countries concerned. Too often in the past, governments, IFIs and companies have worked together to the detriment of people from whose land they are extracting maximum profits. In the process, the consequences of resource exploitation have included war, famine and widespread poverty, and we feel that if the initiative is to help prevent these effects, it must facilitate engagement with civil society.

Existing Transparency Provisions in Timor-Leste

One of EITI’s principles “recognize[s] that achievement of greater transparency must be set in the context of respect for contracts and laws”. We are concerned that this could allow existing, secretive contracts and outmoded, anti-democratic laws to conceal information from the public. If EITI, and other initiatives such as the Code of Good Practices are to be effective, it must override current practices that tolerate an opaque environment where corruption and misuse of money flourish.

¹ See The IMF’s “Partnership for Sustainable Global Growth”, 1996

Timor-Leste's Petroleum Fund Draft Act, recently circulated for public consultation, contains, for example, an article that defines a principle of transparency, as we suggested. However, there are obstacles to the implementation to effective transparency – in repeated exceptions for “confidential information”, each time the act discusses providing information to the public. These censorship loopholes should be removed: there is no excuse for confidentiality regarding public assets. Any organisation, for example, investment advisors, can be informed in their contracts that Timor-Leste practises genuine transparency. Other examples of potential obstacles are provisions which require that reports or information be “adapted for public information” before being released. It is indeed helpful to publish clearer versions so that people can understand them more easily, but this is no reason not to release the original.

Timor-Leste's Central Bank, the Banking and Payments Authority (BPA) and the Ministry of Planning and Finance will manage Timor-Leste's Petroleum Fund. These are the appropriate institutions to administrate the fund, but there is a pressing need to legislate greater legal and structural oversight, checks and balances. At present, there are institutional impediments to these being implemented. The BPA, for example, has operated illegally for three years and has never held a valid meeting, because its Governing Board has three members, although five are required for a quorum. We strongly suggest the BPA's Governing Board be legally constituted before it is handed millions of dollars more in public funds.

Provisions for oversight have been made through the Consultative Council (CC) and Independent Auditor, but again, these are not strong enough, and could be meaningless unless they have effective power to check the affairs of the public and private sector in relation to the petroleum fund. La'o Hamutuk has recommended that when Parliament should disclose advice given by the CC that CC members from non-governmental sectors should be chosen by those sectors not the government. The CC should be empowered to investigate when it has information that the law may not be followed, amongst other suggested improvements. In relation to the independent auditor, we are concerned that provisions made to appoint one may not be carried through until several parts of the judiciary are operational – which could be a long time given the scarcity of qualified judges in Timor Leste. We have also recommended that the Consultative Council, not the government, choose the auditor.

The new law also needs to be more rigorous in its requirements of companies involved in petroleum exploration and production. In order for the CC, the Independent auditor and the public to have confidence that reports of Fund receipts (Article 6.1) are accurate and complete, they need information from companies about payments they have made. This is in keeping with the growing international movement for transparency within Extractive Industries. We urge that the petroleum fund require that the companies cooperate with the CC, the Auditor, the Provedor and the Parliament in providing information about all payments they make to Timor-Leste and the TSDA. This information should also include how the amounts of each payment were determined. The companies will be required to provide such information to the Petroleum Ministry on a regular basis; these statements should be public as part of the Petroleum Fund Management.

The Petroleum regime draft laws, drawn up to manage and tax petroleum development, were circulated last summer and passed by the Council of Ministers in December. This followed a public consultation process that was claimed as having been “thorough”², though consisted primarily of explanations by the drafters of the legislation why they made certain decisions, and arguing against suggested revisions. Neither parliament nor the public have seen revised versions of the laws, even though Parliament will be asked to look at these laws in a matter of weeks. According to the interim Petroleum minister, Jose Texeira, it is effectively a matter for parliament whether draft laws are released or not. We feel this underscores the point that the present government has, put charitably, at times a flexible interpretation of the terms “transparency” and “public consultation”.

EITI and Room for Improvement

We hope that the EITI principles set out in 2003 will be improved on at this conference. We are concerned that the guidelines read more like a set of opinions and observations rather than convictions. Believing in the “principle and practise of accountability by government” or that “payments disclosure... should involve all extractive industries” is commendable, though ensuring such sentiments are carried through to action and policy provide greater obstacles than have been encountered up to now.

We realize that the proposed outcomes build on the original EITI principles, but they need to be more robust. For example, we agree that “publication of payments by companies to governments continues to be an important first step in increasing accountability and...should be vigorously pursued”, though this is only a first step. We hope that our statement has highlighted some of the institutional and legal hurdles that make it difficult to achieve full disclosure of payments.

We acknowledge and welcome, too, the international support given to EITI by “companies, investors, non-governmental organisations, international organisations and by other countries”. However we hope that civil society is not overlooked in this process, since citizens of resource producing countries are the actual owners of the resources.

It is important, too, as we have said in our introduction, that implementation of EITI is not, as is stated in the list of proposed outcomes, merely “driven by the resource rich countries themselves”. EITI should be binding on resource-consuming countries, and they must also be proactive in driving the Initiative. We expect the UK-led, World Bank/IMF supported, EITI secretariat to provide highly inclusive and comprehensive facilitation that encompasses all parties.

We agree with EITI decision makers that EITI “provides a good entry point for broader work and discussion on revenue management”. Indeed, we urge them to consider seriously that EITI should now be taken to the next level, from voluntary to enforceable.

² Petroleum Fund Discussion paper, at www.etan.org/lh/misc/PetFundSub/04FundConsult.html, page 14

In our country's case, it is important to realise that the "encouraging progress" made so far is not enough, that a closer look at existing and proposed laws and contracts, as well as the massive development of institutions that has not yet been undertaken, are key to ensuring sensible decisions by future governments in a nation dominated by petroleum revenues. We need mandatory controls on petroleum companies and petroleum-producing economies, as well as on our own leaders and civil servants. This could help counterbalance having unelected officials from IFI's 'assess' implementation and give policy advice, potentially with attached unfair and debilitating conditionalities. More importantly, it would protect current and future generations of people in petroleum producing countries, as well as the future habitability of our planet.