

La'o Hamutuk

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TimorGAP: Timor-Leste's National Oil Company

11 October 2010. Updated 3 June 2016

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Background

When Timor-Leste's [Petroleum Act](#) (also [Portuguese](#)) was enacted as Law No 2005/13 five years ago, one of the most important changes made during the year-long [public consultation](#) was the addition of Article 22 "State Participation in Petroleum Operations," which allows a state-owned National Oil Company (NOC) to participate in joint ventures for exploring and exploiting petroleum resources in Timor-Leste. Article 8 of the [Model Production-Sharing Contract](#) under the Petroleum Act allows an NOC to become a partner in petroleum exploration in Timor-Leste's exclusive areas, with up to a 20% share, without paying a share of the exploration costs already incurred. The NOC must declare its interest within 60 days of when a company declares a field as a "commercial discovery" after exploration finds profitable quantities of oil and/or gas. This applies only in Timor-Leste's exclusive land and sea territory; if the NOC wishes to participate in a joint venture in the Joint Petroleum Development Area or outside Timor-Leste's territory, it will have to purchase a share of the project just like any other oil company would.

The NOC is not a partner in the Bayu-Undan, [Kitan](#) and [Greater Sunrise](#) fields in the JPDA, for which contracts were signed before the Petroleum Act became law and the NOC was established.

History

In 2007, the previous Government drafted a [National Oil Company decree law](#) (also [Portuguese](#)) and held two rounds of [public consultation](#) on draft statutes for what was then called PETROTIL. [La'o Hamutuk](#) and others raised a number of serious concerns, and the election intervened before the law was passed. Our main points, which are still valid, are described in the box at right:

The AMP came into office in mid-2007, [promising](#) to create a national oil company quickly. In May 2009, the State Secretariat for Natural Resources organized a two-day workshop for officials and civil society with speakers describing national oil company experiences in Mexico, Indonesia, Trinidad, Thailand, Norway and Papua New Guinea (links to presentations [below](#)).

The first visible follow-up came almost a year later,

Excerpts from La'o Hamutuk's 2007 Submission

La'o Hamutuk supports the creation of a strong, well-managed, citizen-owned national oil company for Timor-Leste. Such an institution can help develop our resources and our capacity to manage them, as well as maximizing the financial benefit to the people of Timor-Leste. In addition, a transparent, accountable, democratically-controlled national oil company will respond to the needs and wishes of our own people, rather than to investors from overseas. It will prioritize Timor-Leste's long-term interests, rather than daily share prices or quarterly dividends.

However, in other countries, national petroleum companies are often a pathway to disaster. Such companies can be used to evade responsibility for pollution or remediation for environmental damage caused by profit-making foreign companies (such as Texaco selling its interests in Ecuador to Petroecuador). They can enable flouting laws about safety or communication with local people (such as NNPC in Nigeria). If not carefully regulated, a national oil company can be far more dangerous than a privately owned one which is accountable to stock exchange or

and the Government had hoped to pass a Decree-Law establishing a National Oil Company by the end of 2010, so that it could participate if commercial quantities of petroleum were discovered at [Cova](#) or in [Block K](#), where Eni and Reliance hope to drill test wells in mid-2010. (Wells were drilled at the end of the year, but no commercial discoveries were found.) A [July 2010 draft of the law](#) was circulated informally. In October, the State Secretariat of Natural Resources began a more formal public consultation in the districts.

More than 60 people participated in an all-day public consultation on 18 November 2010 discussing newer drafts of the [laws to create the PETRONATIL national oil company](#) (also [Tetum](#)) and the [Institute for Petroleum and Geology](#) (also [Tetum](#)). After many questions and controversies were raised, SERN asked people to submit comments by 24 November, as they hope to present the two laws to the Council of Ministers on 30 November.

[La'o Hamutuk's submission on PETRONATIL](#) highlighted the following points:

- National oil companies are dangerous, and we should learn from failures as well as successes.
- The public consultation process is inadequate.
- PETRONATIL should be established by Parliamentary law, not decree-law.
- PETRONATIL should serve the people of Timor-Leste.
- This Decree-Law must be written clearly.
- PETRONATIL should follow the rules for state agencies.
- PETRONATIL needs to be transparent and accountable.
- PETRONATIL should be designed to prevent corruption.
- PETRONATIL should not be given more power than it needs.
- PETRONATIL's profits must be paid into the Petroleum Fund, not reinvested in the company.
- PETRONATIL should not be empowered to borrow or issue bonds.

Our [submission on IPG](#) recommended that it be established during 2011 as a directorate within the State Secretariat for Natural Resources, rather than as an autonomous *Instituto Publico*.

At their 16 December meeting, the Council of Ministers "analysed the proposal to create the Timor-Leste oil company that will detain and manage, with a managerial framework and principles, the property assets of the Timor-Leste State, in the oil sector." With exploratory drilling underway in both Eni's and Reliance's blocks, the government hopes to establish PETRONATIL in early 2011, with the help of \$2 million allocated for in the [proposed state budget for 2011](#), which was increased to \$2.5 million in the final budget. In La'o Hamutuk's [submissions to Parliament on the Budget](#) we urged them

government regulators in countries where its stock is traded.

In addition, La'o Hamutuk made some suggestions which are still relevant:

- PETROTIL should be established by Parliamentary law, not by a Decree-Law secretly debated in the Council of Ministers.
- PETROTIL should be a government agency, not a semi-autonomous *empresa público*. Its expenditures should be exclusively through the normal government budget.
- Revenues from petroleum-related activities by PETROTIL are required to be deposited in the Petroleum Fund, and cannot be diverted by the agency.
- PETROTIL workers should have the same rights and benefits as other public servants in Timor-Leste.
- PETROTIL must be at least as transparent and accountable as a publicly traded, investor-owned oil company in a rich democracy. Its standards of corporate governance need to be spelled out and mandatory. It needs to consult with the public and local communities who will be affected by its operations,
- Profit-sharing for PETROTIL's Board and employees should not be allowed; it is inappropriate in a public company and violates the Petroleum Fund Act.
- PETROTIL should comply with normal government tender processes.

to use the "power of the purse" to compel Government to create Petronatil with a Parliamentary Law.

Following the consultation, the Government made some changes to the draft PETRONATIL Law, although we have not been allowed to see them. We understand that Government will be more involved in NOC strategic decisions. PETRONATIL will not borrow without Government approval, although Timor-Leste will be better protect from liability for PETRONATIL's debts. Petronatil officials will have to declare their assets. Since both Eni's and Reliance's exploratory wells came up dry, the time pressure to establish PETRONATIL has relaxed a bit, but SERN still wants it to have it operational by April 2011. That way it will be ready to participate in mid-stream and downstream operations on the South Coast (the [supply base](#), refinery and possible fabrication yard and LNG plant in the [Tasi Mane project](#)), even if new exploration and production doesn't happen for some time.

In early 2011, the draft IPG decree-law was put on the back burner, as SERN gave priority to other concerns. However, it was resurrected after a year and [approved by the Council of Ministers on 14 March 2012](#). It went into effect when it was [published in the Jornal da Republica \(Portuguese\) as Decree-Law No. 33/2012 of 18 July](#).

On 25 May 2011, the [Council of Ministers approved](#) (also [Tetum](#) or [Portuguese](#)) the decree-law to create Timor-Leste's national oil company, now called **TIMOR GAP – Timor Gas & Petroleum, E.P.** (Empresa Publica). The Council approved the [legislation](#) (also [Portuguese](#)) after extensive discussion on how TIMOR GAP will relate to the Petroleum Fund. La'o Hamutuk wrote a [letter to the President \(Tetum original\)](#) suggesting some issues that he should consider as he decides whether to promulgate or veto the legislation. On 1 June, the [President told *Diario Nasional* \(Tetum\)](#) that he had received our concerns about creating TIMORGAP without a Parliamentary law, but had not received the decree-law for promulgation. He received it a few days later.



The President's legal staff invited La'o Hamutuk to discuss our concerns, and we followed up the meeting with a [written submission](#) on 14 June, concluding that "on balance, this decree-law will damage Timor-Leste's economic development, political democracy and equitable use of its non-renewable resources. Therefore, we urge the President of the Republic to utilize his powers under Article 88.4 of the [Constitution of RDTL](#) to veto this legislation, and to ask the Government to repair its defects and submit it to Parliament for enactment ... after the 2012 election."



On 20 July, the President declined to follow our recommendation and signed the decree-law without any public announcement. It was published as [Decree-Law No. 31/2011 in the Jornal da Republica \(Port.\)](#) on 27 July 2011.

On 2 September, the [Government appointed Eastlog PTE](#) (also [Portuguese](#)) to build the Suai supply base, which is expected to cost around \$300 million. Once it is built, TimorGAP will own and operate it. La'o Hamutuk's web pages on the [Tasi Mane project](#), [Suai Supply Base](#) and [state budgets](#) have more details.

On 28 September 2011, the [Council of Ministers approved](#) (also [Tetum](#)) [Government resolution 29/2011](#) naming Francisco da Costa Monteiro as Chairman of the Board of Directors and Executive Director of TimorGAP - Timor Oil and Gas E.P. The following week, TimorGAP's new agreement with

Malaysian Helicopter Services was useful, as SERN and TimorGAP officials flew to Suai to meet with concerned local residents and fly over proposed sites of the Supply Base and Nova Suai. On 17 October, [SERN Despacho No. 106/GSERN/X/2011](#) named Antonio Jose Loyola de Sousa, Dino Gandara Rai and Norberta Soares da Costa to four-year terms as members of the board.

A month later, Dili's new [Timor Plaza luxury shopping mall celebrated TimorGAP's imminent arrival](#): "Given the prominence of TimorGAP as the national oil company, it was important to find a prestigious location for the new offices. 'Frankly speaking, there was no other choice but the Timor Plaza,' Monteiro said, 'Given the nature of TimorGAP's operations, we have to be professional and presentable.' "

2012

On 17 February 2012, local newspapers included an [advertisement for 22 positions with TimorGAP](#) relating to several components of the [Tasi Mane project](#), as well as an [interview with TimorGAP President Francisco Monteiro \(Tetum\)](#) explaining that "TimorGAP will be directly involved in oil exploration." Francisco stated that they would be involved in both upstream and downstream operations and services, as well as the [Suai Supply Base](#), Betano refinery, and [LNG pipeline and Beacu LNG plant](#). TimorGAP continues to focus on [Tasi Mane](#), with the first priority being given to the Suai Supply Base and the highway. The refinery is being discussed with PTT Thailand, while the LNG plant continues to depend on negotiations with Woodside about how [Sunrise gas](#) will be processed.

On 1 June 2012, Prime Minister [Xanana Gusmão named TimorGAP President Francisco Monteiro](#) to the Investment Advisory Board for the [Petroleum Fund](#). According to [IAB meeting minutes](#), he has attended only two of the eight meetings held since his appointment, missing every meeting during 2013 and the last four months of 2012.

2013

During 2012 and 2013, TimorGAP's principal activities related to design, contracting and land clearance for the [Tasi Mane project](#), especially the [Suai Supply Base](#). Our web pages on these topics contain much more information.

On 5 March 2013, Timor-Leste's Council of Ministers [approved](#) what became [Government Resolution no 11/2013 of 13 March](#) (official [Portuguese](#)), appointing TimorGAP to import diesel fuel for the [Hera and Betano power plants](#) run by EDTL. This rapidly growing expenditure had become a [cause of concern](#),

with suspected irregularities in price, data and the tendering process. TimorGAP, which has no capacity to produce or refine fuel, [reportedly signed an agreement](#) with the Indonesian company Pertamina to supply it, without an open tender or competitive bidding. On 23 April, the [Council of Ministers approved EDTL's contract with TimorGAP](#) "with corrections." However, the [effort eventually collapsed](#) due to TimorGAP's unwillingness to implement proper legal safeguards.

The [2013 State Budget](#) appropriates \$101 million for EDTL generator fuel and projects expenditures of \$122 million in 2014 and more in the future.

On 13 April 2013, TimorGAP signed its first [Production Sharing Contract](#) (PSC) as a 24% partner in a joint venture for area 11-106 in the Joint Petroleum Development Area. The project will be operated



by the Italian company Eni, which owns 40.53% of it, and the Japanese company Inpex owns 35.47%. The contract, signed without an open bidding process, covers 662 square km of relinquished portions of [JPDA 06-105](#), near the Kitan field. The companies committed to drill two exploration wells within two years, and plan to tie into Kitan if a commercial discovery is made while Kitan is still production. The signing was [announced by ANP](#) and [celebrated by TimorGAP](#) (also [Tetum](#)) and [Timor-Leste's government](#) (also [Tetum](#)). ANP published [PSC JPDA 11-106](#) to their website seven months later.

In November 2013, [TimorGAP explained to Parliament](#) why the Tasi Mane projects are moving so slowly, with only 4.2% of their \$139 million 2013 appropriation expected to be executed by the end of the year.

2014

According to law, TimorGAP is required to present an annual report to Parliament by the end of June of the following year, but by 30 June 2014 they had never published a single report. Based on this and other concerns, on 5 August La'o Hamutuk wrote an open [letter asking the Court of Appeals to investigate TimorGAP's finances and management](#). Among the issues we suggested the Court could explore are:

- No public information is available about their finances, including Annual Reports, State Budget and execution reports.
- TimorGAP often ignores or violates procurement, hiring, reporting and environmental licensing laws.
- Since 2011, TimorGAP has received \$13.3 million in transfers from the State budget, been awarded \$8.4 million in State contracts, and been entrusted with the multi-hundred-million dollar [Tasi Mane project](#), on which nearly \$50 million has already been spent.
- TimorGAP's management of the Tasi Mane project has been plagued with delays, redesigns, community hostility, inaccurate cost projections and legal violations.
- TimorGAP's failure to fulfill its agreement to supply fuel for the [Hera and Betano power plants](#) raises doubts about its capability and commitment to managerial and legal principles.
- TimorGAP has non-public agreements with the Thai National Oil Company (PTT) and Malaysian Helicopter Services (MHS), partners with dubious financial and other histories.
- TimorGAP is about to be involved with the new CPLP Petroleum Consortium, build Tasi Mane Project components, begin onshore oil exploration, and spend tens of millions of dollars looking for oil in JPDA PSC 11-106.

On 7 November 2014, TimorGAP and other institutions under the Ministry of Petroleum and Mineral Resources [testified before Parliament Committees C and D \(Tetum\)](#) on the [proposed State Budget for 2015](#). [La'o Hamutuk's letter to Parliament](#) on the budget discussed TimorGAP and the Tasi Mane project. Although the President of TimorGAP left before MPs could ask him questions, his staff distributed the 2011-12 and 2013 Annual Reports of TimorGAP, which were [presented to the Council of Ministers](#) two weeks later and published on [TimorGAP's website](#) in mid-December.

- 2011-2012 Annual report ([English](#) or [Portuguese](#))
- 2013 Annual report ([English](#) or [Portuguese](#))

Although the 2012 report implies that the Audit Board required by Articles 7(b) and 15-18 of [TimorGAP's Bylaws](#) will be established, it is not mentioned in the 2013 report. Neither report contains

financial information on the profits and losses of their various business ventures.

2015

Unfortunately the Court of Appeals Audit Chamber's 2015 Action Plan does not include an audit of TimorGAP, as La'o Hamutuk had suggested.

On 17 March 2015, La'o Hamutuk wrote a [letter of protest](#) to the National Procurement Commission regarding their intent to award a contract for preliminary design of the [LNG Plant in Beacu](#). We explained that uncertainties around the Greater Sunrise pipeline and TimorGAP's managerial record, as well as the many years which will pass before this project is built, make it inadvisable to spend even more of Timor-Leste's people's money on the Beacu LNG dream.

TimorGAP released its [annual report for 2014](#) (also [Portuguese](#)) in July 2015.

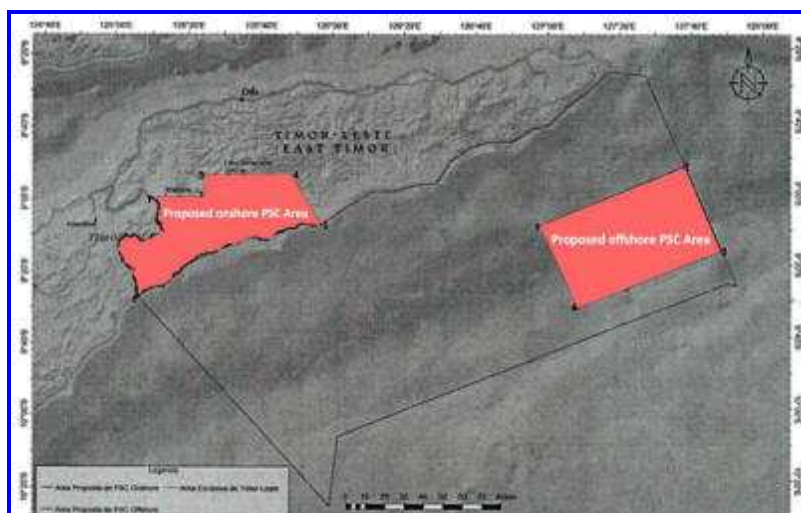
In August, TimorGAP officials signed the largest contract in Timor-Leste's history, [\\$719 million for the Suai Supply Base](#). The prize went to the Korean company Hyundai Engineering and Construction, which has been [fined and blacklisted in Korea for collusion](#). In late October, the Audit Chamber rejected this contract, and the Government's appeal of this decision is pending in the Court of Appeals. In mid-February 2016, local media reported that Hyundai had virtually closed its Dili office.



In October, the [Council of Ministers reappointed Francisco da Costa Monteiro](#) for a second four-year term as TimorGAP's President.

The proposed [2016 State Budget](#) will subsidize TimorGAP with a \$6 million Public Transfer from the Ministry of Petroleum and Mineral Resources, 10% lower than in 2015. On 18 November 2015 Timor-Leste's petroleum related institutions, including [TimorGAP, presented materials](#), including their Strategic and Business Plan 2015-2035, to a Parliamentary hearing on the budget.

On 14 December 2015, Timor-Leste's Council of Ministers approved a [Resolution \(Portuguese original\)](#) granting TimorGAP exclusive right to oil and gas exploration without a public tender in one onshore area (around Suai) and one offshore area in the southeast corner of Timor-Leste's Exclusive Area (previously [explored by Reliance](#)), as shown on the map at right.



2016

At the end of January, [ANPM officially announced](#) the offshore PSC awarded to TimorGAP.



The Chinese company [BGP started offshore seismic research](#) as soon as this [Resolution](#) was published on 22 December, working through Christmas to hand over the results to TimorGAP and ANP on 10 March 2016. TimorGAP will pay BGP \$11.4 million over the next three years for this 'Crocodile' 3D seismic survey data, which covers 2,780km² in the TLEA.

The following week, [TimorGAP invited bids](#) (circulating a draft [Service Agreement](#)) for an contractor to process the seismic 3D data "sufficient for detailed structural and stratigraphic interpretation and precise reservoir characterization." A few weeks later, TimorGAP published [clarifications and addenda to the tender](#). After extensive analysis by TimorGAP and consultants, exploration wells could be drilled in 2017.

In March, TimorGAP invited La'o Hamutuk to a 'public consultation' on the [environmental impacts of the proposed Betano refinery, and we wrote them an open letter](#) in May raising some serious concerns.

TimorGAP released its [annual report for 2015](#) (also [Portuguese](#)) in June 2016.

Documents

- TimorGAP Annual report for 2015 ([English](#) or [Portuguese](#)) (6/16)
- La'o Hamutuk [letter to TimorGAP asking for a more serious environmental review for the Betano refinery](#) (5/16)
- TimorGAP Annual report for 2014 ([English](#) or [Portuguese](#)) (7/15)
- La'o Hamutuk [letter to the National Procurement Commission](#) asking them not to award a contract for Beaçú LNG plant design (3/15)
- TimorGAP Annual report for 2013 ([English](#) or [Portuguese](#)) (12/14)
- TimorGAP Annual report for 2011-2012 ([English](#) or [Portuguese](#)) (12/14)
- La'o Hamutuk letter to Court of Appeals asking them to audit TimorGAP ([English](#) or [Tetum](#)) (8/14)

Legislation

- [Government resolution 44/2015](#) (also [Portuguese](#)) granting TimorGAP the right to explore for oil in two areas (22 December 2015)
- [Government resolution 11/2013](#) (also [Portuguese](#)) appointing TimorGAP to provide fuel for EDTL's power plants (13 March 2013)
- [Decree-Law 33/2012 of 18 July establishing the Institute for Petroleum and Geology \(Portuguese\)](#) (18 July 2012)
- [Government resolution 26/2011 appointing Eastlog PTE](#) (also [Portuguese](#)) to build the Suai supply base (2 September 2011)
- [Decree-Law No. 31/2011 of 27 July: TIMOR GAP - TIMOR GÁS & PETRÓLEO, E.P. \(Portuguese\)](#) as promulgated (27 July 2011)
[La'o Hamutuk submission to President of the Republic on TimorGAP decree-law](#) (14 June 2011)
- [TIMOR GAP Decree-Law and Bylaws \(English translation\)](#) (also [Portuguese](#)) as approved by the

Council of Ministers (May 2011)

Older versions

- [Council of Ministers approves IPG decree-law](#) (14 March 2012)
- [La'o Hamutuk submission on draft IPG decree-law and bylaws](#) (25 November 2010)
- Draft decree-law establishing the [Institute for Petroleum and Geology](#) (also [Tetum](#)) (November 2010)
- [Draft PETRONATIL Decree-Law and Bylaws \(English translation\)](#) (also [Tetum](#)) (November 2010)
- [La'o Hamutuk submission to SERN on draft PETRONATIL decree-law and bylaws](#) (24 November 2010)
- [Draft PETRONATIL Decree-Law and Bylaws \(English translation\)](#) (July 2010). This has been slightly revised; [see above](#).
- [Draft PETROTIL decree law and bylaws](#) (also [Portuguese](#)) (February 2007). This was not passed prior to the 2007 election.

Background documents

- [Timor-Leste Petroleum Act](#) (2005)
- [Model Production-Sharing Contract](#) (2005) for Timor-Leste's exclusive area

Presentations from May 2009 Workshop on Setting up an NOC in Timor-Leste

- [Chatham House: Mapping out the NOC Landscape](#)
- [Indonesia: Pertamina - Transformation in Changing Environment](#)
- [Mexico: Governance in the Mexican Petroleum Sector](#)
- [Norway: Building a competent NOC - StatoilHydro's case study](#)
- [Papua New Guinea: National Oil Companies](#) and [Petromin Story](#)
- [Thailand: PTT's experience in Listing an NOC](#)
- [Trinidad and Tobago: Energy in Economic and National Development - Some Governance Issues](#) and [Natural Gas for Sustainable Development](#)

The Timor-Leste Institute for Development Monitoring and Analysis (La'o Hamutuk) Institutu Timor-Leste ba Analiza no Monitor ba Dezenvolvimentu

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

P.O. Box 340, Dili, Timor-Leste

Tel: +670-3321040 or +670-77234330

email: info@laohamutuk.org Web: <http://www.laohamutuk.org> Blog: laohamutuk.blogspot.com