



**Submission to**  
**Committee C, RDTL National Parliament**  
**from**  
**La'ó Hamutuk and FONGTIL**  
**regarding**  
**Proposed Amendments to the Petroleum Fund Law**  
**15 July 2019**

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**Introduction**

Since 2004 La'ó Hamutuk has been proud of the steps taken by the National Parliament and the Government of Timor-Leste to create this law which upholds the Petroleum Fund's transparency and sustainability, in order to reduce the possibility of corruption, and to sustain and pass on benefits to the next generation. This Fund also helps to ensure the sovereignty of the Constitutional State of Timor-Leste, which has the right to manage the state budget. Further, we have not forgotten the thorough processes of the Government and the National Parliament in establishing the Petroleum Fund Law in 2004 and amending it in 2011. This law and the amendments were created carefully, with sufficient time for serious public consultation. We appreciate these fine efforts.

In addition, we also wish to congratulate once again the Government of Timor-Leste for its success in signing the Maritime Boundary Treaty in 2018. Since 2002, La'ó Hamutuk has advocated for a median line boundary which is fair to Timor-Leste and consistent with principles of international law, and so we wish to use this opportunity to congratulate the nation of Timor-Leste for succeeding in the negotiations which were finally able to push Australia to establish the Maritime Boundary Treaty.

Following the signing of the Maritime Boundaries Treaty in March 2018, La'ó Hamutuk wrote two letters to the Parliaments of Timor-Leste and Australia, urging both parties to quickly ratify the treaty, and not to change laws which would weaken the transparency which exists under current law. Such changes could threaten Timor-Leste's democracy, transparency, and accountability.<sup>1</sup>

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<sup>1</sup> <http://www.laohamutuk.org/Oil/Boundary/2018/LHtoPNTreataduFM6Aug2018en.pdf> and <http://www.laohamutuk.org/Oil/Boundary/JSCT/2018/LHtoJSCT18Apr2018.pdf>

Unfortunately, the Eighth Constitutional Government has begun the process of amending some fundamental laws which have protected our Petroleum Fund up to now. The Petroleum Fund is now in great danger, beginning with the amendments made to the Petroleum Activities Law last year. La’o Hamutuk considers these amendments to be a significant threat to the financial sustainability of the State for future generations. La’o Hamutuk discusses our concerns as follows:

**Ratifying the Boundaries Treaty does not require amending the Petroleum Fund Law.**

Although the Eighth Constitutional Government is considers that amendments to the Petroleum Fund Law are necessary for the ratification of the Maritime Boundaries Treaty, La’o Hamutuk believes that there is no fundamental reason to link them. We think that the Government’s motivation in linking the Petroleum Fund Law with the ratification of the Maritime Boundaries Treaty is to shut the public out from engaging in critical discussions, and we question the true intention behind these amendments.

The Government says that its motivation in amending the Petroleum Fund Law is to make it consistent with the amendments to the Petroleum Activities Law in Law No. 1/2019, but this law has no relation to the Maritime Boundaries Treaty.

We also think that there is no need to rush through these amendments; there is no need for urgency to rapidly amend the law. La’o Hamutuk views the changes to the Petroleum Fund Law as being pushed though too fast, without consulting important entities such the Timor-Leste Central Bank (BCTL). This recalls the mistaken action of the Seventh Constitutional Government in 2018 in withdrawing \$70m from the Petroleum Fund without the approval of the National Parliament.

The current Government needs to maintain its credibility to prioritize positive changes. It should not repeat actions which it has previously criticised. Any significant change to the Petroleum Fund Law requires open and transparent discussion that includes important bodies such as the BCTL and KKFP, as well as civil society.

As shown in the table below, when the Petroleum Fund Law was introduced in 2005 the Government and Parliament took almost a year to conduct public consultations and parliamentary debates before the law was eventually passed unanimously. The revision of the Petroleum Fund Law in 2011 also saw the Government held workshops and consultations for more than a year, before Parliament took two further weeks to discuss the amendments. Governments at those times recognised that any changes to the Petroleum Fund Law could impact the financial stability of the nation and the well-being of the Timorese people. The current Government’s proposed amendments would have a significant impact of the sustainability of the Petroleum Fund, but unfortunately there has been no public consultation, nor consultation with relevant institutions, and the process has been rushed.

Legislation	Year	Days to enact	Public consultation	Parliament
Petroleum Fund Law No 11/2005	2004-5	304	Three rounds of hearings nationwide, 25 submissions	Unanimous passage after two months of hearings and debate
Petroleum Activities Law No. 9/2005	2004-5	335	Many workshops, one round of hearings, nine submissions	Pending in Parliament for 7 months, no hearings before enactment.
Amendments to the Petroleum Fund Law	2010-11	457	Many workshops, two hearings, four submissions	Discussed for two weeks, passed with few changes.
\$70m extraordinary transfer from the Petroleum Fund	May 2018	0	No legislative process, probably illegal	Not submitted for approval

Legislation	Year	Days to enact	Public consultation	Parliament
\$140m extraordinary transfer from PF	July 2018	10	None. LH made submission to rumoured broad draft, which was replaced by a one-time transfer	One-off transfer approved
Amendments to the Petroleum Activities Law	Oct-Nov 2018	23 and 1 (for the most important parts)	Secret hearing. Brief Parliamentary hearing on preliminary vision	Major addition just before final vote. Vetoed, overridden, challenged in court. Retroactive.

### **These proposed amendments endanger the basic integrity of the Petroleum Fund**

When Timor-Leste established its Petroleum Fund in 2004-2005, following almost a year of public discussion and consultation, it was lauded as an example of sound management of oil and gas revenues which exemplified transparency and accountability. The Law was developed as a way to ensure intergenerational equity and future financial sustainability for Timor-Leste.

The Petroleum Fund was designed to be invested in secure international investments that would provide a return which finance state spending and investments within Timor-Leste; the Fund itself was never intended to be used within the country, and domestic investment of the Fund contravenes democratic budgetary processes.

Below, La'ó Hamutuk highlights the specific amendments we are concerned about, which threaten the objectives of the Petroleum Fund:

Article 15 of the Petroleum Fund Law sets out important limitations to how the Petroleum Fund may be invested; these limitations protect the fund from unnecessary risk and ensure transparency. However, the proposed addition of Article 15A on Investment in Petroleum Operations means that the restrictions on 'eligible investments' spelled out in Article 15 will no longer apply to investments in 'petroleum operations' (15A.2).<sup>2</sup>

The regulations that will no longer apply according to the proposed amendments include:

1. That investments must be located abroad in internationally recognised jurisdictions (15.1)
2. That no more than 5% of the Fund may be invested in 'other eligible investments' which meet certain requirements (15.4)
3. That no single company or issuing entity, except for sovereign states, may exceed 3% of the value of the fund (15.5.a).

Proposed Article 15A creates loopholes in the existing safeguards on investments in petroleum operations, and should not undermine the protections in Article 15 of the current law.

It cancels the limit on investing in one company, allowing more than 3% of the Fund to be invested in a single petroleum company, which is a big threat to the Fund because Timor-Leste's financial security will depend on the success or failure of one company.

La'ó Hamutuk is worried about the impacts of these changes on the stability and security of the Fund. Allowing direct investments from the Petroleum Fund without strong rules opens the way for threats and risks which undermine current investment regulations.

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<sup>2</sup> 15A.2 - Os investimentos do Fundo Petrolífero em Operações Petrolíferas previstos no número anterior constituem uma classe de ativos autónoma, à qual, em virtude da sua natureza, não são aplicáveis os requisitos constantes do artigo anterior.

We also note that by exempting investments in Petroleum Operations from the entirety of Article 15 on Investment Rules, these amendments also mean that Parliament has no role in reviewing the petroleum investments contained in the investment portfolio (15.4.a), and that these investments do not require Ministerial approval or publication of the “rules and criteria for the selection, management and evaluation” of each individual financial instrument within an asset class (15.4.b). This reduces the accountability and transparency of the Petroleum Fund.

We are concerned that these proposed amendments pose a risk to the fundamental principles of the Petroleum Fund. Originally, the creation of the Petroleum Fund was designed to ensure that financial resources would be available for future generations. The current law ensures that domestic investments may be made only when the transfers from the Petroleum Fund are approved through the State Budget process (that is, they cannot be taken directly from the Fund).

### **We need strong laws that don't depend on individual political figures.**

Thirteen years ago, La'o Hamutuk wrote about the need for Timor-Leste to have a strong legal framework to ensure that our petroleum operations and revenues are securely managed in the public interest.<sup>3</sup> Today, like 13 years ago, we cannot expect that we will always have leaders who embrace the common interest as part of their duty. Therefore, our democratic nation needs to be governed by strong laws, not by one or two people who follow their own whims.

### **Suggestions and Recommendations**

The following recommendations to summarise the main points of this submission:

- Remove Article 15A from the proposed amendments and conduct public consultations with relevant institutions such as the Central Bank, civil society, and KKFP.
- The National Parliament should use its authority to decide how much time you need to decide on these important laws, and access legal support before the proposed amendments to the Petroleum Fund Law are discussed in Parliament.
- The National Parliament and Government should not abandon the underlying objectives of creating the Petroleum Fund Law: that the Fund belongs not only to this generation, but also to future generations.
- The National Parliament needs to be careful with these amendments, because they could take away Parliament's role as the representative of the people with the authority to decide how to allocate resources for our development.


We hope that this submission provides information useful to Committee C of the National Parliament in compiling their report, and that it helps the distinguished Deputies to carry out their important responsibilities. Thank you for your cooperation.

Sincerely,

**Diretór Fongtil**

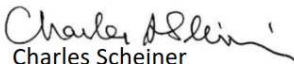
  
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<sup>3</sup> <http://www.laohamutuk.org/Bulletin/2006/Apr/bulletinv7n1.html#LHtoPM>