



17 March 2004

The Secretary,
Senate Economics Legislation Committee,
Room SG.64, Parliament House,
Canberra ACT 2600.

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Dear Sir/Madam,

**Re: INQUIRY INTO THE GREATER SUNRISE UNITISATION
AGREEMENT IMPLEMENTATION BILL 2004 AND THE CUSTOMS TARIFF
AMENDMENT (GREATER SUNRISE) BILL 2004**

Oxfam Community Aid Abroad welcomes the opportunity to make a submission to the Senate Economic Legislation Committee Inquiry into the *Greater Sunrise Unitisation Agreement Implementation Bill 2004* and the *Customs Tariff Amendment (Greater Sunrise) Bill 2004*.

1. Background.

Oxfam Community Aid Abroad is an independent, secular Australian organization working in over 30 countries and in Indigenous Australia. Our vision is of a world in which people control their lives, their basic rights are respected and their environment is sustained. Oxfam Community Aid Abroad is the Australian member of Oxfam International and a member of the Australian Council for International Development (ACFID).

Oxfam Community Aid Abroad and other Oxfam affiliates have a long history of support for a free and independent Timor-Leste and are currently engaged in a variety of development projects within Timor-Leste aimed at reducing poverty at the community level along with supporting the emergence of a strong and robust civil society and good governance at the national level. Recognising the importance of the resources of the Timor Sea as a major potential contributor to the above aims, Oxfam Community Aid Abroad has sought to identify, review and analyse the complex issues and dynamics of the negotiations regarding the resources of the Timor Sea. Our aim is to monitor and where appropriate contribute to a wider understanding of the negotiation process between Australia and Timor-Leste in order to find a solution that is fair to all parties and consistent with international law.

Oxfam Community Aid Abroad helps communities to help themselves. With a people-centred approach to long-term development, we are dedicated to empowering communities and building a fairer world. Donations over \$2 to our Overseas Aid Fund are tax deductible. Oxfam Australia is a Public Benevolent Institution. ABN 18 055 208 636

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Oxfam Community Aid Abroad believes that failure to unlock the resources of the Timor Sea for the maximum benefit of Timor-Leste will have significant consequences for Timor – Leste's development and its immediate economic, political and social stability. Maximising the revenue stream from oil and gas currently represents the Government of the Democratic Republic of Timor-Leste's greatest hope for meeting their people's basic rights to services including primary health care and education as well as providing significant opportunities for economic growth. In this respect we believe that a fair and equitable delimitation of maritime boundaries between Australia and Timor-Leste will lay the foundation for a politically and economically stable Timor Leste which is ultimately in Australia's national interest and in the interests of security and stability in our region.

2. Recommendation.

Oxfam Community Aid Abroad calls for the Committee to recommend the Australian Government not proceed with the ratification of *Greater Sunrise Unitisation Agreement Implementation Bill 2004* and the *Customs Tariff Amendment (Greater Sunrise) Bill 2004* until the following preconditions are met:

- 1. The Australian Government reinstates Australia's adherence to the dispute settlement mechanisms of the International Court of Justice (ICJ), and International Treaty on the Law of the Sea (ITLOS).**
- 2. The Australian Government establishes a definitive time frame, not to exceed five years, in which boundaries will be settled, with or without a joint development agreement, or otherwise referred to an impartial independent arbitration as set out within the ITLOS**
- 3. The Australian Government hold all revenues received from activities on Timor Leste's side of the median line, but outside of the Joint Petroleum Development Area in escrow until permanent maritime boundaries are established.**

3. Rationale.

Oxfam Community Aid Abroad reiterates the position it stated at the *Inquiry into Unitization of Greater Sunrise and Troubadour*, that is that Oxfam Community Aid Abroad strongly urges the Committee to reject the International Unitization Agreement (IUA) until such time that Australia has reinstated its adherence to the International Court of Justice (ICJ) and the International Treaty on the Law of the Sea (ITLOS).

On the Maritime Zones Act of July 2002, Timor-Leste claimed its exclusive economic zone entitlement extending 200 nautical miles from Timor-Leste's coast pending negotiations on maritime boundaries with its neighbours. According to international law, states have an obligation to refrain from exploiting resources in areas of overlapping claims where maritime boundaries are yet to be agreed. Yet the Australian Government continues to unilaterally exploit the Laminaria, Corallina and Buffalo fields, and as recently as February 23, 2004 issued a new permit (NT/P68) for exploration in the disputed area. This follows the issuance of another permit in the same area on April 22, 2003 (NT/P65).

The Government of the Democratic Republic of Timor-Leste, while recognising the need to ensure expedient revenue flows from the Timor Sea, has consistently considered the various Timor Sea agreements between the two countries as non-prejudicial to future delimitation of maritime boundaries between Australia and the Democratic Republic of Timor-Leste. In its submission to JSCOT on the Timor Sea Treaty, Oxfam Community Aid Abroad recognised that it was critical for Timor-Leste to secure access to at least some revenues from the Joint Petroleum Development Area in the short term. For this reason Oxfam Community Aid Abroad recommended that subject to the Australian Government reinstating its adherence to the ICJ and ITLOS mechanisms, the Australian Government sign the Timor Sea Treaty. These conditions have not been met.

In March 2003, the Australian government - fully appreciative that it was critical for the Government of Timor Leste to access Timor Sea revenues as soon as possible - refused to ratify the Timor Sea Treaty until the International Unitization Agreement (IUA) was signed by the Prime Minister of Timor Leste. Through this act, the Australian government effectively held "hostage" the much needed revenues from the Bayu-Undan fields. Although the Government of Timor Leste clearly felt pressured into signing this agreement, they did so with the expectation that the Australian Government would act in equally good faith with regards to maritime boundaries, as had been expressed by Prime Minister John Howard.

The Government of the Democratic Republic of Timor-Leste has consistently sought to establish permanent maritime boundaries with its neighbours, as is its right according to international law, and has requested monthly meetings on the issue. Despite this, the Australian government has only been able to attend a single preliminary meeting with the Government of Timor-Leste, in November 2003. A second meeting is scheduled for late April 2004. The Australian government claims lack of resources as the reason for biannual instead of monthly meetings; a rather unsupportable argument given the relative levels of the respective government budgets: East Timor with US\$74.7 million (A\$99.6million) and Australia with A\$178.9 billion.

Oxfam Community Aid Abroad is concerned by the actions of the Australian Government for the following reasons:

- The Australian Government has failed to show "good faith" in its negotiations with Timor Leste, as demonstrated by a lack of commitment to a timeline for negotiations

and a continuation of the unilateral issuing of licenses in the areas of overlapping claim. This stance is causing increasing dismay not only within Timor Leste and Australia, but internationally as well. This is evidenced by the European Union statement at the Timor Leste Development Partners Meeting in December 2003, wishing for "a rapid and successful conclusion (to the negotiations) with full respect of international laws". In addition, a letter was recently sent by United States Congressman Barney Franks and fifty two of his colleagues to the Australian Government urging that it negotiate with Timor Leste and "recognise its right to a swift, permanent resolution to the maritime boundary dispute".

- By withdrawing from international dispute resolution mechanisms and refusing to treat negotiating partners with equanimity, the Australian Government is directly contravening its own rhetoric in promotion of good governance in Asia and the Pacific.
- Delaying negotiations on permanent maritime boundaries puts at risk Timor Leste's financial sustainability and its ability to meet its development objectives. It would be counterproductive to put at risk the great strides that the Government of Timor Leste and the Development Partners have taken in creating governance structures and stability in one of Australia's neighboring states.
- It is the Government of Timor Leste's right according to international law to negotiate permanent maritime boundaries and it is the Australian Government's obligation according to international law to do so in a timely manner.

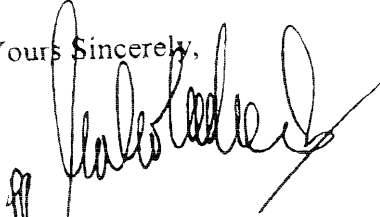
Conclusion.

All governments are afforded the right to negotiate their permanent maritime boundaries by international law. Oxfam Community Aid Abroad believes that if the Australian Government continues to operate outside the mechanisms of established international law on issues pertaining to the Timor Sea, Australia's image abroad, both with its immediate neighbours and those further afield, will be irrevocably damaged.

Alternatively, the Australian Government could adhere to the above principles by aligning itself with international laws, norms and values. Australia would thereby be taking an approach which would be heralded by the international community and which would serve its own national interest and its regional foreign policy and security objectives. In addition, the Government of Australia would be treating our newest and poorest neighbor with the respect and equanimity it fought so long and hard for.

Oxfam Community Aid Abroad would welcome the opportunity to provide oral evidence to the Committee upon request.

Yours Sincerely,



James Ensor,
Director of Public Policy and Outreach.