TIMOR-LESTE PETROLEUM FUND ACT
COMMENTARY SUBMITTED TO RDTL PARLIAMENT, COMMISSION C

Section-by-section comments and suggested changes from La'o Hamutuk, 6 June 2005.

Most of the points discussed in our Submission on the earlier draft of this Act, which we gave to the Ministry of Planning and Finance on 1 March 2005, are still relevant and we hope you will look at them as well. Our description of the dangers of petroleum development, the experience of other countries in mismanaging petroleum revenue, and the need for binding rules controlling expenditure from the Petroleum Fund are especially important. Our earlier submissions on the Petroleum Fund Discussion Paper and the Petroleum Regime also discuss relevant issues.

We are gratified that some of our suggestions were incorporated in the current version of the Act, but many were not and are still critical to the future of the people of Timor-Leste.

Preamble	
This Act establishes a Petroleum Fund which seeks to meet with the constitutional requirement laid down in Article 139 in the Constitution of the Republic. Pursuant to this provision, petroleum resources shall be owned by the State, be used in a fair and equitable manner in accordance with national interests, and the income derived therefrom should lead to the establishment of mandatory financial reserves.	
The Petroleum Fund shall contribute to a wise management of the petroleum resources for the benefit of both current and future generations. The Petroleum Fund shall be a tool that contributes to sound fiscal policy, where appropriate consideration and weight is given to the long-term interests of Timor-Leste's citizens.	The Act and its implementers need to go beyond the vague "for the benefit of both current and future generations." The Fund Act should specify goals involving transition to the post-petroleum era, human rights, building human and physical assets and capacity, moving towards renewable energy. It should also discourage use of Fund money for military expenditures, weapons, one-time projects, etc. Since the preamble of the Act will be the standard by which the Investment Advisory Board, Consultative Council and others judge whether the Fund is being properly managed, it needs to be explicit, detailed and carefully thought out. This applies to a number of articles below.

Efficient planning and proper execution of public sector budgets are key components of a sound management of the petroleum wealth. The Petroleum Fund is to be coherently integrated into the State Budget, and shall give a good representation of the development of public finances. The Petroleum Fund shall be prudently managed and shall operate in an open and transparent fashion, within the constitutional framework.	As discussed below and in our earlier submissions, the Act should include binding rules to improve the ability of Timor-Leste officials to properly plan and execute their budgets. In the absence of such rules, windfalls of petroleum revenue, magnified by short-term pressures, will almost inevitably lead to bad policy.
This Act lays down the key parameters for the operation and management of the Petroleum Fund. The Act governs the collection of and management of receipts associated with the petroleum wealth, regulates transfers to the State Budget, and provides for Government accountability and oversight of these activities.	
Therefore, pursuant to Article 139 of the Constitution and for the purpose of establishing a fund of income from the exploitation of non-renewable petroleum resources for the needs of both current and future generations,	This Act and the Fund should encourage planning for our nation's post-petroleum era. This would include long-term planning, development of non-petroleum sectors and energy sources, and investing in human and physical infrastructure.
The Government presents to the National Parliament, pursuant to paragraph c), item 1, Article 97, and paragraph a), item 2, Article 115, of the Constitution of the Republic, the following draft law:	
Chapter I – General Provisions	
Article 1: Citation	
This Act may be cited as the Petroleum Fund Act.	
Article 2: Definitions	
2.1 In this Act, unless the context requires otherwise:	
(a) "Central Bank" means the authority to be established under Section 143 of the Constitution of the Republic or, until such authority is established, the Banking and Payments Authority;	
(b) "Code" means the Petroleum Mining Code and the Interim Petroleum Mining Code agreed and adopted by Timor-Leste and Australia under Article 7 of the Treaty, as amended, varied, modified or replaced from time to time, and regulations made and directions given under it;	
(c) "estimated sustainable income" for a fiscal year means the amount determined in accordance with the formula set out in Schedule 1;	

(d) "Exchange of Notes" means:	
(i) Exchange of Notes Constituting an Agreement between the Government of Australia and the United Nations Transitional Administration in East Timor, of 10 February 2000; or	
(ii) Exchange of Notes Constituting an Agreement between the Government of Timor-Leste and the Government of Australia, of 20 May 2002.	
(e) "fiscal year" means the period of twelve (12) months from 1st July to 30th June;	
(f) "independent auditor" means an internationally recognised accounting firm appointed for the purpose of auditing the Government accounts as set out in the Timor-Leste law until the administrative, tax and audit courts is established, or thereafter an internationally recognised accounting firm appointed pursuant to Article 34;	
(g) "investment manager" means the Central Bank and any person appointed as external investment manager under Article 12;	
(h) "Minister" means the Minister in charge of finances;	
(i) "Parliament" means the National Parliament of Timor-Leste;	
(j) "payer" means any entity on whom there is an obligation pursuant to this present Act to make a payment into the Petroleum Fund;	
(k) "petroleum" has the same meaning given to it in the Petroleum Act;	
(l) "Petroleum Act" means the Petroleum Act, 2005, as amended, varied, modified or replaced from time to time, and regulations made and directions given under it;	
(m) "petroleum authorisation" means:	
(i) an access authorisation, a petroleum contract, a prospecting authorisation or a seepage use authorisation, or any agreement made in respect of such an authorisation or contract, granted or entered into under the Petroleum Act; or	

(ii) an authorisation or production sharing contract, or any agreement made in respect of such an authorisation or contract, granted or entered into under the Code;	
(n) "Petroleum Fund" means the Petroleum Fund for Timor-Leste established under Article 5;	
(o) "Petroleum Fund receipts" has the meaning given to it in Article 6;	
(p) "petroleum operations" means authorised activities under a petroleum authorisation;	
(q) "State Budget" means the State Budget referred to under Section 145 of the Constitution of the Republic;	
(r) "tax revenue" means any tax or duty imposed under Timor-Leste law;	
(s) "Timor-Leste" means the Democratic Republic of Timor-Leste; and	
(t) "Treaty" means the Timor Sea Treaty between the Government of Timor-Leste and the Government of Australia signed on 20th May 2002, as amended, varied, modified or replaced from time to time.	
2.2 All terms in the present Act that are defined in the Timor-Leste law on budget and financial management have the same meaning given to it in that law.	There should be a specific reference to that law.
Article 3: Scope of the Act	
This Act shall provide for the establishment and management of the Petroleum Fund, and the procedural rules relating thereto.	
Article 4: Inconsistencies	
For the purposes of this present Act, in the event of any inconsistency between the provisions of the Act and the provisions in the law of Timor-Leste on budget and financial management, or between the provisions of the Act and the terms of a petroleum authorization, the provisions of the present Act shall prevail.	

Chapter II – The Petroleum Fund for Timor-Leste	
Article 5: Petroleum Fund for Timor-Leste	
5.1 There is hereby established a fund known as the Petroleum Fund for Timor-Leste.	
5.2 The Petroleum Fund shall have an earmarked receipts account, held by the Central Bank in compliance with Articles 14 and 15, into which the Petroleum Fund receipts set out in Article 6 are credited.	
5.3 Transfers from the Petroleum Fund shall be made only in accordance with Articles 7 to 10.	
5.4 The details concerning the account referred to in Article 5.2, and the State Budget account referred to in Article 7.1, shall be made public through the publication of the operational management agreement to which Article 11.3 refers.	
Article 6: Petroleum Fund Receipts	
6.1 The following amounts are Petroleum Fund gross receipts:	The Act should forbid any petroleum-related payments, by any party, to places other than the Fund. There should be penalties for companies not complying with the Act, including for making payments outside of the Fund. This should be inserted either in this Article or as a new Article in Chapter VII – Penalties.
(a) the gross revenue, including tax revenue, of Timor-Leste from any petroleum operations, including prospecting or exploration for, and development, exploitation, transportation, sale or export of petroleum, and other activities relating thereto;	This should include all revenue from the sale of seismic or other data.
(b) any amount received by Timor-Leste from the Designated Authority pursuant to the Treaty;	
(c) any amount received by Timor-Leste from the investment of Petroleum Fund receipts;	
(d) any amount received from direct or indirect participation of Timor-Leste in petroleum operations; and	

(e) any amount received by Timor-Leste relating, directly or indirectly, to petroleum resources not covered in paragraphs (a) to (d) above.	This should explicitly include money paid by Australia according to the March 2003 "Memorandum of Understanding Between the Government of the Democratic Republic of Timor-Leste and the Government Of Australia Relating to the Exploitation of the Sunrise and Troubadour Petroleum Fields in the Timor Sea" if the IUA comes into effect. It should also include money to be paid by Australia in compensation for Timor-Leste forgoing downstream development rights or boundaries, as is envisioned in the proposed "creative solution" to the boundary dispute. Also revenues and compensation to be recovered from Australia for revenue they already collected from illegal exploitation of Laminaria-Corallina and other fields, or from escrow accounts relating to such revenue. Also fines or interest collected on this – plus any damages awarded by a court in connection with these activities.
6.2 In the event that Timor-Leste participates in petroleum operations indirectly, as provided for in paragraph (d) of Article 6.1, through a national oil company, the receipts of the Petroleum Fund shall include the following:	
(a) any amount payable by the national oil company as tax, royalty or any other due in accordance with Timor-Leste law; and	
(b) any amount paid by the national oil company as dividend.	
6.3. From the amount received in accordance with Article 6.1, the Central Bank shall be entitled to deduct, by direct debit of the Petroleum Fund account, any reasonable management expenses, as provided for in the operational management agreement referred to in Article 11.3.	
Article 7: Transfers	Rules should set binding limits on the amount which can be withdrawn from the Fund in a given year. Otherwise, Parliament could decide to spend the entire Fund in a single year.
7.1 Subject to Article 6.3, the only debits permitted to the Petroleum Fund are electronic transfers made in accordance with this present article, as well as Articles 8 to 10, to the credit of a single State Budget account.	If debits not permitted by this article are made, penalties should be specified in Chapter VII.

7.2 The total amount transferred from the Petroleum Fund for a fiscal year shall not exceed the appropriation amount approved by Parliament for the fiscal year.	This should not be a ceiling, but a fixed amount like the rest of the budget. Unspent money can be carried over to the following year's budget, reducing the amount needed from the Fund for that year. This Act should require a specific resolution by the Council of Ministers and the Parliament for each transfer from the Fund to the budget, as in Norway. The resolution should specify the amount of money, what it will be used for, its relation to current Fund income and its impact on future dividends. All authorizations of transfers, actual transfers, budget resolutions and related reports should be promptly recorded in the Public Register. See proposed new article 32½ below.
7.3. Subject to Article 8 to 10, transfers from the Petroleum Fund by the Central Bank in the fiscal year, shall only take place after publication of the budget law, or any subsequent changes thereto, in the *Jornal da República*, confirming the appropriation amount approved by Parliament for that fiscal year.	
Article 8: Requirements for Transfers	
No transfer shall be made from the Petroleum Fund in the fiscal year unless the Government has first provided Parliament with reports:	All of these reports, unedited, should be made public at the same time they are given to Parliament.
(a) specifying the estimated sustainable income for the fiscal year for which the transfer is made;	The report needs to explain how these figures are calculated, not just the amount, and what assumptions were made.
(b) specifying the estimated sustainable income for the preceding fiscal year; and	The report should also specify the estimated sustainable income (ESI) for future years, based on the proposed amount of the transfer (if it is less than the sustainable income, future ESI will increase).
(c) from the independent auditor certifying the amount of the estimated sustainable income in paragraphs (a) and (b).	The auditor should certify the assumptions and models which the ESI is derived from, not only the amount.
Article 9: Transfers Exceeding the Estimated Sustainable Income	
No transfer shall be made from the Petroleum Fund in a fiscal year in excess of the estimated sustainable income for the fiscal year unless the Government has first provided Parliament with:	
(a) the reports described in paragraphs (a) and (b) of Article 8;	
(b) a report estimating the amount by which the estimated sustainable income for fiscal years commencing after the fiscal year for which the transfer is made will be reduced as a result of the transfer from the Petroleum Fund of an amount in excess of the estimated sustainable income of the fiscal year for which the transfer is made;	This report should also indicate the impact of exceeding the ESI on the total amount which can be withdrawn from the Fund over time, not only on the reduction of the ESI. If Parliamentarians realize that an excess transfer of $10 this year will cost Timor-Leste $44 over the next 50 years, they might be more reluctant to do it.

(c) a report from the independent auditor certifying the estimates of the reduction in estimated sustainable income in paragraph (b); and	
(d) a detailed explanation of why it is in the long-term interests of Timor-Leste to transfer from the Petroleum Fund an amount in excess of the estimated sustainable income.	This explanation should include whether or not withdrawals larger than the ESI are anticipated for each of the next few years, and why. There should be a prohibition on exceeding the ESI level for more than two consecutive years.
Article 10: Transfers for Purposes of Refund of Tax	
If required under the law of Timor-Leste, transfers from the Petroleum Fund are exceptionally permitted for purposes of refund of tax, in the event of overpayment of tax under paragraph (a) of Article 6.1. This amount represents a reduction of the Petroleum Fund receipts, and shall not be considered as part of the appropriation approved under Article 7.2.	Does this only apply to Supplemental Petroleum Tax? From our reading of the public consultation drafts of the Petroleum Tax Act and Model PSC, other tax overpayments are credited to the following year rather than refunded. This article should reference relevant articles of other acts. Each tax refund should be timely and publicly reported as a negative receipt, including the date, amount, payee and reason for the transfer.
Chapter III – Petroleum Fund Investment and Protection	
Article 11: Management of the Petroleum Fund	
11.1 The Government is responsible for the overall management of the Petroleum Fund.	The February 2005 draft of this Act (8.1) also said: *"In the exercise of any management functions and competences entrusted thereto, the Minister shall be accountable before the Prime Minister, and they both shall be accountable before the Council of Ministers and before Parliament"*. This should be put back in, to give Parliament the authority it may need to exercise effective oversight.
11.2 The Minister shall not make any decisions in relation to the investment strategy or management of the Petroleum Fund without first seeking the advice of the Investment Advisory Board in accordance with Article 16.	
11.3 The Minister shall enter into an agreement with the Central Bank for the operational management of the Petroleum Fund and the Central Bank shall be responsible for the operational management of the Petroleum Fund.	The agreement should be public and subject to approval by the Council of Ministers, the Board of Governors of the Central Bank and Parliament. The Central Bank (BPA) Board of Governors must be legally constituted so that it can achieve a quorum, which it has not been up to now.
11.4 The Petroleum Fund shall be managed prudently in accordance with the principle of good governance for the benefit of current and future generations.	

Article 12: External Investment Managers	
12.1 The Central Bank may propose to the Minister, either of its own motion or at the request of the Minister, the appointment of one or more external investment managers to be responsible for managing the investment of amounts in the Petroleum Fund.	The appointment of investment managers should be public. If they are to be paid from the assets or revenues of the Petroleum Fund, that must be included in the public announcement, auditor's reports, and estimates of sustainable income.
12.2 The Central Bank may select and appoint an external investment manager proposed under Article 12.1 only if the Minister is satisfied that:	
(a) the external investment manager is a legal person with sufficient equity capital and adequate guarantees and insurances against operational risks;	In addition to the characteristics listed in (a-c), investment managers should have familiarity and experience with ethical investing, as well as long-term asset management. They must be free of conflicts of interest.
(b) the external investment manager has a sound record of operational and financial performance; and	
(c) the references and reputation of the external investment manager in the field of fund management are of the highest standard.	They should have an excellent record of integrity and be committed to following Timor-Leste's principle of the highest level of transparency, willing to forego any predilection they might have to keep information confidential.
12.3 The Central Bank shall be responsible for the tendering procedures required for any appointment made pursuant to Article 12.1, as well as for the contracting of any other professional services under the operational management agreement referred to in Article 11.3, and shall in doing so comply with the substantive provisions of Timor-Leste law.	
12.4 The procedures for terminating a contract with an external investment manager shall be laid down in the operational management agreement referred to in Article 11.3.	
12.5 The duty of the investment manager is to maximise the return on the Petroleum Fund investments having regard to appropriate risk as indicated by the investments permitted under Articles 14 and 15, any subsidiary legislation under this Act, any instructions by the Minister and the operational management agreement referred to in Article 11.3.	The investment and management of the Petroleum Fund should include ethical guidelines, as in Norway. Maximizing the rate of return is important, but it should not be done at the costs of violating human rights, financing unsustainable development, or profiting from war or occupation. The Fund should be invested according to socially responsible principles that should be included in this Act, and the investment managers should act according to those principles as well. See proposed new article 15½. All instructions by the Minister referred to in this article should be public.

Article 13: Quarterly Reports on the Petroleum Fund	
13.1 The Central Bank shall present to the Minister quarterly reports on the performance and activities of the Petroleum Fund no later than twenty (20) days after the end of each quarter.	There should be specific requirements for the contents of such reports, including all income, expenditures, and investments made to, from and by the Fund during the reporting period, as well as other information. All management fees and commissions paid should also be reported.
13.2 The Central Bank shall provide for the publication of its reports no later than forty (40) days after the end of the quarter.	There is no need for a 20-day delay between when the report is presented to the Minister and when it is published. In many places in this law, there is a long time after a report is finished before it has to be released or published. Since this involves very little work, it should be reduced to 5 days or less everywhere it exists (see article 32.5 for another example).
13.3 The Central Bank shall ensure that in releasing, or allowing access to, such reports measures are taken to prevent the disclosure of confidential information.	"preventing disclosure of confidential information" which appears here and in many other places is still a problem, even though confidential information is better defined than in earlier drafts. See comments below on article 32.2.
Article 14: Investment Rules	
14.1 Not less than ninety per cent (90%) of the amounts in the Petroleum Fund shall be invested only in qualifying instruments described in Article 15.	The Fund is protected against risky investment, but not against unsafe spending. This seems incomplete; it is like locking a window while leaving the door wide open.
14.2 Not more than ten per cent (10%) of the amounts in the Petroleum Fund may be, in accordance with all procedures laid down in this present Act, invested in financial instruments other than those mentioned in Article 15.1, provided that such instruments are:	
(a) issued abroad;	
(b) liquid and transparent;	
(c) traded in a financial market of the highest regulatory standard.	
14.3 The range of instruments included as qualifying instruments in Article 15.1 shall be reviewed by the Government, and approved by Parliament, at the end of the first five (5) years of the Petroleum Fund existence, having regard to the size of the Petroleum Fund and the level of institutional capacity.	This review should also include the 90%/10% allocation of instruments allowed under 14.2. This review and consequent recommendations should be made public. If it results in changing the qualifying instruments listed in 15.1, an act of Parliament should be required to amend this Act.
Article 15: Qualifying Instruments	
15.1 Subject other provisions of this present article, a qualifying instrument is:	
(a) a debt instrument denominated in United States Dollars that bears interest or a fixed amount equivalent to interest, that is:	

(i) rated Aa3 or higher by the Moody's rating agency or rated AA– or higher by Standard & Poor's rating agency; and	
(ii) issued by or guaranteed by the World Bank or by a sovereign State, other than Timor-Leste, provided the issuer or guarantor is rated Aa3 or higher by the Moody's rating agency or rated AA– or higher by Standard & Poor's rating agency; or	
(b) a United States Dollars deposit with, or a debt instrument denominated in United States Dollars that bears interest or a fixed amount equivalent to interest issued by:	
(i) the Bank for International Settlements;	
(ii) the European Central Bank; or	
(iii) the Central Bank of a sovereign State, other than Timor-Leste, with a long-term foreign currency rating of Aa3 or higher by the Moody's rating agency or AA– or higher by the Standard & Poor's rating agency;	
(iv) a bank designated by Moody's rating agency with a long-term foreign currency rating of Aa3 or higher or designated by Standard & Poor's rating agency with a long-term foreign currency rating of AA– or higher.	
15.2 The investment manager shall dispose of an instrument if it ceases to be a qualifying instrument because of a change in the rating of the instrument or the issuer of the instrument within one month of the instrument ceasing to be a qualifying instrument.	Any such disposal should be publicly announced and included in the Public Register.
15.3 The average interest rate duration of Petroleum Fund qualifying instruments under Article 15.1 shall be less than six (6) years.	Longer-term, less liquid investments should comprise the majority of the Fund's holdings. Not only does this encourage savings and planning for future generations, but it helps reduce brokers' and currency exchange fees, making it more profitable to invest in a wider range of securities, including those not in U.S. dollars.
15.4 A derivative instrument is a qualifying instrument only if:	
(a) it is solely based on instruments that satisfy the requirements of Article 15.1; and	
(b) its acquisition reduces the financial exposure to the risks associated with the underlying instrument or instruments.	

	Proposed new Article 15½: Ethical Investment Similar to Norway's Ethical Guidelines, Timor-Leste's Petroleum Fund should incorporate rules governing investment which incorporate ethical guidelines and avoid Timor-Leste supporting activities against our national interest or beliefs. Since our Fund is to be invested outside Timor-Leste, it is part of our nation's international relations. Section 8 of the RDTL Constitution says, *inter alia*, that international relations shall be governed *"by the principles of national independence, the right of the Peoples to self-determination and independence, the permanent sovereignty of the peoples over their wealth and natural resources, the protection of human rights, … the peaceful settlement of conflicts, the general, simultaneous and controlled disarmament, … and establishment of a new international economic order capable of ensuring peace and justice in the relations among peoples."* These principles are the basis for ethical rules for investment of the Fund. The Fund should explicitly seek to prevent negative outcomes associated with petroleum producing countries. It should therefore include rules regarding environmental protection, sustainable development and energy independence. The investment managers should be instructed to comply with these rules, and the "watchdog" mechanisms of the Consultative Council and others could verify compliance.
Article 16: Investment Advisory Board	
16.1 There is hereby established an Investment Advisory Board that is responsible for:	All the benchmarks, instructions, advice and recommendations from the Investment Advisory Board (IAB) (articles 16.1 and 16.2) should be made available to the Parliament, the Consultative Council and the public in a timely manner, preferably before the related decisions have been made. If the IAB does not have unanimous agreement, majority and minority reports should both be published. The documents should be released by the IAB directly; the Minister should not be responsible for publication (19.2) or be able to interfere with this process. In addition to advising the Minister, the IAB should respond to inquiries from Parliament and the Consultative Council.
(a) developing for the Minister performance benchmarks of desired returns from, and appropriate risks of, the investments of the Petroleum Fund;	
(b) advising the Minister on the investment instructions that the Minister shall provide to the investment managers of the Petroleum Fund appointed pursuant to Article 12;	

(c) advising the Minister on the performance of the external investment managers and making recommendations to the Minister on the appointment or removal of external investment managers; and	
(d) advising the Minister on the need for changes in the overall investment strategy or management of the Petroleum Fund, including the making of recommendations as to such changes.	This advice should also include compliance with sustainability rules, intergenerational equity and ethical investment guidelines.
16.2 Subject to Article 18, the Minister shall seek the advice of the Investment Advisory Board before making a decision on any matter relating to the investment strategy or management of the Petroleum Fund.	
16.3 Any advice given by the Investment Advisory Board on investment strategy or management of the Petroleum Fund shall take into account:	
(a) the overall objective that the Petroleum Fund be a fund of income from the exploitation of non-renewable petroleum resources for the benefit of current and future generations;	As discussed above, "for the benefit of current and future generations" is an inadequate standard.
(b) the current conditions, opportunities and constraints in investment markets, and the constraints under which the Central Bank and other key institutions in Timor-Leste operate; and	
(c) the need to ensure that sufficient amounts are available when needed for transfers referred to in Article 7.	
16.4 The Investment Advisory Board shall determine the rules of procedure under which it operates.	Transparency and accountability, and avoidance of conflicts of interest, are mandatory.
Article 17: Organisation of the Investment Advisory Board	
17.1 The members of the Investment Advisory Board shall be:	All appointees should be required to publicly declare their property and wealth prior to becoming members of the IAB.
(a) the Director of Treasury;	The first two members of the Board have an inherent conflict of interest between providing objective advice and justifying their own actions as officials responsible for managing the Fund.
(b) the Head of the Central Bank;	

(c) two persons appointed by the Minister with significant experience in investment management; and	The appointments in (c) and (d) need to be people with no personal interest related to investment or other activities of the Fund. This Article should contain language or a reference to another statute prohibiting appointment of people with actual, apparent or potential conflicts of interest, involving either investment or petroleum development. Experienced people like these can make mistakes. The IAB needs people with a broader perspective, including ethical investment, inter-generational equity and management of publicly owned assets.
(d) one other person appointed by the Minister.	The IAB should include at least two people appointed by someone other than the Minister, given that the Minister also directly or indirectly appoints all other members. This is essential to ensure independent, objective advice.
17.2 The Central Bank shall provide the secretariat for the Investment Advisory Board and any support required by the board to carry out its functions.	
17.3 The Minister shall provide, in accordance with Timor-Leste law:	
(a) a person to sit on the secretariat of the Investment Advisory Board; and	
(b) appropriate remuneration for the members of the Investment Advisory Board appointed under paragraphs (c) and (d) Article 17.1.	
Article 18: Absence of Advice from the Investment Advisory Board	
18.1 The non-provision of advice by the Investment Advisory Board, within fifteen (15) days of the request, or within such longer time period as may be determined by the Minister having regard to the nature of the advice sought, shall not constitute an impediment for the Minister to make a decision.	Petroleum Fund assets are so important to the future of the people of Timor-Leste that they should never be invested or managed hastily. The exceptions from following or seeking IAB advice should be deleted, restoring the spirit of 16.2 which involves the IAB in all investment strategy and management decisions.
18.2 If, having regard to the nature and urgency of the decision to be taken, there is insufficient time to seek the advice of the Investment Advisory Board, in relation to a particular decision, the Minister shall make a decision without first seeking the advice of the Investment Advisory Board.	
18.3 If the Minister makes a decision under Article 18.1 or 18.2, the Minister shall immediately report the making of the decision to the Investment Advisory Board.	If the Minister makes decisions without IAB advice, or disregarding IAB advice, he should provide a public explanation, including why the decision needed to be made on such short notice.
18.4 The Minister shall reexamine the decision having regard to any subsequent advice provided by the Investment Advisory Board.	Such reexamination should be publicly explained, whether or not it results in changes in the decision.

Article 19: Release of Advices of the Investment Advisory Board	
19.1 When required by Parliament, the Government shall without delay provide Parliament with all advices given thereto by the Investment Advisory Board.	Article 16 refers to advice to the Minister, but this discusses advice to the Government. It should cover all advice from the IAB, to any individual or agency. All advice given by the IAB should be automatically given to Parliament, without waiting for a requirement. It should also be released to the public.
19.2 The Minister shall ensure that in releasing, or allowing access to, advices given thereto, measures are taken to prevent the disclosure of confidential information.	This will not involve "confidential information", so no censorship will be required. See comment on Article 32.2.
Article 20: No Encumbrances on the Assets of the Petroleum Fund	
20.1 Any amount that is invested pursuant to Articles 14 and 15 shall, at all times, remain the property of Timor-Leste.	
20.2 Any contract, agreement or arrangement, to the extent that it purports to encumber the assets of the Petroleum Fund, whether by way of guarantee, security, mortgage or any other form of encumbrance, is null and void.	To make this article more effective, Fund assets must also be prohibited from being used for payments for debt service. The automatic transfer from the Petroleum Fund to fill annual budget deficits ensures that any level of government expenditure will be covered by the Fund. As a result, the Fund becomes *de facto* collateral: if money is borrowed, debt payments are guaranteed by the Fund.
Chapter IV – Supervision of the Petroleum Fund	
Article 21: Maintenance of Petroleum Fund Accounts and Records	
21.1 The Director of Treasury is responsible for maintaining the Petroleum Fund accounts and records in accordance with the International Accounting Standards in force, to reflect the operations and financial condition of the Petroleum Fund.	
21.2 The Director of Treasury shall submit to the Minister quarterly management information reports and analyses on the performance and activities of the Petroleum Fund no later than twenty (20) days after the end of each quarter.	These reports should go promptly to Parliament and the public by inclusion in the Public Register (see proposed new Article 32½ below).
21.3 The Director of Treasury is responsible for reporting on the performance and activities of the Petroleum Fund for the purpose of the annual financial statements of Timor-Leste.	These reports should go promptly to Parliament and the public by inclusion in the Public Register (see proposed new Article 32½ below).

Article 22: Internal Audit	
The accounts, records and other documents relating to the Petroleum Fund shall be audited every six months by the bodies responsible for internal audits of each of the entities involved.	Enumerate "each of the entities involved" – this is unclear new wording. The audit reports should go promptly to Parliament and the public by inclusion in the Public Register (see proposed new Article 32½ below).
Article 23: Annual Report	Once per year is not often enough for this information to be released; if corrective action is necessary, that could be too late.
23.1 The Government shall submit an Annual Report for the Petroleum Fund for a fiscal year to Parliament, at the same time as the annual financial statements of that year are submitted to Parliament.	
23.2 The Annual Report referred to in Article 23.1 shall be published by Government within fifteen (15) days of its submission to Parliament.	Five days should be enough, as it is already written. The Annual Report and other document should be published in Tetum, Portuguese, English and Indonesian so that it will be widely understood.
Article 24: Information Contained in the Annual Report	
24.1 The Annual Report for the Petroleum Fund shall be prepared in a manner that makes it readily adaptable for public information, and shall contain in particular the following information for the fiscal year for which the Report is prepared:	The information spelled out in this article is a minimum standard; the Annual Report should contain additional information which the Ministry, Central Bank, IAB or CC believes is helpful in increasing the public's awareness, participation and sense of ownership of the Fund. In article 32½, we have listed reports and documents which should be included in a Public Register. Many of these, or at least summaries of them, should also be in the Annual Report. However, the Public Register will be more timely, enabling public participation in decisions before they are made, not just the ability to lock the barn door after the horse has escaped.
(a) audited financial statements certified by the independent auditor, comprising:	If the independent auditor is unwilling to certify the audit, or includes any qualifications, then the Annual Report should disclose the auditor's objections and what is being done to resolve them.
(i) an income and expenditure statement;	
(ii) a balance sheet, including a note listing the qualifying instruments of the Petroleum Fund, valued at market value;	This should include the amount, date purchased and rate of return of each of the Fund's holdings, in a form similar to the Annual Report of the Norwegian Petroleum Fund.
(iii) details of all appropriations and transfers from the Petroleum Fund; and	Also details of all receipts into the Fund (see Article 6). Without this, Timor-Leste does not fulfill its commitment to the Extractive Industries Transparency Initiative.
(iv) notes to the financial statements, as appropriate;	

(b) a report signed by the Minister describing the activities of the Petroleum Fund in the year, including all advice provided by the Investment Advisory Board, any reports prepared by the independent auditor under Article 35 and drawing attention to particular issues or matters that may be of concern or interest to Parliament;	
(c) a statement by the Director of Treasury drawing attention to any accounting issues or practices arising from the Report that may materially affect the interpretation of amounts or activities shown within it;	
(d) the income derived from the investment of Petroleum Fund assets during the fiscal year compared with the income of the previous three fiscal years;	
(e) a comparison of the nominal income on the investment of Petroleum Fund assets with the real return after adjusting for inflation;	
(f) a comparison of the income derived from the investment of Petroleum Fund assets with the benchmark performance indices provided to the Minister pursuant to Article 16.1;	
(g) a comparison of the estimated sustainable income for the fiscal year with the sum of transfers from the Petroleum Fund for the year;	Include projections of ESI for future years, as well as details of the underlying assumptions and data for its calculation (see comment on Schedule I).
(h) in the event of Government borrowings, the liabilities shall be reflected in the presentation of Petroleum Fund accounts so as to give a true representation of the past and expected future development of the Government's net financial assets and rate of savings; and	
(i) a list of persons holding positions relevant for the operation and performance of the Petroleum Fund, including:	Also the monetary compensation paid to each such person during the past year for their work involving the Petroleum Fund.
(i) the Minister;	
(ii) the Director of Treasury;	
(iii) the members of the Investment Advisory Board;	
(iv) the external investment managers;	
(v) the Head of the Central Bank; and	

(vi) the members of the Petroleum Fund Consultative Council.	Also the auditor
24.2 The sources of the information described in Article 24.1, whatever their form, and including all reports and statements, shall be annexed to the Annual Report in unedited form.	
Chapter V – Petroleum Fund Consultative Council	
Article 25: Petroleum Fund Consultative Council	
25.1 There is hereby established a Petroleum Fund Consultative Council.	The Petroleum Fund Consultative Council (CC) is described as a "watchdog," buts its powers are severely limited. A watchdog is not a guard dog. A watchdog serves only to sound an alarm – there needs to be a higher power which will respond to the alarm. If the CC finds an unexplained discrepancy or believes the law is not being followed, it must, on its own initiative without the intervention of the Minister or Parliament, refer the matter and all relevant information in its possession to the Provedor or General Prosecutor.
25.2 The Petroleum Fund Consultative Council shall, of its own motion or at the request of Parliament:	The CC should be able to investigate and provide advice to Parliament or anyone else at any time, on its own initiative. It should also be empowered to obtain information or advice from any government agency, individual, expert or other person involved in Petroleum development or revenue management.
(a) advise Parliament on matters relating to the performance and operation of the Petroleum Fund;	All such advice should be promptly made public.
(b) advise Parliament on appropriations from the Petroleum Fund as set out in Article 30.2; and	
(c) in the context of the budgetary process, advise Parliament on whether the appropriations of the Petroleum Fund are being used effectively to the benefit of current and future generations.	As discussed above, "the benefit of current and future generations" is an inadequate standard.
Article 26: Composition of the Petroleum Fund Consultative Council	
The Petroleum Fund Consultative Council shall comprise the following members, all of whom are nationals of Timor-Leste:	
(a) former Presidents of the Republic;	
(b) former Speakers of the Parliament who have effectively been in office for at least three (3) years;	
(c) former Prime Ministers who have effectively been in office for at least three (3) years;	

(d) former Ministers in charge of finances who have effectively been in office for at least three (3) years;	
(e) former Heads of the Central Bank who have effectively been in office for at least three (3) years;	
(f) two members appointed by Parliament, elected in accordance with the rules laid down by Parliament;	
(g) two members appointed to represent civil society non-profit organisations;	We suggest adding more members of civil society to include, representatives of popular organizations, people living outside Dili, members of minority political parties and youth. Since the purpose of the Fund is to provide for future generations and the inclusion of former officeholders will weight this council toward older people, special efforts are necessary to include young people.
(h) a member appointed to represent the private business sector; and	
(i) a member appointed to represent religious organisations.	
Article 27: Appointment, Tenure and Reeligibility of Members	
27.1 The members of the Petroleum Fund Consultative Council referred to in paragraphs (a), (b) and (c) of Article 26 are appointed, in accordance with procedures laid down by Parliament, from the end of their term in office for a period of ten (10) years. These members are not eligible for reappointment.	
27.2 The members of the Petroleum Fund Consultative Council referred to in paragraphs (d) and (e) of Article 26 are appointed, in accordance with procedures laid down by Parliament, from the end of their term in office for a period of five (5) years. These members are not eligible for reappointment.	
27.3 The members of the Petroleum Fund Consultative Council referred to in paragraphs (f), (g), (h), and (i) of Article 26 are appointed for a period of four (4) years. These members are eligible for reappointment for a second term.	
27.4 The members of the Petroleum Fund Consultative Council referred to in paragraphs (g), (h), and (i) of Article 26 shall be freely appointed by the concerned organisations, duly registered in accordance with Timor-Leste law, under procedures to be laid down by Parliament.	

27.5 If no appointment can be made to the Petroleum Fund Consultative Council pursuant to paragraphs (a), (b) or (c) of Article 26, the President of the Republic, the President of Parliament, and the Prime Minister, respectively, shall appoint one member to fill such a vacancy.	
Article 28: Limitations	
28.1 A person shall not be appointed as a member of the Petroleum Fund Consultative Council if the person:	There should be a prohibition on people with conflicts of interest serving on the CC. All appointees should have to declare their property and wealth before becoming members of the CC.
(a) has been removed from office;	This is a new and confusing clause. Would it apply to a former Prime Minister or President of Parliament whose party decided to replace him? Or a former President who failed to win re-election?
(b) has been declared bankrupt or insolvent; or	
(c) has been convicted of a criminal offence.	
28.2 Members of the Petroleum Fund Consultative Council have security of tenure and, unless otherwise provided for by law, may not be suspended, retired or removed from office.	
28.3 The appointment of a member of the Petroleum Fund Consultative Council ceases if the member:	
(a) is declared bankrupt or insolvent;	
(b) is convicted of a criminal offence; or	
(c) is unfit for office.	Define “unfit for office.” Who decides? A CC member should be permitted to refuse appointment or to resign for personal reasons. A conflict of interest should also be grounds for removing someone.
28.4 Until such time as specific procedures for the removal of a member under paragraph (c) of Article 28.3 are established under the general law, the procedures applicable for the removal of judges shall apply.	

Article 29: Economic Advisor to the Petroleum Fund Consultative Council	
Subject to approval by Parliament, the Petroleum Fund Consultative Council may select and appoint as its international adviser for economic and financial matters, for a period of two (2) years, an academic or professional of the highest reputation and competence.	The CC should be able to have more than one international advisor, providing access to expertise and experience related to helping petroleum-dependent countries manage revenues to avoid negative long-term consequences. The CC should also be free to seek or accept advice from anyone it chooses. Any such advisor(s) should be publicly disclosed and free from conflict of interest. Remove the two-year limitation; the advisor should serve at the pleasure of the CC.
Article 30: Functioning of the Petroleum Fund Consultative Council	
30.1 In conducting its activities, the Petroleum Fund Consultative Council shall take into account:	
(a) the overall objective that the Petroleum Fund be a fund of income from the exploitation of non-renewable petroleum resources for the benefit of current and future generations; and	As discussed above, "the benefit of current and future generations" is an inadequate standard.
(b) the principles for the operation of the Petroleum Fund as outlined in this present Act.	
30.2 When:	
(a) the Government introduces legislation to Parliament to appropriate an amount from the Petroleum Fund, and	
(b) the amount the legislation would appropriate in the fiscal year is greater than the estimated sustainable income of the Petroleum Fund for the fiscal year,	The CC should submit an opinion even if the proposed transfer is at or below the ESI. It is for the benefit of Timor-Leste to keep withdrawals from the Fund as low as possible, even below the ESI, if the money is not needed in a given year. The CC can evaluate whether it believes the entire ESI amount can be spent effectively in a given year.
the Petroleum Fund Consultative Council shall submit, in a timely manner, as decided by Parliament on a case by case basis, an advice to Parliament on the Government's proposed appropriation.	
30.3 The non-provision of advice by the Petroleum Fund Consultative Council, within the time period decided by Parliament, shall not constitute an impediment for Parliament to make a decision.	The time period should be reasonable; otherwise Parliament can make the CC ineffective.

30.4 For purposes of advising Parliament, the Petroleum Fund Consultative Council shall consult widely in the community and, to this end, shall hold an annual forum on issues relating to the Petroleum Fund.	This specifies a minimum level of public consultation for the CC. The CC should be able to, on its own or at the request of a member of Parliament, hold additional fora or provide information to the public. The CC's purpose in this is not only to advise Parliament, but to help ensure continuing public buy-in of the Fund, and to seek public views on how the Fund should be invested, managed and spent, as well as information about any possible mismanagement or corruption. "For purposes of advising Parliament" should be deleted.
30.5 The Petroleum Fund Consultative Council shall determine the rules of procedure under which it will operate, and its decisions shall not be binding unless taken by majority, with a quorum of six (6) members.	Within principles of transparency, accountability, etc.
30.6 Parliament shall provide adequate funding for the operations of the Petroleum Fund Consultative Council, including appropriate remuneration for members of the Petroleum Fund Consultative Council, through the budgetary appropriation for the operation of Parliament.	Is there staff or a secretariat for the CC? How is it established?
Article 31: Release of Information	
31.1 Parliament shall provide for the publication of the advices of the Petroleum Fund Consultative Council, including minority opinions, within thirty (30) days of having been provided.	No need for such a long delay, since the advice is already complete when it is provided. The CC should be able to publish its advice and findings directly, without intervention of Parliament, if it so chooses. It should also be empowered to communicate directly with the public, the media or any other person or organization. Parliament should make public if it followed the CC's advice, and, if not, there should be a clear explanation of why.
31.2 Parliament shall ensure that in releasing, or allowing access to, advices of the Petroleum Fund Consultative Council, measures are taken to prevent the disclosure of confidential information.	The Parliament, not the CC, should be responsible to prevent disclosure of confidential information. It would be better if this confidential information roadblock was removed between the CC and the Parliament, so that the CC has full access to information and is able to provide the Parliament with everything it knows. Parliament could exercise censorship deemed necessary when it publishes information, as described in this section.
31.3 The Minister and/or the Head of the Central Bank shall furnish the Petroleum Fund Consultative Council with information it requests on any aspect of the operation or performance of the Petroleum Fund for the purpose of its monitoring of the Petroleum Fund.	The Council should have access to all information it deems necessary for its work from the Ministry of Finance, the Central Bank, investment manager, IAB, Petroleum Ministry, TSDA, National Oil Company and international petroleum companies. If Fund managers fail in their duty of transparency, the Council should give information to the media and the public about Fund balances, inflows, expenditures, and interest.

31.4 In dealing with the information furnished under Article 31.3, the Petroleum Fund Consultative Council shall ensure that measures are taken to prevent the disclosure of confidential information.	Protection of confidentiality should be taken care of by Parliament (as in Article 31.2) for any information provided to Parliament. The CC only needs to protect confidentiality for information it directly shares with the public.
Chapter VI – Transparency	
Article 32: Transparency as a Fundamental Principle	
32.1 The management of the Petroleum Fund shall always be carried out, and the related duties of all relevant parties shall be discharged, with the highest standard of transparency.	Unlike the prior draft there is no presumption in favor of disclosure. There should also be a requirement for timely response (15 days) to a request for information, to either provide the information or indicate why it is not being provided. This is consistent with Article 40.1 of the Constitution of RDTL: "*Every person has the right to freedom of speech and the right to inform and be informed impartially.*"
32.2 Information or data whose disclosure to the public could, in particular:	This article is so broad, vague and subjective that it undercuts any commitment to transparency, allowing the withholding of almost any information from the public. Few of the items below can be proven, and most are not valid reasons for withholding information from the public. The purpose of a transparency principle is for the citizens to be aware of information which government officials might find embarrassing or uncomfortable – otherwise there is no need for a transparency provision.
(a) prejudice significantly the performance of the Petroleum Fund;	
(b) be misleading, as it relates to:	This could be applied to conceal different perspectives on analysis of the fund's management or the projection of sustainable income. If there is a debate on such issues within the government or the IAB, it is important for the Parliament and public to hear all sides.
(i) incomplete analysis, research or statistics;	
(ii) to frankness and candour of internal discussion;	
(iii) the exchange of views for the purposes of deliberation; or	
(iv) the provision of confidential advice;	
(c) significantly affect the functioning of the Government;	This could be used to hide politically embarrassing information about Government incompetence or corruption.
(d) amount to the disclosure of confidential communications;	This could be used to block release of any information provided by petroleum companies, if they claim "commercial confidentiality."
(e) substantially prejudice the management of the economy;	
(f) substantially prejudice the conduct of official market operations; or	
(g) result in or lead to improper gains or advantages;	

may be declared as confidential. The declaration of confidentiality shall, taking into account the principle of transparency and the right of the public as regards to access to information, provide a clear reasoning on the motives for treating such information or data as confidential.	If any person believes that confidentiality has been inappropriately invoked, there should be a procedure for timely appeal and review of the decision.
32.3 Any information that is kept confidential at the time at which it could have been published, as well as the reasoning for having been treated as confidential, shall be made available to the public, upon request, when the reasons for confidentiality are no longer valid, and in any case after five (5) years from the date at which it could have been published.	The reasoning why something is kept confidential should be made public immediately, whether or not it is requested and whether or not the reasons are valid.
32.4 In the exercise of its functions and competences, and as provided for in this present Act, Parliament, the Government, the Minister, Central Bank, Investment Advisory Board and the Petroleum Fund Consultative Council shall take all necessary measures to ensure transparency mechanisms and free access to public information.	Add investment managers to this list.
32.5 The Minister shall ensure that this present Act, any subsidiary legislation made thereunder, any instructions relating to the Petroleum Fund, the operational management agreement referred to in Article 11.3 and the reports referred to in Articles 8 and 9 are readily available to the public within thirty (30) days of having been finalised.	There is no need for a 30-day delay between when a document is finished and when it is published. Since this involves very little work, it should be reduced to 5 days or less. Many of these documents should be made public directly by their authors, without intervention by the Minister.
	Proposed new Article 32½: Public Register Because of the large number of public documents and information associated with the Petroleum Fund and the multiplicity of institutions which produce these materials, we suggest that a Public Register be established for information relating to the Petroleum Fund. Although some of this material is mandated to be included in the Annual Report, it would also be appropriate to have a Register which will be more timely and accessible. Since the principal purpose of this Register is transparency, those managing it should be protected from political or personal pressure. The Public Register should not reside in the Finance Ministry or the Central Bank. At a minimum, the Public Register should include the following in a timely manner, uncensored: • The proposed State Budget (Article 7.3) as soon as it is approved by the Council of Ministers. • Reports from the Government and auditor to Parliament regarding transfers (Articles 8 and 9), published at the same time they are given to Parliament. These reports should explain the underlying assumptions and calculations of the estimated sustainable income. • Information on any refunds of tax (Article 10).

	• The Agreement between the Minister and the Central Bank about Fund management (Article 11.3). • Appointments of and contracts with investment managers (12) • Instructions from the Minister to the Manager (12.5) • Quarterly reports from the Central Bank to the Minister (13), including all Fund receipts. • The review of the qualifications of investment instruments (14.3) • A list of all investments made, sold, or disposed (15) • Performance benchmarks from the IAB (16.1(a)) • Advice from the IAB to the Minister on various topics (16.1(b,c,d), 16.2, 16.3, 19.1) • Rules of procedure of the IAB (16.4) • Decisions by the Minister, plus an explanation if IAB advice was not followed (18.3) • Quarterly management reports by the Director of the Treasury (21.2) • Results of internal audits (22) • Annual Reports and Annual Financial Statements (24), including all the items enumerated in 24.1 • Advice from the CC to the Parliament (25.2(a), (b), (c)) • Procedures for appointing CC members (27) • Qualifications and appointment of CC advisors (29) • CC analysis and opinion on Fund appropriations (30.2), including minority opinions • Notices, submissions and reports from the CC annual public forum and consultations (30.4) • CC rules of procedure (30.5) • Auditor's report listing each payment made into the Fund (35.1 as amended) • Auditor's referral of discrepancies (35.4) and report (36) • Regulations to carry out the provisions of this act (47) • Information on the opening balance (Article 48.1) of the Fund, and how that revenue was received, from whom, and for what. • Details and assumptions underlying the calculation of estimated sustainable income (Schedule 1)
Article 33: Payments into the Petroleum Fund Account	
For all purposes of Timor-Leste law, an obligation to make a payment into the Petroleum Fund shall not be treated as discharged until the amounts have been deposited, integrally and unconditionally, into the Petroleum Fund earmarked receipts account.	

Article 34: Independent Auditor	
34.1 Without prejudice to the jurisdiction of any court, there shall at all times be appointed an independent auditor, which shall be an internationally recognised accounting firm, selected and appointed by the Government.	The CC should be responsible for recommending the auditor. If the auditor is selected by the Government alone, it will not be independent. The appointment should also be approved by Parliament.
34.2 The selection and appointment of the independent auditor shall be made in accordance with the procurement procedures established under Timor-Leste law.	
34.3 The independent auditor appointed under this present Act shall remain in function for the contracted period, unless the contract is terminated for serious misconduct or serious breach of contract, or if the independent auditor's conduct otherwise prejudices the performance of the Petroleum Fund.	
Article 35: Payments made as Petroleum Fund Receipts	
35.1 The independent auditor shall prepare a report for the Minister of all payments made, or that should under this present Act have been made, as Petroleum Fund receipts for each fiscal year.	The audit report should also validate and explain the assumptions on which the sustainable income calculation is based. It should look at investments, not just income and expenditures. In addition to each receipt, the auditor's report should include all transfers and debits from the Fund, including transfers to the State Budget, management and brokers expenses and commissions (6.3), tax refunds (10), legal fees, settlements, payments, etc. A separate section of the report should detail costs related to the Petroleum Fund -- the auditor, IAB, CC, Central Bank management costs, etc.
35.2 The independent auditor may require any payer to provide any information, and to deliver proof of any facts which may be necessary for the full discharge and performance of the independent auditor's duties under this present Act.	This information from companies should also be available to the CC, Parliament and public, as envisioned by the Extractive Industries Transparency Initiative. The companies should also be required to publish all payments, with no "commercial in confidence" exceptions.. The Petroleum Act and Production Sharing Contracts also need to specify that every payer must cooperate with requests for information from the auditor, CC, General Prosecutor and Provedor.
35.3 The independent auditor's report shall state the aggregate amounts of payments made as Petroleum Fund receipts for each payer for the fiscal year.	The report should not be aggregate amounts , but each individual receipt. Should also explain what the payment was for (FTP, tax, etc.), for what project, how much oil was produced, what costs were recovered, etc. All of this is required by the PSC, but should be reported by the auditor.

35.4 If the independent auditor concludes that there is a discrepancy between payments made and those which should have been made, and which cannot be explained, the independent auditor shall refer the matter to the Minister. In referring the matter to the Minister, the independent auditor shall provide all information that the independent auditor possesses regarding the discrepancy in question.	This standard for referring issues to the Minister is too high. It should be if the auditor believes there "may be" an unexplained discrepancy. It was better in the earlier draft (20.3). The Petroleum Fund Consultative Council should be informed any time such a matter is referred to the Minister, and provided with any relevant information it requests. Any such referral should also be announced publicly within 30 days. The CC, General Prosecutor and Provedor should each be allowed to request the auditor to provide information or perform an investigation. It should not only be triggered by a discrepancy between receipts and payments, but by any apparent irregularity, including management of investments and calculation of the estimated sustainable income from the Fund. If the auditor has any suspicion that the Minister or his subordinates or superiors are involved in an irregularity or discrepancy, he should inform the Minister and Consultative Council, while referring the matter to the Provedor or the General Prosecutor. The Auditor should consult with the IAB, CC or any other relevant official in attempting to ascertain the causes of a discrepancy.
Article 36: Reports of the Independent Auditor	
36.1 The Minister shall provide for the publication of the independent auditor's report, in particular through the Annual Report.	The auditor's report should be published in full (perhaps in the Public Register), within 15 days of when it is completed, without being dependent on actions by the Minister or waiting for the next Annual Report. It can also be included in the Annual Report.
36.2 The independent auditor shall ensure that in preparing the report measures are taken to prevent the disclosure of confidential information.	There should be no censorship of confidential information, especially given the overbroad and subjective definition in 32.2.
Chapter VII – Penalties	Minimum prison sentences unreasonably restrict judicial discretion.
Article 37: Scope of the Chapter	
The provisions included in this Chapter are without prejudice of criminal and civil liability under general law.	
Article 38: Non-Compliance with an Obligation to Publicise Information	
Whoever fails to comply with any obligation to publicise information, provided for in this present Act, or leads someone else to fail to comply with, or in any manner hinders or leads someone else to hinder the compliance with, such an obligation, shall be punished by imprisonment for a period up to two (2) years or fine of not less than fifty (50) days.	

Article 39: Misleading Information	
39.1 Whoever gives information that is materially false or misleading, or knowingly includes or permits to be included, in any report or document, information that is materially false or misleading, shall be punished by imprisonment for a period up to three (3) years or fine of no less than seventy five (75) days.	This Article is dangerous. Many of the calculations involved in the Petroleum Fund, including projecting returns and estimating the sustainable income, are based on assumptions about which reasonable people may differ. Criminal penalties for "misleading" information will discourage someone who might make different assumptions from the ones preferred by the Government. This would restricting public and internal debate, making it less likely that decisions will truly reflect Timor-Leste's needs. This article should be deleted.
39.2 An attempt is punishable.	
Article 40: Hindering the Exercise of Powers by an Auditor	
40.1 Whoever, directly or indirectly, in any measure or by any means, hinders or leads someone else to hinder the exercise of powers by an auditor under this present Act, shall be punished by imprisonment for a period from three (3) months to four (4) years or fine of not less than one hundred (100) days.	This should specifically include providing false, misleading or incomplete information to the Auditor.
40.2 An attempt is punishable.	
Article 41: Accessory Penalties	
In relation to the crimes provided for in this present Act, the following accessory penalties may be applied:	
(a) Termination of contracts;	
(b) Publication of the conviction and sentence; and/or	This should be automatic for all prosecutions and convictions, as court hearings are public under Article 131 of the Constitution of RDTL.
(c) Other injunctive relief as may be necessary taking into account the circumstances of the case in question.	
Article 42: Liability of Legal Persons, Corporations and Other Legal Entities	
42.1 Legal persons, corporations or any other legal entities, including those without juridical personality, are liable for contraventions provided for in this Part when committed by its organs or representatives in its name and in the collective interest.	
42.2 The liability is excluded where the agent has acted against express orders or instructions properly issued.	
42.3 The liability of the entities mentioned in Article 42.1 does not exclude the individual liability of the respective agents.	

42.4 The entities mentioned in Article 42.1 are jointly and severally liable, as provided for in civil law, for the payment of any fines or compensations, or for the fulfillment of any obligations, derived from the facts or with incidence on matters covered by the scope of this Act.	
Article 43: Fines to Legal Persons, Corporations and Other Legal Entities	
43.1 In the case of legal persons, corporations or any other legal entities, including those without juridical personality, the daily rate for fines corresponds to an amount between one United States Dollars (USD $1.00) and two thousand United States Dollars (USD $2,000.00), as determined by the court, taking into account the economic and financial circumstances of the legal person, corporation or other legal entity.	Fines for corporations should be much higher. Corporations could make illegal profits of tens or hundreds of millions of dollars by concealing or misrepresenting information to the Government, and fines must be high enough to discourage such activities. This provides a maximum fine of $730,000 per year, which is less than one day's worth of production from the Laminaria-Corallina oil field, for example. In the Alaska cases, for example, oil companies had to pay more than ten billion dollars.
43.2 If the fine is applied to an entity without juridical personality, its payment will be guaranteed by the entity's assets and, in the event of non-existence of such assets or under-capitalisation, jointly and severally, the assets of each of the partners or shareholders of the entity.	
Article 44: Complaints to the Ombudsman for Human Rights and Justice	
44.1 Any person, legal and natural, may lodge a complaint with the Ombudsman for Human Rights and Justice, on any matters covered by the scope of this present Act, in accordance with general law.	The Ombudsman should have access to all information available to any person or agency under this Act, with no exception for confidential information.
44.2 Any recommendations forwarded by the Ombudsman for Human Rights and Justice to the competent authorities, on any matters covered by the scope of this present Act, shall be treated as a matter of urgency.	
Article 45: Subsidiary Legislation	
General criminal law, both substantive and adjective, as well as the relevant administrative legislation, are applicable in a subsidiary manner, with the required adaptations, to the extent necessary to give effect to the provisions of this Chapter.	

Chapter VIII – Transitional and Final Provisions	
Article 46: Implementation of Organizational Structure	
46.1 All appointments necessary for the effective functioning of the Investment Advisory Board shall be made within three (3) months of the entry into force of this present Act.	
46.2 All appointments necessary for the effective functioning of the Petroleum Fund Consultative Council shall be made within six (6) months of the entry into force of this present Act.	
Article 47: Subsidiary Laws and Regulations	
The Government and the Minister may make regulations for the effective carrying out of the provisions of this present Act, including regulations of a transitional nature consequent upon the making of this present Act.	Need a public rule-making process, with a chance for Parliament to be informed. All regulations should be included in the Annual Report and the Public Register.
Article 48: Opening Balance of the Petroleum Fund	
48.1 The opening balance of the Petroleum Fund is the total amount of the payments received by Timor-Leste, up to the commencement of the present Act, as *First Tranche Petroleum*, from the Joint Authority pursuant to the terms of the Exchange of Notes, or from the Designated Authority pursuant to the terms of the Treaty, increased by such amount, if any, as determined by the Government.	Plus any amounts listed in 6.1(a and e) additions above which have been received by the time the Fund becomes operational.
48.2 A report on the determination of the opening balance of the Petroleum Fund shall be provided with the first quarterly report presented under Article 13.	There should be an audited, public report on the opening balance of the Fund and its components, as provided for in Article 13, published at the commencement of the Fund's operation.
Article 49: Entry into force and application	
49.1 This present Act enters into force on the day following its publication in the *Jornal da República*.	
49.2 This present Act applies to fiscal years commencing on or after 1 July 2005.	
49.3 Until the implementation of the organizational structure under this present Act is fully completed, and in no case for a period of more than six (6) months starting from the date of entry into force of this present Act, only the provisions that do not require the intervention of the organic structure to be constituted shall apply.	

Schedule 1: Calculating estimated sustainable income for a fiscal year	
I. Estimated sustainable income for a fiscal year is the maximum amount that can be appropriated from the Petroleum Fund in that fiscal year and leave sufficient resources in the Petroleum Fund for an amount of the equal real value to be appropriated in all later fiscal years as determined in accordance with the formula in paragraphs II and III below.	The validity and accuracy of the estimated sustainable income (ESI) projection is crucial to protecting the long-term interests of Timor-Leste. Yet this estimate is unavoidably derived from incomplete and subjective data, and attempts to anticipate financial and petroleum market developments for the indefinite future. It could be subject to political manipulation, depending on assumptions about production levels and oil prices. Timor-Leste's population will grow rapidly over the next two generations. Even if the ESI is accurate and obeyed, the income from the Petroleum Fund for each Timor-Leste citizen each year will drop 71% by 2050. Although the auditor certifies this estimate, it is unclear who calculates the estimate and determines the underlying assumptions which will define the input data.
II. Estimated sustainable income for a fiscal year is calculated according to the following formula: ***r* × *petroleum wealth*** where: ***r*** is the estimated average real rate of return, or real interest rate, on Petroleum ***Fund*** investments in the future and, for the purposes of these calculations, shall be 3.0%.	3.0% should not be used to estimate the real rate of return indefinitely. It could be used as a starting point (as the earlier draft said), but should be revised as experience is gained with fund management and performance, and to follow world economic trends, exchange rate changes and other factors.
III. In this Schedule, "petroleum wealth" is calculated according to the following formula: $V + \text{present value } (R_0, R_1, \ldots, R_n) = V + \sum_{t=0}^{n} \frac{R_t}{(1+i)^t}$ where: **V** is the estimated value of the Petroleum Fund at the end of the prior fiscal year **R_0,R_1, etc**. are the published budget projections for expected annual Petroleum Fund receipts minus investment returns for that fiscal year (R_0) and future fiscal years (R_1, etc.) **i** is the estimated nominal yield on a U.S. government security, averaged over the years in which Petroleum Fund receipts are expected **n** is the number of years until no further Petroleum Fund receipts are projected to be received.	Timor-Leste has experienced large swings in anticipated and actual petroleum revenue over the last three years. Those projections go only five years into the future, for a single field (Bayu-Undan) whose ownership, production and taxation are already defined. The Government relied on projections by ConocoPhillips which turned out to be wrong in both timetable and amounts, leading to fluctuating projections of Timor-Leste's "financial gap." Estimating for many fields over decades will be far less exact. Will the Government rely on petroleum companies for this information, in which case there will be no data for fields not yet under Production Sharing Contracts, or will an agency of the Timor-Leste government make this estimate, considering the nation's entire potential petroleum wealth? The interest rate (**i**) should not be averaged over all years, but projected for each individual year.

IV. All assumptions upon which the calculations made pursuant to paragraphs II and III above are based shall be clearly identified and explained, and any changes made in these assumptions in subsequent calculations shall be clearly pointed out. V. All assumptions made shall be prudent, reflect international best practice and be based upon internationally recognized standards. VI. The amount determined in accordance with the formula in paragraphs II and III above shall be certified by the independent auditor.	To be certifiable by the independent auditor, this estimate must include: 1. Which petroleum fields and reserves are included, estimated extractable petroleum from each reserve, and at what Proved/Probable/Possible levels. 2. Statements of projected selling prices for oil and gas for each year. 3. Statement of when extraction from each field is to commence, and what the amount of production and expenditure for cost recovery will be for each year the field is in production. 4. Projections of when each field will recoup its investment, with consequent "profit oil" tax receipts. 5. For fields whose revenue is shared with Australia, including the JPDA and potentially unified Greater Sunrise, statements of what portion of revenues Timor-Leste will receive. 6. Anticipated settlement of maritime boundaries with Australia, including any payments from Australia to Timor-Leste as part of this settlement. 7. Projections for downstream revenues and incomes from a Timor-Leste National Oil Company. 8. Anticipated rates of return from Petroleum Fund investments. 9. Anticipated withdrawals above or below the ESI in the near future. 10. Anticipated rates of inflation. The calculations, and all assumptions involved, should be made public at the same time the calculation is used by the government in estimating sustainable income for a given year. In that way, the Parliament and the public can evaluate this information before making a final decision how much to withdraw from the fund for that year. The auditor should certify not only the amount (that is, that the arithmetic is correct), but also the assumptions.
Approved in Council of Ministers, on 12 April 2005 The Prime Minister _____ Mari Alkatiri	