

**Two years on...  
What future for an independent East Timor?**



**Oxfam Community Aid Abroad  
May 2004**

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## Executive Summary<sup>i</sup>

The 20th of May 2004 marks the celebration of the second anniversary of independent East Timor. However, after decades of struggle for independence, the battle now facing Australia's nearest neighbour is just beginning: The battle to overcome the extreme poverty of the vast majority of East Timorese people.

When East Timor celebrated independence in May 2002, the challenge of economic and social development lay ahead. Two years later, East Timor continues to face enormous development challenges. Only 60 per cent of East Timorese people can read and write, life expectancy is just 57 years and more than one in ten East Timorese children born today are likely to die before the age of five. East Timor remains the poorest country in East Asia.

Two years after independence, the Australian Government's approach to maritime boundary negotiations with East Timor is limiting East Timor's capacity to plan for and finance its future development. This could push newly independent East Timor to the brink of becoming a failed state through no fault of its own.

East Timor's paltry current annual budget of US\$74.6 million is heavily reliant on foreign aid, which is set to rapidly decline over the next three years. In May 2004 the Government of East Timor announced cuts to its expenditure budget of US\$40.5 million over the next four years. These cuts will likely further reduce the government's capacity to deliver essential services and improved infrastructure to meet the needs of the people of East Timor. Despite these cuts, East Timor still faces a budget deficit of US\$30 million for the next four years.

Fortunately for East Timor, there is a window of opportunity for financing its development needs and investing for future generations over the coming decades - the lucrative oil and gas reserves of the Timor Sea. Under the waters of the Timor Sea between Australia and East Timor lie vast reserves of oil and natural gas worth tens of billions of dollars which are currently subject to overlapping maritime boundary claims by the two countries.

The Australian Government is reaping more than \$1 million<sup>ii</sup> a day from oil fields in a disputed area of the Timor Sea that is twice as close to East Timor as it is to Australia. This is contrary to its obligation to restrain from exploiting these resources given the overlapping maritime boundary claim. In total, Australia has received nearly ten times as much revenue from Timor Sea oil and gas than it has provided in aid to East Timor since 1999.

Under a temporary treaty signed with East Timor, Australia has access to two-thirds of the known oil and gas deposits in the Timor Sea, even though a maritime boundary set according to international law could deliver most, if not all, these resources to East Timor.

East Timor has yet to negotiate maritime boundaries with its neighbours and wants to resolve ownership of the Timor Sea expeditiously. It wants access to the resources it believes it is entitled to under international law so that it can develop without being dependent on foreign aid.

The Australian Government is refusing to enter into maritime boundary negotiations in a timely manner. Whilst East Timor wishes to move the process forward with monthly meetings, Australia will only agree to discussions on a six monthly basis to negotiate a maritime boundary. This may drag the process on for decades. Australia has also denied East Timor's right to refer the issue to an independent umpire by withdrawing from international tribunals for maritime disputes.

Australia received enormous international recognition for its recent actions in East Timor through its lead role in INTERFET and through being a major donor to East Timor. However, the unfolding tensions over the Timor Sea that stand to push East Timor to the brink of becoming a failed state through no fault of its own, undermine Australia's relations with our closest neighbour and tarnish the current Australian Government's strongest foreign policy achievement – supporting the fledgling country over the past five years. If the people of East Timor are to have any chance at winning the battle against poverty, Australia should give them a fair go.

## **Recommendations**

It is in Australia's national interest to do all it can to reduce poverty and promote social, economic and political stability in East Timor. Central to this is an urgent need to expedite agreement to a permanent maritime boundary with East Timor. Access to oil and gas revenue from the Timor Sea is a vital economic lifeline to address the poverty experienced by the majority of East Timorese people.

To this end, the Australian Government should:

- 1) Negotiate a permanent maritime boundary with East Timor within the next three to five years. In the event negotiations fail, the issue should be referred to the impartial independent arbitration process set out within the International Tribunal on the Law of the Sea (ITLOS).
- 2) Negotiate a maritime boundary in good faith and not link in any way development assistance or support for security in East Timor to negotiations over the Timor Sea. These are separate issues, and should be treated as such.
- 3) Reinstate 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).
- 4) Cease unilaterally issuing new exploration licenses in the Timor Sea in areas subject to overlapping maritime claims.

- 5) Hold all revenues from licensing, royalties and taxation on East Timor's side of the median line, but outside of the Joint Petroleum Development Area, in escrow until completion of negotiations on permanent maritime boundaries.

The Government of the Democratic Republic of East Timor should:

- 1) Initiate a process of public information and consultation and subsequently establish the proposed petroleum fund to ensure transparent administration of Timor Sea oil and gas revenues.
- 2) Ensure that East Timorese civil society organisations are allowed both sufficient access to information and are provided with political space to be active in scrutinising Government management of Timor Sea oil and gas revenues.

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Front cover image: Agretina, a student at Lauhata school in East Timor, watches a health and hygiene class hosted by Oxfam Community Aid Abroad. Credit: Lara McKinley.

## Oxfam Community Aid Abroad in East Timor

Oxfam Community Aid Abroad is an independent, secular Australian organisation working in more than 30 countries and in Indigenous Australia. Our vision is of a fair world in which people control their lives, their basic rights are respected and the 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 has a long history of work in East Timor and is currently engaged in a variety of development projects within East Timor to reduce poverty, support the emergence of a strong and robust civil society and promote good governance. Oxfam works at a national level and in seven districts of East Timor – Covalima, Liquica, Oecusse, Manatuto, Baucau, Lautem and Viqueque. Examples of our work include:

- Improving food security and increasing the incomes of rural communities, including fostering their access to commercial markets.
- Health promotion, including improving reproductive health and nutritional practices, and improving water supplies and sanitation.
- Assisting East Timorese women to ensure that their rights are enshrined in the new nation's constitution.
- Supporting education, literacy and training of people, especially women and girls.
- Strengthening the capacity of local organisations to respond to natural disasters.
- Working with government and partner organisations to design appropriate poverty reduction strategies for East Timor.
- Addressing the issues of violence against women.

### **People improving their lives**

Oxfam is working with the men and women of Buneo village in Oecusse District of East Timor. Children in Buneo suffered from poor nutrition and high rates of diarrhoea and other preventable illnesses. Women and children in the village walked three kilometres to access drinking water. Oxfam has worked in partnership with the community to construct a piped water system to the village to bring clean water close to people's homes. This water has not only been used for drinking and washing, it has enabled families to plant and irrigate vegetable gardens. As well as enjoying improved health and nutrition, community members are now enthusiastically working together to explore new ways of improving their lives.

Recognising the importance of the resources of the Timor Sea as a major contributor to East Timor's future, 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.

## 1. Snapshot of an independent East Timor

*"Today, you are witness of the resolve to build a democratic foundations of development for the entire Timorese society. And today, you are witnesses to the hope for the future based on the active and permanent struggle against poverty in all its forms. Today, with humility – and before the international community - we take upon ourselves the obligations towards our people."*

– Xanana Gusmão, President of the Democratic Republic of East Timor, 20 May 2002

After a generation of struggle for independence, Timor-Leste (East Timor) became the world's newest nation on 20 May 2002. This momentous event came with great pride, significant expectations and formidable challenges. The independence celebrations followed four centuries of colonial rule, a quarter of a century of brutal occupation and conflict culminating in displacement and devastation reaped by militia groups after the independence referendum of 1999.

The government and the people of East Timor are now actively engaged in the ongoing social, economic, and political development of their nation. East Timor ranks as one of the poorest countries in the world with daunting development challenges. Two years after independence:

- 41 per cent of the population live below the national poverty line of US 55 cents per day.
- 75 per cent of the population live in rural areas, the majority of whom are reliant on subsistence farming and have less than adequate food consumption.
- Life expectancy is 57.4 years compared to 79.0 years in Australia.
- Twelve out of every 100 East Timorese children born today will die before the age of five. This is one of the highest child mortality rates in the world.
- Nearly half of East Timor's children aged under five are underweight, with implications for their future development.
- More than one in every two adults are unable to read and write, while the average adult has had only three and half years of schooling.
- 45 per cent of the population is under the age of 15 years. Providing an education and subsequent job opportunities for this future generation is essential for East Timor's future development and social and political stability.

Although progress has been made in restoring the country's essential infrastructure following the widespread destruction of 1999, East Timor desperately needs new investment in establishing a road network, reliable power supply and other infrastructure essential for its development.

Following a moderate increase of 2% in real GDP in 2002, East Timor's economy declined by 2% in 2003, implying a drop in Gross National Income per person of 5% to US\$430. Urban areas have been most heavily hit by this economic downturn, with unemployment reaching at least 43% among young urban men.

East Timor faces difficult policy choices in addressing these challenges. How does it deliver jobs and livelihoods for its young population without compromising fiscal responsibility? How does it invest in educating future East Timorese to take on the task of becoming the country's doctors, teachers, police officers and public servants? How should it pursue historical justice for human rights crimes during the period of Indonesian occupation without jeopardising its overall relationship with Indonesia?

Underscoring the urgency of addressing these challenges, social unrest has become an increasingly important issue in newly independent East Timor. Riots in Dili in December 2002 saw the Prime Minister's residence and two other houses belonging to his family burned, with local police apparently unable to exercise control. This has been attributed to organised political motivated groups outside the mainstream parties mobilising youth motivated by frustration at the lack of jobs and livelihood opportunities. In response, the Government developed a stability plan for which it sought donor funds to implement.

East Timor must address these and other development challenges in an environment where the government budget is less than US\$74 million per annum, while it faces declining donor interest and budget shortfalls. In this environment, the revenues earned from Timor Sea oil and gas reserves are critical to improving the lives of the East Timorese people in the short term as well as for future generations.

#### **East Timor: poverty reduction and planning**

The National Development Plan drafted through broad consultation in early 2002 lays out the detail of the development vision and strategy for East Timor. The Government of East Timor has also developed annual Action Plans whereby the individual Ministries prioritise actions for the year. In early 2003, the government created "The Road Map" for medium term development strategies and "The Stability Plan" to address more immediate issues. In 2004, East Timor has been developing Sector Investment Programs which describe both the overall strategies, the priorities and the necessary inputs to achieve progress in nine critical sectors: education and training; health; agriculture and livestock; natural resources and environment; communications; power; transportation; water and sanitation and private sector development.

The international community has marshalled significant support for East Timor since the 1999 referendum. Australia is a major donor to East Timor with official development assistance exceeding \$234.5 million since 1999<sup>iii</sup>. In a recent statement to the United Nations Security Council, the Australian representative John Dauth claimed that *"No country has done more to assist Timor-Leste in building a stable and sustainable democracy"*.<sup>iv</sup>

However, over the same period Australia has received approximately \$2.14 billion (US\$1.5 billion) in oil revenues from areas of the Timor Sea which are twice as close to East Timor as they are to Australia, and would likely belong to East Timor under international maritime law<sup>v</sup>. In total, Australia has received nearly ten times as much revenue from Timor Sea oil and gas than it has provided in aid to East Timor since 1999.

In March 2002, Australia withdrew from the International Court of Justice's procedures for resolving maritime boundary disputes, denying East Timor's right to independent arbitration. This move effectively holds East Timor captive to an Australian-determined time line for negotiations. Australia has said that these negotiations could take up to 20 years, the bulk of the estimated commercial life of the oil and gas fields in question.

## 2. Poverty and the Timor budget gap

The Government of East Timor needs to urgently address the absolute poverty that exists in East Timor and to strengthen social, economic and political development in the long term. Encouragingly, East Timor has expressed its commitment to responsible development and spending to make the most of its meagre resources.

East Timor has extremely limited financial resources to address the massive reconstruction and poverty reduction needs. Although East Timor has had significant support from donors since 1999, this support has fallen from a peak of US\$300 per capita in 2000 to US\$175 per capita in 2004<sup>vi</sup>. Foreign aid levels are expected to continue to decline over the coming years. Australian aid to East Timor is no exception to this trend, decreasing by 8.4 per cent to \$39.9 million in 2004-5.

The East Timor Government is looking at ways to increase government revenues and reduce costs to reduce its current dependency on donor funding. In the 2003-04 financial year, East Timor estimates budget revenue of US\$74.6 million. Twenty seven percent of this revenue is anticipated to come from domestic sources, 23 per cent from Timor Sea tax revenues and 45 per cent from foreign aid, with five per cent carried over from the 02/03 budget. Due to limited financial resources, East Timor has implemented very tight budget management which has resulted in an extremely small civil service, minimal investment in infrastructure and the planned introduction of user pays systems for secondary education, electricity and water.

Despite these budgetary constraints, the Government of East Timor is committed to developing a “pro-poor” budget<sup>vii</sup>. This will ensure that the bulk of education and health funding will be spent in rural communities where the vast majority of East Timorese live.

Although running a balanced budget since 2002, East Timor’s paltry current annual budget of US\$74 million is heavily reliant on foreign aid which is set to rapidly decline over the next three years. In May 2004 the Government of East Timor announced cuts to its expenditure budget of US\$40.5 million over the next four years. These cuts will likely further reduce the government’s capacity to deliver essential services and improved infrastructure to meet the needs of the people of East Timor. Despite these cuts, East Timor still faces a budget deficit of US\$30 million for the next four years.

Although it is expected that revenues from the Timor Sea will increase in the next few years, far greater resources are needed in the long term for the comprehensive poverty reduction and development strategy that East Timor must implement to be able to address health and education, employment, justice, security and infrastructure needs.

The present interim Timor Sea maritime boundary arrangements which favour Australia are unlikely to generate sufficient income for East Timor to address its long-term development challenges. Under these arrangements East Timor will be able to sustain an annual expenditure

of approximately \$US100 million which would not enable the government to significantly expand delivery of essential health and education services nor scale up investment in infrastructure for its citizens. If however a maritime boundary were agreed consistent with East Timor's claim, oil and gas revenue to East Timor would enable the government to sustain an annual expenditure budget of \$US300 million to address the pressing needs of its people.

The importance of oil and gas revenue from the Timor Sea in financing East Timor's attack on poverty was underscored by East Timor Prime Minister Alkatiri in his opening speech at the unfruitful maritime boundary discussions with Australia in April 2004: *"For us, a twenty year negotiation is not an option. Timor-Leste loses one million dollars a day due to Australia's unlawful exploitation of resources in the disputed area. This is too many lost and wasted lives."*<sup>viii</sup>

### **The health of the nation**

In a village in Oecusse district a group of women are in a discussion about ways that they can improve health in their community - for their children and for themselves. The woman speaking has given birth to 14 children of whom only seven are still alive. She herself bears the impact of long term malnutrition, a likely reason for a number of miscarriages that she has suffered in addition to those 14 births.

Her story is not a rare one in rural East Timor. With inadequate public funds, the nearest health post will remain a two-hour walk away, the nearest hospital a four-hour walk. As the budget crisis deepens, the distance between women such as these and access to essential government services will grow longer.

### 3. Australia and East Timor – a long history

In 1941 Australian troops were sent to Portuguese Timor<sup>ix</sup> in order to prevent the Japanese from using East Timor as a launching pad for an invasion of Australia. This unilateral action violated Portuguese neutrality and had the effect of dragging the people of East Timor into the Second World War. Australia's intervention was met with a full-scale Japanese invasion of East Timor in February of 1942. A small Australian force continued to wage a guerilla until 1943 with the help of many Timorese people. The result of East Timorese's involvement in WWII was an estimated

#### The other Timor Sea resource

On the beaches of Suai, groups of women often gather around fires sharing stories and chatting about their families. But this is not a social event for women such as Odete Soares and Anita Guar who spend their days boiling the waters of the Timor Sea down for salt that they then sell at the local market. This process is exhausting and time consuming, and yet a single bag sells for approximately \$US1. The average household expenditure in East Timor is US \$24.20/month. Three quarters of the population live in rural areas, most of whom are based in subsistence agriculture. These local salt-entrepreneurs have made the most of their surroundings. However, the use of wood for fuel to boil water leads to soil degradation, erosion and increased flooding, which in turn has caused enormous problems. In the meantime, these women will continue to use the only Timor Sea resources that are available to them.

60,000 deaths and the razing of much of their country. As Australian forces departed East Timor, they urged the East Timorese to continue to resist the Japanese, and dropped leaflets declaring "Your friends do not forget you."<sup>x</sup>.

When Indonesia invaded East Timor in 1975, it began a 25-year occupation that cost the lives of estimated 200,000 East Timorese as a result of violence and famine. The occupation of East Timor was condemned by United Nations, Security Council Resolution 384 on December 22, 1975. In the many resolutions since then, the United Nations continued to assert East Timor's right to self-determination, but Australia was the only nation to officially recognise Indonesia's "annexation" of East Timor. Australia's *de jure* recognition of Indonesian sovereignty

in East Timor was expressly linked to its desire to negotiate a seabed boundary in the Timor Sea. In a submission to then Foreign Minister Andrew Peacock in 1978, the Department of Foreign Affairs advised the government to "slip" into *de jure* recognition as this was necessary for commencing negotiations with Indonesia for a seabed boundary in the "Timor Gap"<sup>xi</sup>.

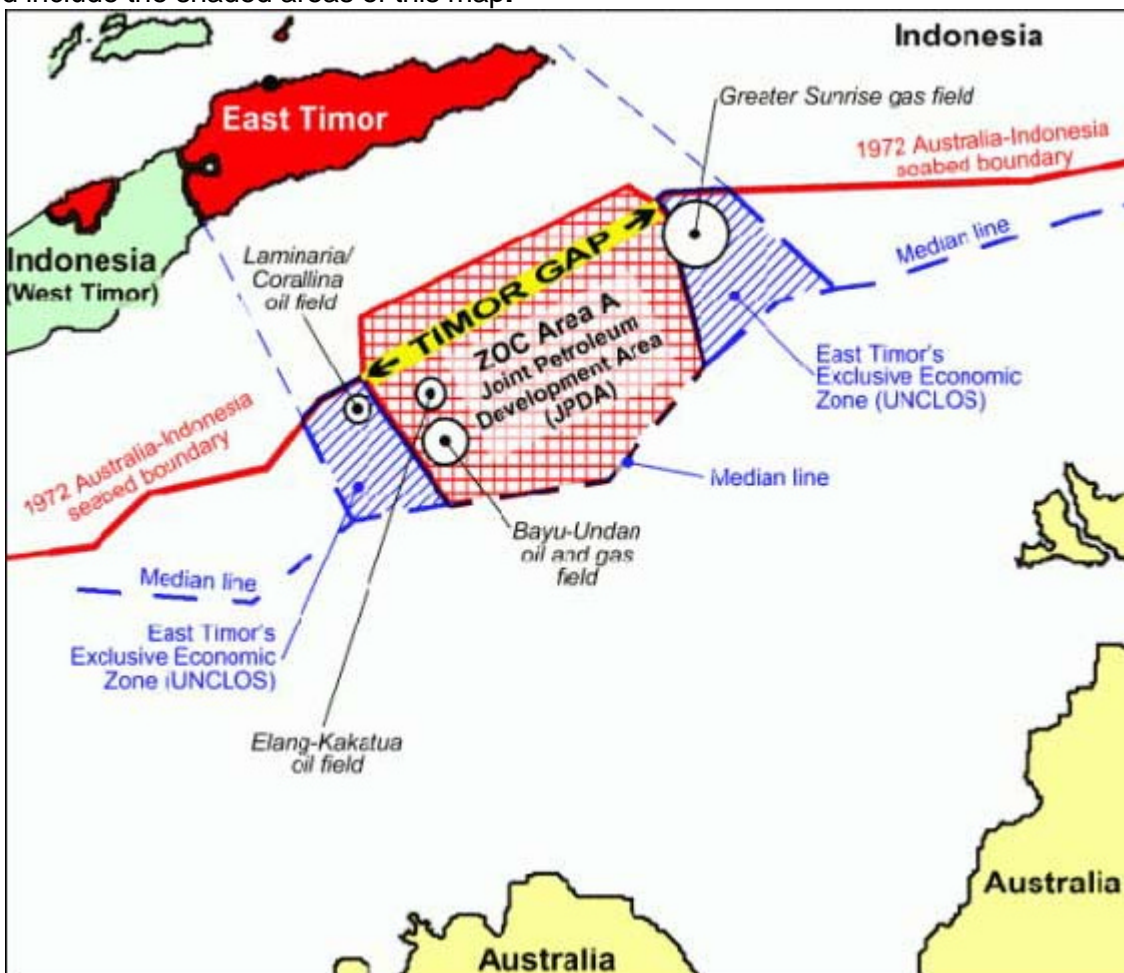
In January 1999 Indonesian President Habibie declared that the people of East Timor would be asked to vote on integration with Indonesia. Subsequently, violence increased dramatically, culminating in extreme human rights violations and widespread destruction after the referendum in August 1999. Responding to public pressure within Australia, the Australian Government agreed to the Australian Defence Forces leading INTERFET forces which entered the smouldering capital on 20 September 1999. Since that time the Department of Defence has spent around \$2 billion in East Timor<sup>xii</sup>. In addition to military assistance, the Australian Government has provided \$234.5 million<sup>xiii</sup> in aid to East Timor focusing on community development, education, water supply and sanitation, health, agriculture, rural development and food aid programs.<sup>xiv</sup> The support of Australian people throughout the Indonesian occupation,

the arrival of INTERFET and the Australian aid program have all contributed towards a strong feeling of goodwill among East Timorese towards Australians. Equally, Australians are proud of the role that they have played in the rebuilding of East Timor.

#### 4. Maritime boundaries in the Timor Sea

Maritime boundary negotiations are governed by the 1982 *United Nations Convention on the Law of the Sea* (UNCLOS). Opportunities for mediation and resolution of conflicts over maritime boundaries exist within the *International Tribunal on Convention of the Law of the Sea* (ITCLOS) or under the International Court of Justice (ICJ). The Australian Government withdrew from the dispute settlement mechanisms of the International Court of Justice and the International Law of the Sea in March 2002, exactly two months before East Timor became independent.

International law allows for a country to claim an Exclusive Economic Zone 200 nautical miles from its shoreline. Under UNCLOS, where there are areas of overlapping claim, for example if two nations are closer than 400 nautical miles (such as in the Timor Sea), those countries are required to negotiate a boundary, with the standard measure of delimitation being the “median” line, that is, a border mid-way between the two countries. If the borders between East Timor and its neighbours were to be drawn according to the median line principle, East Timor’s territory would include the shaded areas of this map.



Note: this map details only the oilfields that are in an area of overlapping claim.

East Timor has claimed its Exclusive Economic Zone (EEZ) of 200 nautical miles<sup>xv</sup> while the Australian Government has claimed a maritime border considerably closer to East Timor than to Australia; on average a mere 50 nautical miles from East Timor's southern coastline.

**The Government of East Timor's position:**

International law would set the frontal boundary dividing the Timor Sea into northern and southern parts as an equidistance line (or halfway line) between East Timor and Australia. It should be noted that the entire Timor Sea Treaty area lies on the East Timor side of the equidistance line.

A boundary drawn according to international law would set lateral boundaries dividing the eastern and western parts of the Timor Sea in such a manner as to give East Timor a significantly wider area than the Timor Sea Treaty area. These wider lateral boundaries would give East Timor all of the Greater Sunrise field, and the Buffalo, Laminaria and Corallina fields. All of these fields are much closer to East Timor than to Australia.

[www.timorseaoffice.gov.tp](http://www.timorseaoffice.gov.tp)

The Government of Australia has based its border delineation on the 1958 United Nations Convention on the Continental Shelf whereby the Australian Government claims an exclusive economic zone (EEZ) to the end of the continental shelf (which Australia has identified by a large trough in the Timor Sea). However, this argument has been questioned as some geological surveys demonstrate Australia's continental shelf may actually fall on the northern side of East Timor<sup>xvi</sup>. Geologists believe that the Timor trough may not actually be the end of Australia's continental shelf, but in fact simply a dip in it. In this assessment, the island of Timor may actually *be* a part of Australia's continental shelf, with the continental shelf's edge falling on the *north* side of the island. This would render Australia's UNCCS argument mute, unless it intended to also claim the entire island of Timor as its exclusive economic territory.

In any event, what lies under the sea is now considered all but irrelevant for resolving overlapping claims (defined as where two countries are less than 400nm apart). One of the classic texts on the law of the sea states: "In other words title to the continental shelf is now based on a distance criterion. The consequence of this must be that geological and geomorphological factors are all but irrelevant, at least in the case of states opposite each other and less than 400 miles apart" (Churchill and Lowe, *The Law of the Sea*, 1999).

Current international law recognises the median line argument which would overrule the 1958 convention. The East Timor Government has cited 60 maritime boundary agreements between countries that have relied on the median line to resolve overlapping claims, and a further 20 arbitrated settlements. Only one, the Indonesia-Australia agreement, relied on the continental shelf argument to resolve an overlapping claim, and this was agreed more than 30 years ago. For this reason that the Government of East Timor believes it has a strong case under international law for its position. Australia's refusal to adhere to dispute settlement mechanisms is effectively denying East Timor the opportunity to negotiate the maritime boundaries within the framework of international conventions.

East Timor also needs to negotiate its eastern and western (lateral) maritime boundaries with both Australia and Indonesia. East Timor is claiming a maritime boundary significantly further to

both the east and west than the JPDA, an outcome which would bring both the Greater Sunrise and Laminaria/Corallina resources within East Timor's jurisdiction.

Indonesian legislation recognises that in the absence of an established maritime boundary agreement between Indonesia and another country, "...the boundary line shall be the median line or the line equidistant from Indonesian baselines or territorial base points and those of the other state concerned<sup>xvii</sup>. The East Timor Maritime Zones Act requires peaceful settlement of questions of maritime delimitation, "taking into account the relevant principles and rules of international law".

## 5. History of negotiation of maritime boundaries

In 1972, Australia and Indonesia came to an agreement on a permanent maritime boundary with Indonesia delimiting the boundary at the edge of Australia's continental shelf. At the same time, Portuguese East Timor refused to accept the same boundaries thus creating an area commonly known as the "Timor Gap" where there was no agreement and thus resources could not be exploited. The Australian Ambassador to Indonesia at the time of the invasion of East Timor, Richard Woolcott, said "closing the present gap in the agreed border...could be much more readily negotiated with Indonesia...than with Portugal or independent Portuguese Timor"<sup>xviii</sup>. Upon recognition by Australia of Indonesia's annexation of East Timor, negotiations with Indonesia on the Timor Gap commenced. These negotiations were concluded in late 1989 with an agreement for a 50/50 split of revenues within Zone A, referred to as the Joint Petroleum Development Area (JPDA). This agreement was called the Timor Gap Treaty. After the referendum in 1999, UNTAET (United Nations Transitional Authority in East Timor) agreed to the continuity of the terms of the Timor Gap Treaty, through an Exchange of Notes in February 2000 which enabled East Timor to receive Indonesia's share of revenues until a new treaty agreement could be reached. The Exchange of Notes was always considered a temporary measure.

By far the largest resource within the Timor Sea is referred to as the Greater Sunrise oil and gas resource – estimated to be worth \$US30 billion. In early March 2002, the soon to be Prime Minister of East Timor, Mari Alkatiri stated that all of the Greater Sunrise development would fall in East Timor's territory according to median line principles. East Timor stated that if Australia refused to recognise East Timor's territorial rights, then East Timor would seek arbitration of the Timor Sea maritime boundaries issue through the *International Treaty on the Law of the Sea* (ITLOS) mechanism at the International Court of Justice (ICJ), as is its right within international law. On March 21, 2002, the Government of Australia withdrew from ITLOS, effectively denying East Timor the right to independent arbitration and at the mercy of an Australian negotiating schedule. This was seen by the East Timorese as an "unfriendly" act.

Despite East Timor's concerns, an Exchange of Notes for the Timor Sea Treaty was signed between the two prime ministers in May 2002. This memorandum of understanding avoided a legal vacuum until the ratification of the new Timor Sea Treaty by the parliaments of each country. The Timor Sea Treaty only covers the Joint Petroleum Development Area (JPDA) and not the full area covered by East Timor's maritime boundary claim. The Timor Sea Treaty provides that 90 per cent of the revenues from the JPDA and go to East Timor, and 10 per cent to Australia.

The Australian Government promotes this 90:10 agreement with East Timor as very generous deal. However it is important to note that the entire JPDA falls within the territory claimed by East Timor and that Australia is receiving \$1 million per day from oil fields located in areas subject to overlapping claims that fall outside the area covered by the Timor Sea Treaty.

## Spin city. Australia's generous 90:10 deal?

The Australian Government's spin doctors were quick to inform the Australian public of the generous deal that it had negotiated with East Timor. The spin suggests that East Timor will receive 90 per cent of the Timor Sea cake under the interim Timor Sea Treaty. What the spin doctors carefully avoid disclosing is that East Timor will receive 90 per cent of just one slice of a much larger cake – the great bulk of which Australia aims to gobble up. In reality, East Timor receives 90 per cent of revenue from just one part of the Timor Sea that it claims as its territory – the Joint Petroleum Development Area or JPDA. Below is a summary of the actual revenue share of the larger Timor Sea cake between East Timor and Australia.

**Laminaria-Corallina:** These fields subject to overlapping maritime boundary claims began production in late 1999 and are now considered to be 75 per cent exhausted. Australia is conservatively estimated to have received US\$1.5 billion in taxes and royalties up until mid 2003. Timor-Leste has not received any revenue from these fields<sup>1</sup>.

Australia US\$1.5 billion (100%) <sup>1</sup> : Timor-Leste 0 (0%)
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**Buffalo and Buller:** These are smaller fields discovered in 1996 and believed to be close to exhaustion. Australia has been receiving revenue from these fields however the figures are unavailable.

**Elang Kakatua:** falls wholly within the JPDA. Production began in 1998 but is now nearing the end of its commercial life. Up until 2003, Australia has received approximately AU\$40 million (US\$21.6 million<sup>1</sup>) in royalties not including company tax receipts<sup>1</sup>. Since independence in May 2002, 90 per cent of revenue flows from this field are forwarded to Timor - Leste. These add up to approximately US\$26.7 million for the year 2002/2003.

Australia US\$21.6 million <sup>1</sup> (45%) : Timor-Leste US\$26.7 million (55%)
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**Bayu-Undan:** falls wholly within the JPDA. Production is due to begin in early 2004 with an expected commercial life of 17 years. Estimated resources include 400 million barrels of condensate and Liquid Petroleum Gas (LPG) and 3.4 trillion cubic feet of natural gas<sup>1</sup>. As above, since May 2002 90% of revenue flows from this field will be forwarded to Timor-Leste. The expected revenue flow to Australia is US\$1.1 billion and to Timor-Leste is US\$3 billion. In addition, Australia is expected to receive additional benefits through direct investment and employment through construction of a gas pipeline and LPG plant in Darwin totalling US\$1.5 billion. Timor-Leste is expected to receive additional benefits totalling US\$55 million in direct investment by the oil companies and supply of LPG at concessional rates<sup>1</sup>.

Australia US\$2.59 billion (46%) : Timor-Leste US\$3.06 billion (54%)
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**Greater Sunrise:** First sales of gas are planned in October 2008 and these fields are estimated to contain 300 million barrels of condensate and 8 trillion cubic feet of natural gas<sup>1</sup>. Only 20.1% of these fields fall within the JPDA East Timor will receive 18% (90% of 20.1% within the JPDA) of revenues from Greater Sunrise. The expected tax revenue flow to Australia is AU\$8 billion and to Timor-Leste AU\$2 billion. Australia is also expected to receive enormous additional benefits from employment and infrastructure through onshore processing totalling approx AU\$22 billion or AU\$700 million if it there is an offshore installation.

Information from Timor Sea Office, Office of the Prime Minister of the Government of East Timor and La'o Hamutuk Bulletin, August 2003.

East Timor agreed to sign the Timor Sea Treaty on the basis that this was an interim treaty and would not be prejudicial to permanent maritime negotiations. The preamble of the Timor Sea Treaty states that: *“in the absence of delimitation, the further obligation for States to make every effort, in a spirit of understanding and co-operation, to enter into provisional arrangements of a practical nature which do not prejudice a final determination of the seabed delimitation”*

There was an expectation by the East Timorese that negotiations on permanent maritime boundaries would commence in good faith, as stated by the Australian Prime Minister, John Howard.

On this basis, the Timor Sea Treaty was ratified by the Parliament of East Timor in December 2002, fulfilling a written commitment by both countries to have ratified the treaty by the end of the year. However, the Government of Australia refused to ratify the Timor Sea Treaty until the legally unrelated International Unitisation Agreement (IUA) for the Greater Sunrise oil and gas field was signed by Prime Minister Alkatiri. The IUA governs the Greater Sunrise and Troubadour oil fields which fall partially inside and partially outside the JPDA, but wholly within the exclusive economic zone claimed by East Timor.

The IUA allows Timor only 20.1 per cent of the revenues from the Greater Sunrise field<sup>xix</sup>. With the Australian parliament refusing to ratify the Timor Sea Treaty until Prime Minister Alkatiri signed the IUA, East Timor had little choice but to sign this agreement because the revenues held in trust until ratification of the Timor Sea Treaty were critical to East Timor’s capacity to address the pressing needs of its citizens.

However, the IUA also makes very clear that the initial revenue share is subject to a final agreement on maritime boundaries. It also expressly acknowledges East Timor’s maritime rights in the area of Greater Sunrise. The preamble states that both countries have “made maritime claims, and not yet delimited their maritime boundaries, including in an areas of the Timor Sea where Greater Sunrise lies”.

#### **Greater Sunrise oil and gas fields**

East Timor believes that the Greater Sunrise fields lie wholly within East Timor’s territory in accordance with principles of established international law (see map). These fields are estimated to contain 300 million barrels of condensate and 8 trillion cubic feet of natural gas. Only 20.1 per cent of these fields fall within the JPDA and thus while Australia delays negotiation and denies independent arbitration, under the interim arrangements of the Timor Sea Treaty, East Timor would receive only 18 per cent (90 per cent of 20.1 per cent within the JPDA) of revenues from Greater Sunrise. Australia is also expected to receive enormous additional benefits from employment and infrastructure through onshore processing totalling approx \$22 billion or \$700 million if it there is an offshore installation.

**Australia’s withdrawal from the International Court of Justice on maritime boundary issues denies East Timor its right to independent arbitration of its permanent maritime boundaries and thus to an independent decision as to whether these revenues rightfully belong to the East Timorese people.**

Importantly, both the Timor Sea Treaty and the IUA are legally “without prejudice” to future maritime boundaries and will cease upon delimitation of a permanent maritime boundary between Australia and East Timor. Although both Prime Ministers had signed, neither government had ratified the International Unitisation Agreement (the agreement that would govern the Greater Sunrise fields) until mid March 2004.

On March 10, 2004, the Australian Government tried to rush the ratification legislation through both the House of Representatives and the Senate in a single day. The opposition parties sent the legislation to the Senate Economic Legislation Committee for consideration. The legislation

was subsequently passed by the Australian Senate on 29 March 2004.

#### **Australian Senate Debate 29 March, 2004**

The following interesting issues arose from the Senate debate:

- The Australian Government accepts the jurisdiction of the International Court of Justice except on issues of maritime boundaries. As Mr. Campbell from the Attorney-General’s office pointed out “We accept it (the ICJ) for many purposes but this is one purpose for which the government did not feel we could accept it.” **Why, if Australia were confident in the legality of its position, is this the single “purpose” whereby Australia rejects the ICJ jurisdiction?**
- The Australian Government had not responded to the petition signed by fifty-three US Congressmen regarding Australia’s responsibility under international law in negotiations on maritime boundaries in the Timor Sea. Chris Moraitis, Australian Government negotiator stated that the letter was “Not of concern. It is to be expected”. **Why does the Australian Government expect a negative international reaction to its position, even from one of Australia’s closest allies?**
- The Australian Government could not provide a rationale for limiting negotiations to six-monthly meetings except to say that the issues are “complex” and that “this sort of timetable at this stage...has been adopted in relation to other maritime boundary negotiations.” Examples could not be provided.

In passing the legislation the Australian Labor Party failed its first test on this issue. At its 2004 national conference, the ALP adopted a resolution which states that Labor “*recognises that the people of East Timor have the right to secure, internationally recognised borders, with all neighbouring countries*”. The ALP committed that “*a future Labor Government will negotiate in good faith with the Government of East Timor, in full accordance with international law and all its applications, including the United Nations Convention on the Law of the Sea. In Government Labor will do all things reasonably practicable to achieve a negotiated settlement within 3-5 years. The conclusion of the maritime boundary should be based on the joint aspirations of both countries*”<sup>xx</sup>.

By agreeing to support ratification of the IUA, ALP Senators appeared to contradict their own policy.

## 6. A permanent maritime boundary within three-to-five years

It is the right of all countries to negotiate their permanent maritime boundaries under international law. The Government of East Timor has consistently sought to establish permanent maritime boundaries with Australia, as is its right according to international law, and has requested monthly meetings to speed up negotiations. The East Timor Government has also requested that an impartial court be available to mediate or to decide the matter. *"We are so confident on the legal correctness of our position that we are prepared to have any impartial court – the International Court of Justice, the International Tribunal for the Law of the Sea or an international arbitral tribunal to decide the matter on the merits<sup>xxi</sup>".*

"...there's such an inherent disparity in the power of the two entities that it would be in everybody's interests in terms of fairness to have a third party in it."  
Barney Franks, US Congressman (Dem)  
ABC Radio, 12 March 2004

Despite this, the Australian Government has refused to reinstate adherence to ITCLOS or the ICJ. The Australian Government is in a position to exert significant power over its small neighbour during negotiations. Australia can afford to delay talks as the revenues are not significant in terms of Australia's budget whereas for East Timor they are a "matter of life and death" according to East Timor Prime Minister Mari Alkatiri.

Australia will only agree to six monthly negotiation meetings beginning with preliminary talks in November 2003 and a second meeting held in April 2004. The Australian Government claims lack of resources as the reason for biannual instead of monthly meetings. In the April 2004 talks, Prime Minister Alkatiri offered to *"make available East Timorese funding to support the*

*Australian government to engage in monthly talks"*. At the end of the April 2004 negotiations, the Australian government would only commit to a next round of talks in September 2004.

### Is this generous to East Timor?

Laminaria-Corallina and Buffalo are oil fields that East Timor claims to be fully within its maritime boundary. Australia commenced receiving revenues from these fields in 1999 and it is now estimated that the resources are 75 per cent exhausted. From 1999 to June 2003 Australia earned an estimated \$2.14 billion (US\$1.5 billion) in tax revenue from these fields. **Australia has received nearly ten times as much contested oil and gas revenue as it has provided in aid to East Timor since 1999.**

It is critical for East Timor to negotiate maritime boundaries in a timely manner because oil and gas resources are limited and because Australia is receiving revenue from resources that East Timor claims lie within its territory.

## 7. Commitment to transparency of oil revenues

Transparency is an issue for all governments, especially those with large mineral deposits. There are many examples of countries rich in oil and minerals where the wealth has had minimal benefit for the people of those nations.

A significant challenge for East Timor will be to escape the so called “resource curse” – the well documented tendency for poor countries with large incomes from extractive industries to suffer disastrous economic and political outcomes. In countries such as Angola and Nigeria, resource export revenues have funded unsustainably large government bureaucracies and driven up exchange rates, making other non-mineral export industries less competitive. The resource curse can encourage corruption and corrode public trust in government institutions.

This challenge appears to be a high priority for the East Timorese Government which has signed the Extractive Industries Transparency Initiative started by British Prime Minister Tony Blair in 2003. Prime Minister Mari Alkatiri stated at this conference that *“Proper management of revenues from this (the oil and gas) sector is critical in ensuring a strong economic and stable political future, not only for the current generations, but for the future generations too”*<sup>xxii</sup>. He committed himself, and his government, to creating and maintaining a system and culture of transparency in East Timor.

### Management of revenues from the Timor Sea

East Timor receives royalties (percentage of the value of the oil/gas produced paid to the government) and taxes (income and value-added taxes levied on the companies involved in the industry).

All royalties from fields within the Joint Petroleum Development Area (JPDA) are paid directly to the Timor Sea Designated Authority (TSDA). The royalties are known as the First Tranche Petroleum (FTP). The TSDA is an entity that has been created to govern the JPDA and is governed by a Ministerial Council (made up of one member each from Australia and East Timor) and the Joint Commissioners (two members from East Timor and one from Australia). Once the royalties (FTP) are paid to the TSDA, they are split: 90 per cent goes to East Timor, 10 per cent goes to Australia. The TSDA is subject to external audits by both Australia and East Timor.

East Timor’s share of the FTP is paid to the Treasury of East Timor, and maintained in a special account by the Banking and Payments Authority (East Timor’s Central Bank). East Timor is currently discussing the creation of a Petroleum Fund similar to that of Norway, although legislation for the Petroleum Fund has not been created yet.

Taxes on the fields of the JPDA are given directly by the relevant companies to the Treasury and placed in the active account of the Government of East Timor at the BPA. The current policy is that this money is used by the Government of East Timor to service its budget.

As with all nations, the Government of East Timor is run by people, and people are fallible, so there is always the possibility of corruption. A good transparency framework cannot keep people from trying to steal money, but what it can do is set up systems so that people are caught and there are grounds for prosecution. It is important that civil society engages with and closely monitors the establishment and implementation of systems that account for reserves from the Timor Sea. It is critical that civil

society organisations are given the political space to be active in monitoring revenue management.

To date the Government of East Timor has hosted three major conferences on transparency and accountability<sup>xxiii</sup>. Prime Minister Alkatiri expressed that *“In the process of building a state, of building a democratic state, it is fundamental that...transparent public administration is promoted to safeguard the rights and interests of the citizens.”*

## 8. Is Australia being a good neighbour?

*"Today, with the ending of occupation by Indonesia, we come up against the wrongful seizure of our natural resources by Australia."*

– President Xanana Gusmão<sup>xxiv</sup> April 2004.

Under international law and the IUA, Australia is required to show restraint in exploiting oil and gas reserves in areas of overlapping claims. It has been suggested that the Australian government has a strategy to delay resolution on permanent maritime boundaries while continuing to exploit oil and gas resources that lie within territory claimed by East Timor. Specifically, the Australian Government continues to:

- issue unilateral exploration licenses, the most recent being the awarding on d2003 of NT/P65 which abuts the Greater Sunrise field.
- unilaterally accept bidding on new exploration licenses within areas of overlapping claim with East Timor. In fact, the Government of Australia offered lots NT04-1 and AC-041 for auction on March 29, 2004 which lie in the area where East Timor has asked Australia to show restraint.
- receive revenues from the Laminaria – Corallina, Buffalo and Buller fields, which are outside the JPDA but well within the maritime boundaries claimed by East Timor based on median line principles.

This has occurred despite the Australian Government having been requested to place revenues earned from any field in contested areas into trust until the maritime boundary with East Timor has been settled, guarding the revenues for their eventual rightful owner – whichever country that may be<sup>xxv</sup>.

It is in Australia's national interest to do all we can to reduce poverty and promote social, economic and political stability in East Timor. Central to this is an urgent need to expedite agreement to a permanent maritime boundary with East Timor. Access to oil and gas revenue from the Timor Sea is a vital economic lifeline to address the poverty experienced by the majority of East Timorese people.

## 9. What do the East Timorese think?

There is increasing discontent throughout East Timor at Australia's approach to Timor Sea issues. At the December 2003 Timor Leste Development Partners meeting, East Timorese NGO La'o Hamutuk claimed that Australia has already taken more than \$US1 billion from the disputed areas, and referred to East Timor as "*the largest foreign contributor to Australia's national budget*".<sup>xxvi</sup>

The Centre for Independent Information on the Timor Sea (CIITT) is an umbrella organisation that represents 13 civil society organisations in East Timor. In a recent press release from CIITT, Demetrio de Carvalho is quoted as saying "*Unless a fair and just boundary settlement is reached, Australia is effectively robbing 60 per cent of oil and gas revenues from the impoverished people of East Timor*" and that "*it is ironic that on the one hand Australia's aid agency talks about poverty reduction...for Timor Leste, on the other hand, Australia takes away our only resource that will reduce poverty in our country.*"<sup>xxvii</sup>

The concern over Australia's action is growing momentum. Speaking about the areas of overlapping claim, Prime Minister Mari Alkatiri has said "*as long as Australia continues to illegally occupy this area of the Timor Sea, it is undermining our territorial integrity.*"<sup>xxviii</sup>

There were peaceful protests against the Government of Australia's position on the Timor Sea in the lead-up and during the April 2004 negotiations on permanent maritime boundaries.

With this recent increased expression of discontent at Australia's political manoeuvring over the Timor Sea, it seems unlikely that the Parliament of Timor Leste will ratify the International Unitisation Agreement.

## 10. What does the International community think?

It is not only Timorese who are concerned about the process of negotiating maritime boundaries. At the Timor Leste Development Partners Meeting in Dili in December 2003, the European Union wished for a *“rapid and successful conclusion (to the negotiations) with full respect for international laws”*.

In March 2004, United States Congressman Barney Frank and 52 of his colleagues signed a petition stating that it hoped Australia’s *“commitment to the freedom and security of East Timor will include recognition of East Timor’s territorial integrity and its right to a swift, permanent resolution of the maritime boundary dispute.”*<sup>xxix</sup>

In the April 2004 Special Report of the U.N. Secretary-General to the Security Council, Kofi Annan recognised that: *“Progress in [the area of maritime boundary talks] is crucial to permit development of petroleum resources in the region, and to ensure that benefits are shared in an appropriate and agreed manner.”*

### Access to markets in Covalima

“Often we have the crops to sell” says the sub-district administrator for Fatumean, in Covalima district “but the roads are so bad that we can’t get to market.” This is a chronic problem for farmers in East Timor, since access to the everyday market averages 20.6km from the village centre. During the rainy season most of the roads become impassable due to landslides. Until now, the Government of East Timor has only been able to fund 14.3 per cent of the public works sector on its own, with donors providing 85.7 per cent. There is a large funding gap projected over the next three years in this sector. 75 per cent of East Timor’s population live in rural areas and significant investment in rural infrastructure is required in order to alleviate poverty alleviation and build sustainable livelihoods within rural communities. Long term development strategies are dependent on the continued benefits from the Timor Sea resources for generations to come.

<sup>i</sup> All dollar amounts are in Australian dollars unless otherwise stated.

<sup>ii</sup> Timor Sea Office: [www.timorseaoffice.gov.tp](http://www.timorseaoffice.gov.tp)

<sup>iii</sup> Government of Australia, *Statement of Australia, Timor Leste Development Partners Meeting*, December 3-5, 2003

<sup>iv</sup> United Nations Press Release No. SC/8005, February 20, 2004

<sup>v</sup> Timor Sea Office, *Media Release: Australia is undermining “Greater Sunrise” development*, March 22, 2004

<sup>vi</sup> World Bank, *Background Paper for the Timor Leste and Development Partners Meeting*, 3-5 December 2003, Annex III, pg. 3

<sup>vii</sup> Government of RDTL, *Mid-Year Budget Review-Timor Leste Development Partners Meeting*, December 3-5, 2003

<sup>viii</sup> Alkatiri, Mari, *Welcome Statement to the Maritime Boundary Negotiations*, 19<sup>th</sup> April 2004

<sup>ix</sup> Prior to 1975, East Timor was a colony of Portugal and thus was named internationally known as “Portuguese Timor”

<sup>x</sup> Taudevin, Lansell, *East Timor: Too Little Too Late*, Duffy & Snelgrove, Sydney, 1999, pg. 19

<sup>xi</sup> *Australia and the Indonesian Incorporation of Portuguese Timor 1974-1976*, Melbourne University Press, 2000, p840

<sup>xii</sup> an editorial in the Australian in January 04 put the commitment at exactly 2 billion

<sup>xiii</sup> Auditor General, *Audit Report – Aid to East Timor*, December 2003, pg. 12

<sup>xiv</sup> AusAID, *Australia’s Overseas Aid Program in Timor-Leste*, December 2003

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<sup>xv</sup> Maritime Zones Act (MZA) July 2002 claims for Timor-Leste its exclusive economic zone and seabed (continental shelf) entitlement extending 200 nautical miles from Timor-Leste's coast, pending an agreement on

boundaries with its neighbours.

<sup>xvi</sup> Presentation by Francisco Monteiro, Office of the President of RDTL, Transparency and Governance in Oil Revenues Workshop, Dili, March 2004.

<sup>xvii</sup> Dean Bialek, Submission to JSCOT, Review of Timor Sea Treaty, 2002. Reference to *Act no 5 of 1983 on the Indonesian Economic Exclusive Zone*. 18 October 1983, article 3(1).

<sup>xviii</sup> La'o Hamutuk, "Chronology of Oil and Gas Developments in the Timor Sea", *La'o Hamutuk Oil Web*, December 2002

<sup>xix</sup> Timor Sea Office, *Fact Sheets-The Greater Sunrise IUA*, Last downloaded March 2004

<sup>xx</sup> ALP National Congress, January 2004.

<sup>xxi</sup> Alkatiri, Mari, *Welcome Statement to the Maritime Boundary Negotiations, 19<sup>th</sup> April 2004*

<sup>xxii</sup> Alkatiri, Mari, *Statement on the Occasion of the Extractive Industries Transparency Initiative (EITI) Multi-stakeholder Conference*, June 17, 2003

<sup>xxiii</sup> These conferences were the International Conference on Transparency and Accountability, Nov 2003, the Transparency and Governance in Oil Revenues, March 2004 and the Workshop on Transparency and Accountability in Public Administration, May 2004.

<sup>xxiv</sup> President Xanana Gusmão in a speech to Lisbon University on the Building of East Timor, 22<sup>nd</sup> April 2004

<sup>xxv</sup> Mari Alkatiri 19 April 2004.

<sup>xxvi</sup> La'o Hamutuk, *Statement to the Development Partners Meeting*, December 3-5, 2003

<sup>xxvii</sup> CIITT, *Media Release: Timor NGOs plan protest on Timor Sea*, April 9, 2004

<sup>xxviii</sup> Timor Sea Office, *Media Release: Timor-Leste protests unlawful exploitation of its resources*, March 30, 2004

<sup>xxix</sup> Barney Frank et al., *Letter to Prime Minister John Howard*, March 8, 2004