



**Post-Election Situation:
“Between Constitutionality and Arbitrary Rule”**

Mahein’s Voice No. 125, August 25th, 2017



FundasaunMahein (FM)
Website: www.fundasaunmahein.org
2017



Table of Contents

Table of Contents	2
Introduction	3
Methodology	3
The Extension of the Parliament's Mandate	3
The "Interim Government"	5
Conclusion	6
Recommendations	7
Bibliography	8



Introduction

The results of the July 22nd Parliamentary Election revealed that five parties had crossed the 4% to win seats in parliament for the 2017-2022 term. These parties were FRETILIN (29,7%), CNRT (29,5%), PLP (10,6%), PD (9,8%) and KHUNTO (6,4%). The results were validated by the Appeals Court and officially published on August 1st, 2017.

Despite the announcement of the official results, the newly elected MPs have yet to take office. Instead, the expired legislature has continued holding sessions. In effect, the current administration now functions as an “Interim Government.” This situation has prompted various reactions from political leaders and from Timorese society as a whole.

According to the procedures stipulated by the Constitution, the mandates of the outgoing legislature expired on July 30th, 2017. The MPs have mandates of just five years (Constitution Article 93 n.º 4), and the most recent parliamentary period began on July 30th, 2012. Furthermore, according to law, the inauguration should occur fifteen days after the Appeals Court’s announcement of the valid election results. Since this year the court announced the results on August 1st, the current government has now remained in office more than two weeks past the deadline.

The president of the outgoing parliament, Aderito Hugo, told the media that “the mandate of the third legislature was extended by the parliamentary session on August 1st, 2017. The mandate was extended due to the impact of changes in the election calendar” (Tatoli – News Agency of Timor-Leste, August 1st, 2017). Other reasons included the FRETILIN party’s request to delay the new MP’s inauguration and the stated desire to wait for former Prime Minister Xanana Gusmao to return from abroad before inaugurating the new legislature and forming the new government.

This report discusses the parliament’s expired mandate and the legality of the MPs extending their term via a parliamentary session. It concludes by examining the formation of an “Interim Government” to which the outgoing prime minister has alluded. The most important question is: Is this constitutional?

Methodology

FM’s initial process consists of analyzing the MPs’ mandates and examining the relevant sections of the Constitution, the regulations concerning the National Parliament, relevant legislation, and news from private or public media. Once this process is finished, FM researchers also consult with Timorese jurists. They concluded the research-gathering for this report through a method called *Security Sector discussion* (SSD). SSD involves FM researchers discussing and analyzing relevant topics in order to write a report and produce recommendations.

The Extension of the Parliament’s Mandate

The National Parliament of Timor-Leste represents the Timorese people and wields legislative and fiscal power (Constitution article 92). Each parliament has a five-year term (Constitution article 93 n.º 4). Article 4 of the Constitution states:

“The mandate of the deputies begins with the first session of the National



Parliament following the election and ceases with the first session after the subsequent election” (Article 4 n.º 1).

According to the Constitution, this initial session of each new parliament must occur fifteen days maximum after the publication of the official election results. This is defined in National Parliament Rules n.º 1/2016, of May 11th (first alteration to the National Parliament rules approved in 2009) article 41 n.º 1, which states:

“The first session of Parliament after the elections is scheduled by the outgoing President of Parliament by a deadline a maximum of fifteen days from the counting of the data and the official publication of the results.”

However, this year, the Appeals Court published the official parliamentary election results on August 1st. Counting from this day, the new MPs should have been inaugurated on August 16th. But from that time up to the present the new legislature has yet to take office for reasons that lack a constitutional basis.

On August 1st, the outgoing deputies extended their already-expired five-year mandate, which had run from July 30th 2012 to July 30th 2017. This means that the current MPs mandates have expired and the current parliament has no constitutional authority.

Parliamentary President Aderito Hugo justified the extension of the legislature’s tenure by pointing to the calendar change of the parliamentary election. With this situation, the outgoing parliament held a session in order to extend its mandate and postpone the incoming MPs’ inauguration.

FM strongly doubts the capacity of international and national jurists in parliament to advise the MPs about the legality of this decision. The parliament’s rules say nothing about extending the mandate of parliament. They only specify rules for legislative sessions in periods outside the normal functioning of parliament. Therefore, according to the law, the legislature’s mandate should not be extended once it has finished.

The legislature has a five-year term, as the legislature has five legislative sessions and each legislative session lasts one year. According to the Parliamentary Rules about Legislative Sessions, article 45 n.º 1 states:

“A legislative session has a duration of one year, beginning on September 15th and finishing on September 14th of the following year.”

Therefore, the National Parliament’s Rules article 45 n.º 2 states:

“The normal functioning of the National Parliament begins on September 15th and finishes on July 15th, including the suspension period of Christmas between December 23rd and January 2nd of the following year, and of the suspensions that the Parliament decides by a two-thirds majority of the elected deputies.”

This section gives no indication that the National Parliament can extend its own mandate. Similarly, article 48 of the Parliament Regulations states that, in a period outside the normal functioning of parliament, the deputies can continue holding sessions, but only within their mandate. Otherwise, a parliamentary session can be



summoned by the President of the Republic in the case of serious situations related to the national interest (Constitution Article 86 line d).

Therefore, FM considers the parliamentary decision to prolong the outgoing legislature's tenure unconstitutional and illegal.

FM also acknowledges the political reasons for postponing the new deputies' inauguration. It reflects the absence of Xanana Gusmão and the request from FRETILIN to postpone the new MPs' inauguration. FRETILIN is attempting to form a coalition and secure a majority in parliament so as to form the new government. However, these reasons do not justify violating the Timorese Constitution.

Even the most important people in Timor-Leste must obey the Constitution and the laws. Nevertheless, political leaders routinely disregard the rule of law, creating a dangerous pattern of arbitrary rule. Such arbitrary rule conflates the law with the decisions of powerful individuals, impeding the operation of democratic procedures in the Parliament and Government. Such behavior could provoke political instability and endanger national security. It should be kept in mind that Timor-Leste remains a fragile state (Strategic Defense and National Security Concept, p24).

Therefore, the inauguration of the new legislators should not depend on parties' attempts to form coalitions. The constitution stipulates that newly elected MPs must take office a maximum of fifteen days maximum after the announcement of the official elections results (National Parliament Rules n.º 1 article 4 and n.º 1 article 41). Therefore, to run for the position of President of Parliament, candidates must secure the signatures of between ten and twenty MPs. National Parliament Rule n.º 1 article 16 states the following:

“The candidates for the office of President of the National Parliament must be endorsed by a minimum of ten or a maximum of twenty deputies, being presented to the current President twenty-four hours in advance of the realization of the electoral act.”

Consequently there is no legitimate reason to delay the inauguration of the new parliament. Instead, this situation has created a *de facto* “Interim Government” that lacks constitutional legitimacy.

The “Interim Government”

Article 112 of the Constitution states that “The old government is dismissed when the new legislature begins” (n.º 1 line a). This means that the government depends on the functioning of the parliament, and when the parliament's mandate ends the government must also leave office. Since the legislature's mandate expired on July 31st of this year, the government's mandate has ended as well. The National Parliament forms the government and chooses the prime minister based on the party which gets the most votes (or parties in alliance who can assemble a parliamentary majority). The President of the Republic hears the political parties which have representatives seated in parliament (Constitution article 106 n.º 1).

Outgoing Prime Minister Rui Maria de Araujo declared an “Interim Government” (*Governo do Jestaun*) in order to continue running the country. With no basis but his own statements, the Prime Minister now manages this interim government. The “Interim Government” model derives from fellow nations in the Community of



Portuguese Language Countries (*CPLP*), particularly Portugal. But in order to function legally any such “Interim Government” must remain in accordance with the Constitution.

Portugal’s recent experience with interim government had a legal basis. The Portuguese Constitution authorized an interim administration in two situations: first, after the resignation of the Prime Minister, and second, if the National Parliament and the government are at an impasse and cannot pass legislation. In this form, the interim government manages the period between the dismissal of one prime minister and the nomination of a new one, or between the new government’s inauguration and the approval of the new government’s program in parliament. According to the Portuguese government, genuine interim government therefore limits its responsibilities to actions necessary to ensure the continued functioning of political institutions.

In Timor-Leste, the prime minister has not resigned and no impasse exists between the parliament and the government, meaning that the current situation in Timor-Leste fulfills neither of the criteria specified by the Portuguese Constitution. Furthermore, the Timorese Constitution makes no mention of an “Interim Government.” A similar situation is alluded to the Statute of Titles of the Organs of Sovereignty (Republication of Law n.º 7/2007, from July 25th Statute of the Titles of the Organs of Sovereignty) which in article 25, states that:

“After the date of the realization of elections for the National Parliament, of resignation of the Prime Minister, or of his dismissal, the Prime Minister must abstain from political and legislative initiatives, with the exception of those which have the character of urgency or emergency.”

This section asserts that the Prime Minister can retain some very limited authority after parliamentary elections, in order to ensure a smooth transition of power to the new government. However, the prime minister can fulfill this role only before the expiration of his five-year mandate. This means that the “Interim Government” which Prime Minister Araújo currently leads has no constitutional or legal basis.

Consequently, the unconstitutionality of the current regime delegitimizes all of its policymaking decisions. This practice was applied in Portugal with a constitutional basis and within a mandate of five years. But Timor-Leste’s “Interim Government” operates solely on the authority of the Prime Minister in a period outside his mandate. In this sense, all the decisions made by the “Interim Government” lack Constitutional or legal validity.

Conclusion

At the time of writing, Timor-Leste has lacked a legal parliament or government for almost one month. The National Parliament functions with unconstitutional sessions attended by deputies whose mandates have expired and who lack the legal power to extend their own mandates. The Interim Government operates on the personal decisions of the Prime Minister, who similarly lacks any legal authority now that his five-year term has expired. Therefore, the “Interim Government” has no constitutional basis, and none of its decisions are legally valid.

The President of the Republic must take constitutional measures to ensure that Timor-Leste’s democratic institutions function properly. Timor-Leste has lacked a



legal government or parliament for almost one month, ever since the outgoing parliament's mandate expired on July 30th. The functioning of state institutions depends not on the whims of political parties or powerful individuals, but on the Constitution and the laws. It is crucial that the current situation does not set a bad precedent for future disregard of the rule of law. Timor-Leste must remain under constitutional governance, not arbitrary rule.

While FM believes in the importance of the "national interest," FM also wants to emphasize that politicians cannot jeopardize the life of the nation. All citizens agree on the importance of the national interest. But by sacrificing the legal functioning of democratic institutions, Timor-Leste's leaders destabilize the country and endanger national security.

Recommendations

1. The President of Timor-Leste must take constitutional measures in order to guarantee the unity of the state and ensure that democratic institutions function according to law.
2. The President of the outgoing parliament should speedily inaugurate the new MPs.



Bibliography

Constitution of the Democratic Republic of Timor-Leste

Strategic Defense and National Security Concept of Timor-Leste. Ministry of Defense, Edition 2017.

Constitutional Law n.º 1/2005 de 12 de Agosto, Seventh constitutional revision.

National Parliament Rules N.º 1/2016 May 11th, First Alteration to the National Parliament Rules approved in 2009.

Republication of Law n.º 7/2007, from July 25th Statute of the Titles of the Organs of Sovereignty.

Tatoli – News Agency of Timor-Leste August 1st 2017. Legislative Mandate Third Extension. Available here: <http://www.tatoli.tl/2017/08/mandatu-lejislatura-datoluk-estende/>. Accessed on August 1st 2017.