



Fundasaun Mahein (FM), 25 August 2017

Press Release

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

August 25th, 2017

The results of the July 22nd parliamentary election indicated that five political parties crossed the 4% threshold to enter the National Parliament during the 2017-2022 period. These parties were FRETILIN (29,7%), CNRT (29,5%), PLP (10,6%), PD (9,8%), and KHUNTO (6,4%). The Appellate Court approved these results and officially announced them on August 1st. Nonetheless, the newly elected deputies have not been inaugurated yet. Instead, parliament continues to function with sessions attended by the members of the outgoing legislature. The postponement of the incoming MPs' inauguration and the uncertainty around the formation of the new government have provoked various reactions from politicians and from Timorese society as a whole.

The president of the outgoing parliament, Aderito Hugo, told the news media that the mandate of the outgoing legislature was extended via a session of the national parliament started on August 1st. He justified extending the parliament's mandate because the impact that schedule changes had on the election.

Article 93 n.º 4 of the Constitution specifies that each parliament's mandate lasts only five years. Therefore, the outgoing legislature's mandate expired on July 31st, 2017, having begun on July 30th 2012. Furthermore, article 41 n.º 1 of the National Parliament's rules states that the first session of a newly elected legislature must take place fifteen days maximum after the publication of the official election results. But although the Appellate Court officially pronounced the election results more than three weeks ago (on August 1st), the outgoing deputies extended their mandate.

Fundasaun Mahein (FM) believes that this extension of the parliament's mandate has no legal or constitutional basis. A parliamentary session can only legally occur when the legislature remains within its term. Furthermore, it can only extend its mandate within constitutionally defined limits. Because more than fifteen days have passed since the announcement of election results, the parliament's mandate has legally expired.

Article 112 n.º 1 of the Timorese Constitution states that “The government ends when a new legislature begins.” This means that when the old parliament's mandate expires, the government's mandate also expires. Similarly, article 106 of the Constitution specifies that the national parliament produces the government.

While the parliament extended their mandate, Prime Minister Dr. Rui Maria de Araujo declared that an “Interim Government” (*Governu de Jestaun*) would continue governing the country. This statement references a procedure used by other nations in the Community of Portuguese Language Countries (CPLP). In particular, Portugal recently established an Interim Government. In such instances, the prime minister departs from office and the national parliament cannot approve new policies. Instead, the powers of an Interim Government are limited to acts that are necessary to assure the management of public affairs.

However, Timor-Leste’s Constitution mentions nothing about an “Interim Government.” This means that the current government is unconstitutional, and that any policies, contracts, or agreements it promulgates are invalid. Portugal’s Interim Government was established according to the Portuguese constitution by a legislature with a valid mandate. In contrast, Timor-Leste is currently governed by a Prime Minister and Parliament whose mandates have expired. Therefore, all decisions issued by the Interim Government are unconstitutional and illegal.

Recommendations

1. The President of the Republic must take constitutional measures in order to protect the unity of the state and to ensure that democratic institutions function according to the constitution.
2. The outgoing parliamentary president should immediately inaugurate the newly elected MPs.

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