



## **Slow Government Formation:**

**Emerge Violation of Law for Mandates of Chief State Major General, Vice, Chief State Major and Commander of Components**

**Mahein's Voice No. 126, September 12th, 2017**



*Photo PR@Julio Fernandes Guterres/2017*

**Fundasaun Mahein (FM)**  
**Website: [www.fundasaunmahein.org](http://www.fundasaunmahein.org)**  
**2017**



## Contents

Contents	2
Introduction	3
Methodology	4
Nomination Process	4
The Responsibilities of the President	5
Mandate CEMGFA, Vice-CEMFA, CEMFA and Component Commandersira	6
a. Mandates of the CEMGFA and Vice CEMGFA	7
b. Mandate of the CEMFA	9
c. Component Commanders	9
Conclusion	10
Recommendations	10
Bibliography	11



## Introduction

This report analyzes the issues surrounding the mandates of the General Chief of Staff of the Armed Forces (CEMGFA), Vice-CEMGFA, the Chief of Staff of the Armed Forces (CEMFA) and the Component Commanders. FM will explain the current situation, share relevant legal opinions, and offer recommendations to the new Government, the incoming Parliament, and the President of the Republic.

Article 74 n.º 2 of the Constitution of Timor-Leste defines the President of the Republic as the Supreme Commander of the Armed Forces. Therefore, his duties include nominating the leaders of the Timorese military (F-FDTL), including the General and Vice-General Chiefs of Staff, as specified by point M) of Article 86 in the Constitution. The mandates of the CEMGFA, Vice-CEMGFA, CEMFA and Component Commanders will expire on October 6th of this year.

In 2016 a controversy occurred between then President Taur Matan Ruak and the Government about nominating and renewing the mandates of the CEMGFA, Vice-CEMGFA and CEMFA. This long debate resulted in the renewal of the mandate of CEMGFA Major General Lere Anan Timur for two years, starting on October 6th 2015.<sup>1</sup> In the same way, the mandate of Vice-CEMGFA Brigadier General Filomeno da Paixão de Jesus was extended for two years, starting on October 6th 2015.<sup>2</sup> The mandate of CEMFA Cononel Falur Rate Laek was also extended for a period of one year, starting on October 6th 2016.<sup>3</sup>

However, with less than a month before these key military leaders' mandates expire, there have been no signals about new nominations for the CEMGFA, Vice-CEMGFA and CEMFA positions. At the same time the formation of the new Government proceeds extremely slowly. Significantly, the mandates of the CEMGFA, Vice-CEMGFA and CEMFA cannot be renewed once they automatically expire on October 6th of this year.

This report aims to:

1. Analyze the legal issues related to the mandates of the CEMGFA, Vice-CEMGFA, CEMFA and Component Commanders.
2. Explain the nomination process for the CEMGFA, Vice-CEMGFA and CEMFA, according to the rules that FM has researched. The procedure begins with consultations between the members of government with responsibilities in the area of national security and the Supreme Military Defense Council.<sup>4</sup> The government then seeks approval from the Council of

---

<sup>1</sup> Presidential Decree.º 20/2016, from May 19.

<sup>2</sup> Presidential Decree.º 21/2016, from May 19.

<sup>3</sup> Presidential Decree n.º 47/2016, from November 23

<sup>4</sup> Government Decree n.º 7/2016, from 11 May, Rules of the Supreme Council of Military Defense, article 2.º (Composition), 1. O CSDM has the following composition: a) Ministry of Defense, which presides b) General Chief of Staff of the F-FDTL (CEMGFA F-FDTL), c) Vice



Ministers. Finally, the Government submits a proposal to the President of the Republic so that he can give his final approval, which is required by the Constitution of Timor-Leste and by other laws.

3. The National Parliament should consider the issues related to the F-FDTL leaders' nomination, as this question is of extreme importance for the functioning of the security sector.
4. The Ministries responsible for national security should coordinate with the Promotions Council of the F-FDTL in order to ensure that promotion processes proceed according to law. The earlier Presidential Decree about nominations and the mandates of the CEMGFA, Vice-CEMGFA, CEMFA and Component Commanders must be decreed and formalized according to the new Decree-Law from the current President of the Republic, following the provisions specified in 'Decree-Law n.º 28/2016, from July 13th, First Alteration of the Decree-Law n.7/2014, from March 12th (F-FDTL Military Statute)."

### **Methodology**

FM researchers gathered information for this report by searching official documents including the Constitution of Timor-Leste, the F-FDTL Military Statute, Presidential Decrees, and other documents related to the nomination process for the CEMGFA, Vice-CEMGFA and CEMFA positions. In order to finalize this report, FM adopted a method called *Security Sector Discussion (SSD)*. SSD involves FM researchers discussing their findings and analyzing relevant materials together. At the conclusion of the SSD, the researchers agree on the report's recommendations.

### **Nomination Process**

In June 2016, the Government promulgated a decree about the Rules (*Rejimento*) of the Supreme Military Defense Council. The Supreme Military Defense Council is the principal consultative body between the military and the government officials whose responsibilities relate to the defense sector. This body is permanently integrated into the structure of the Defense Ministry.<sup>5</sup> This Governmental Decree outlines the process for proposing the promotion, nomination and dismissal of F-FDTL personnel for the position of CEMFA<sup>6</sup>. Government Decree n.º 6/2016, from May 11th, the Rules of the Supreme Military Defense Council, explains the nomination process in the following manner:

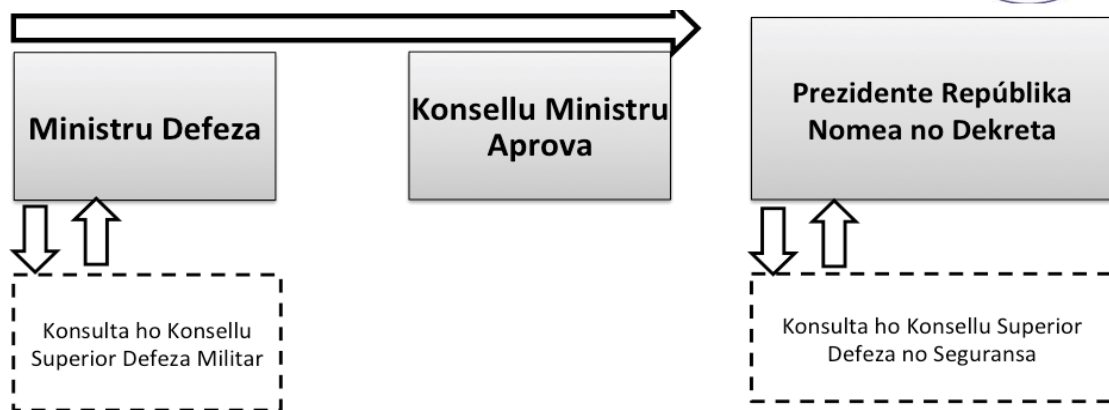
Nomination Process for the CEMGFA, Vice-CEMGFA, CEMFA and Component  
Commander

---

General Chief of Staff of the F-FDTL (V-CEMGFA F-FDTL, d) Chief of Staff of the F-FDTL (CEM of the F-FDTL), e) Component Commanders

<sup>5</sup> Article 1 Nature of the Government Decree n.º 6/2016, from 11 May, Rules of the Supreme Military Defense Council

<sup>6</sup> Article 3 a and b) the proposals of the members of the government with responsibilities related to National Defense at the Ministerial Council under the nomination and dismissal of the CEMG of the F-FDTL following that which is established by law.



This graphic shows the approval process. Firstly, the members of the government who are in the Defense Ministry or who have responsibilities related to national security, conduct hearings and consultations with the Supreme Military Defense Council. The Supreme Military Defense Council is composed of the CEMGFA, the Vice-CEMGFA, and the Component Commanders, and is Presided over by the Defense Ministry.

After obtaining approval from the Supreme Military Defense Council, the Ministry of Defense will submit their conclusions to the Council of Ministers to receive approval. Next, the Council of Ministers submits a proposal to the President of the Republic, who will consult further with the Supreme Council on Defence and Security. The ensuing Presidential Decree then completes the nomination process. This new appointment is then published in the Journal of the Republic.

### Responsibilities of the President

Nominations for the commanding positions in the F-FDTL, particularly the CEMGFA and Vice-CEMGFA, are one of the duties of the President of the Republic, according to point m) of Article 86 in the Constitution of Timor-Leste.

Article 86.<sup>o</sup> (Responsibilities about other bodies) the President of the Republic has responsibilities to:

- m) Nominate and approve, according to the government's proposal, the Armed Forces' CEMGFA and Vice-CEMGFA;

According to article 14.<sup>o</sup> e) from the Law of National Defense (Law n.<sup>o</sup> 3/2010, from 21 April), authorizes the President of the Republic: "e) nominate and dismiss, according to the proposal from the government. 14.<sup>o</sup> e) of the National Defense Law of National (Law n.<sup>o</sup> 3/2010, from 21 April)"<sup>7</sup>.

Article 70.<sup>o</sup> (Responsibility) from the Statute of the Soldiers of the F-FDTL (Decree-Law n.<sup>o</sup> 28/2016, from 13 July, First Alteration of the Decree-Law.<sup>o</sup> 7/2014, from 12 March);

<sup>7</sup> article 14.<sup>o</sup> e) from the National Defense Law (Law n.<sup>o</sup> 3/2010, from 21 April), authorizes the President of the Republic: "e) to nominate and dismiss, following the government's proposal, the CEMGFA and the Vice-CEMGFA".



‘It is the exclusive responsibility of the President of the Republic to promote the soldiers of F-FDTL to the post of general offices, following the proposal of the Council of Ministers.’

Hence also Article 74.<sup>o</sup> from the Statute of the Soldiers of the F-FDTL (Decree-Law n.<sup>o</sup> 28/2016, from 13 July, First Alteration of the Decree-Law 7/2014, from 12 March) establishes that<sup>8</sup>;

Article 74<sup>o</sup> Nomination and dismissal of the Chief of General Staff of the Armed Forces

1. The Chief of Staff of the Armed Forces is nominated and approved from the President of the Republic, following the proposal from the government, after conducting a hearing with the Supreme Council of Defense and Security and the members of the government whose responsibilities relate to National Security;
2. The Chief and Vice-Chief of the Staff of the Armed Forces are nominated and approved from the President of the Republic, following the Government’s proposal, after first evaluating the CEMGFA and Vice-CEMGFA and carrying out an audition with the Supreme Council on Defense and Security.

Article 75.<sup>o</sup> from the Statute of the Soldiers of the F-FDTL (Decree-Law n.<sup>o</sup> 28/2016, from 13 July, First Alteration of Decree-Law 7/2014, from 12 March, also regulates the nomination and dismissal for the Component Commanders. This article states that:

1. The CEMGFA F-FDTL and the Components Commanders are named by the President of the Republic, who, under the Proposal of the Government, evaluates the CEMG F-FDTL, after a hearing with the Supreme Council of Defense and Security.
2. The posts of the CEMGFA and of the Component Commanders have a maximum duration of two years, being able to be renewed once.

### **Mandates of the CEMGFA, Vice-CEMFA, CEMFA and Component Commanders**

In the beginning of 2016, a legal controversy occurred about the nomination and dismissal for the mandates of the CEMGFA, Vice-CEMGFA, CEMFA, and the Component Commanders. The President of the Republic’s nominations for CEMGFA, Vice-CEMGFA, CEMFA and Component Commanders were announced in the Presidential Decree n.<sup>o</sup> 20/2016, from 19 May, and the Presidential Decree n.<sup>o</sup> 21/2016, from 19 May (the Presidential Decree in the previous Decree Law currently had not yet been altered).

This is because the Decree of the previous President mentioned a period “taking effect from October 6th 2015”, including the nominations for the positions of the

---

<sup>8</sup> Article 74.<sup>o</sup> of the F-FDTL Military Statue (Decree-Law n.<sup>o</sup> 7/2013, from 12 March - EMFAR) establishing that : Article 74<sup>o</sup> Nomination and dismissal of the General Chief and Vice-Chief of the F- FDTL 1. The CEMG of the F-FDTL is a general official named and dismissed by the President of the Republic, according to the proposal of the Government, preceded by a hearing of the Supreme Defense and Security Council, including those members of government with responsibilities in matters of national defense. 2. The Vice - CEMG of the F-FDTL is named and dismissed by the President of the Republic, under the proposal of the government, which likes the CEMG of the F-FDTL is preceded by a hearing of the Supreme Defense and Security Council.



Component Commanders and the Chief of Staff (CEMFA). According to the F-FDTL Military Statute, the mandates for these positions last for two years.

**a. Mandates of the CEMGFA and Vice-CEMGFA**

These mandates are regulated according to Article 74° (Nomination and Dismissal of the General Chief and Vice General Chief of Staff of the F-FDTL), from Decree-Law n.º 28/2016, from 13 July, First Alteration of Decree-Law n.7/2014, from March 12th. This article states that;

- 1 (...)
2. (...)
3. The posts of the CEMG of the F-FDTL and the Vice-CEMG of the F-FDTL have a maximum duration of four years, and can be renewed only once<sup>9</sup>.

President Taur Matan Ruak received a proposal letter from the government about the mandates of the CEMGFA and Vice-CEMGFA on October 26th 2015, and the President replied to the Government on November 5th, 2015.

Subsequently, President Taur Matan Ruak also raised the issue of the mandates of the CEMGFA and Vice-CEMGFA which had to be resolved quickly and legally. The Supreme Council of Defense and Security met on February 4th, 2016 and discussions ensued between the Government and the President of the Republic. After almost six months, no solution had been found and the discussions were becoming increasingly acrimonious.

After extended discussions, eventually President Taur Matan Ruak decreed the extension of the mandates, on 19 May 2016 (Presidential Decree n.º 20/2016, from 19 May, and Presidential Decree n.º 21/2016, from 19 May).

According to FM's observations, that the issue of the nomination and dismissal for "general officers", including Component Commanders, is the responsibility of the President of the Republic and there are no limits in order to exercise this right. While the Government has the right to offer proposals, this does not impede on the President's constitutional right to nominate or dismiss general posts and general offices, as specified by Article 70° from the Military Statute, which states that "It is the exclusive responsibility of the President of the Republic to promote F-FDTL for these general posts, to official general posts, and to general offices, according to a proposal from the government"<sup>10</sup>.

FM observed that the nomination and extension of the CEMGFA and Vice-CEMGFA mandates also involve the issue of the mandatory retirement age. This issue is addressed in Decree-Law n.º 7/2014 F-FDTL Military Statute, which has currently not been altered for a one year mandate<sup>11</sup>.

---

<sup>9</sup> Article 74° n.º 3. The posts of CEMG of the F-FDTL and the Vice-CEMG of the F-FDTL have a maximum duration of four years, and can be renewed only once.

<sup>10</sup>Article 70° from Decree-Law n.º 28/2016, from 13 July, First Alteration of the Decree-Law n.º 7/2014, from 12 March (F-FDTL Military Statute: 'It is the exclusive responsibility of the President of the Republic to promote the soldiers of the F-FDTL to the post of general office or general offices, following the proposal of the Council of Ministers.'

<sup>11</sup> Presidential Decree n.º 20/2016, from 19 May, "Major-General Lere Anan Timur is returned to the position of Chief of the General Staff of the FALINTIL-Timor-Leste Defense Forces, for



Specifically, Article 195° (retirement), n.º1 states that soldiers that pass into retirement when they have attained the age of 60.

1. The soldier passes the mandatory retirement age who attains 60 years of age;
2. The soldier who attains 60 years of age can continue to serve, so long as he meets the conditions specified in the general law, specifically;  
e) after the approval of the continuation of function by the CEMGFA of the F-FDTL, or by the President of the Republic, in cases where the CEMGFA and Vice-CEMGFA of the F-FDTL is under consideration, is proposed to the soldier, who can accept or decline.

This age issue also appears in the alteration to the Decree-Law and continues to make clear that Mandate last until the age of 60<sup>12</sup>. This Diploma also mentions the continuation of individuals who have already reached 60 years of age. Such individuals must receive approval for their continuation from the CEMGFA or from the President of the Republic.

According to FM's research, the majority of Component Commanders, CEMGFA, Vice-CEMGFA, and CEMFA have already passed the age of 60. Because the mandate extension contained in the Presidential Decree considers also the age issue, hence the majority will continue in their roles for two years, starting from October 6th 2015- 6 October 2017<sup>13</sup> (the Presidential Decree also clearly mentioned the issue of the mandate periods).

#### **b. CEMFA Mandate**

The President of the Republic also nominated the Chief of Staff of the F-FDTL with a one year mandate, starting from October 6th, 2016.

Coronel Falur Rate Laek was already named to the position of CEMFA according to (Presidential Decree n.º 47/2016, from November), (in 2011 Presidential Decree according to Decree of the President of the Republic n.º 64/2011, 65/2011, and also Decree n.º 66/2011, from 6 October), with a two-year mandate. In 2013<sup>14</sup>, the government did not submit a proposal to the President of the Republic to extend and decree the CEMFA's mandate, as then President of the Republic Taur Matan Ruak had confirmed the CEMFA's mandate according to Presidential Decree n.º 47/2016, from November.

---

a period of one year, in the terms of articleº 195, n.2d) e e) from the Decree-Law n.º7/2014, from 12 March (EMFAR) renew with a limit of two years..."

<sup>12</sup> Article 293.º (Renew of the mandate of the Chief of the General Staff)

1. The exercise of the post of Chief of the General Staff of the F-FDTL, specified in n.º 2 of article 75.º, can with a exceptional and provisional title be renewed for a third mandate, with a maximum duration of two years.

2. The exceptional regime described in the previous number, finishes on 31 December 2016, mantaining the effects of the nominations realized in its term until the end date.

<sup>13</sup> Presidential Decree n.º 20/2016, from 19 May, and Presidential Decree n.º 21/2016, from 19 May.

<sup>14</sup> Presidential Decree n.º 64/2011, 65/2011, and Presidential Decree n.º 66/2011, from 6 October.





According to Article 75.º from the Military Statute of F-FDTL, “the mandate lasts for two years and can be renewed only once.” This Article specifically applies to the CEMFA, and to the Component Commanders in the F-FDTL. The issue of the mandatory retirement age at 60 will also become an important point from the continuation of the mandate of the Chief of the F-FDTL General Staff. While F-FDTL officers who passed the age of 60 can retire, their mandates can continue after receiving approval from the CEMGFA or from the President of the Republic<sup>15</sup>.

### **c. Component Commanders**

On November 23rd 2016, then President Taur Matan Ruak renewed the military chiefs for additional two-year mandates (Component Commanders), specifically (Presidential Decree n.º 46/2016, November 23rd):

- Land Component: Lieutenant Colonel Marcelino Ximenes;
- Naval Component: Captain Adão de Brito;
- Formation and Training: Lieutenant Colonel Celestino Pinto;
- Support and Service: Lieutenant Colonel Benedito dias Quintas

According to FM’s observations the mandates for all component commanders must be extended immediately according to the current Presidential Decree, because the mandate period for the Component Commanders is also two years each according to the F-FDTL military statute and must accord with the altered version of the decree-law from the President of the Republic<sup>16</sup>.

Recommendations for the Component Commanders must be considered by the President of the Republic according to the new altered version of the Decree Law in 2016.

### **Conclusion**

The mandates of the CEMGFA, Vice-CEMGFA, CEMFA and Component Commanders will finish on October 6th 2017, yet there have been no signs given about new nominations for these positions. The mandates of the CEMGFA and Vice-CEMGFA cannot be renewed, as they have already fulfilled one mandate period since 2011 and a renewal in 2015 (Presidential Decree 2016), and also passed the mandatory retirement age. The same situation applies to the mandate of the CEMFA, who finished mandate in 2015 and was granted a renewal in 2016 that according to the accompanying Presidential Decree of 2016 had a limit of just one year.

At the same time the new Government has not yet been inaugurated and the current Government lacks to constitutional authority to make any decision about this issue. Simultaneously, the Supreme Council on Defense and Security which advises the President is currently not functioning. However, according to the Council’s Organic Law, the body should meet every three months. Furthermore, two of the members chosen by the President of the Republic have not been appointed yet. Because the

---

<sup>15</sup> Article 293 from Decree-Law n.º 28/2016, from 13 July, First Alteration of the Decree-Law n.7/2014, from 12 March (F-FDTL Military Statute)

<sup>16</sup>Constitution Article 86 m) Nominate and dismiss, according to the government’s proposal, CEMGFA and Vice-CEMGFA, specifically, in these last cases, the Armed Forces’ CEMFA;



Supreme Council on Defense and Security ought to advise the President of the Republic on defense issues, it should advise him about the appointment of new F-FDTL leaders.

There is a high likelihood that violations of Timorese laws will occur because the new Government will not have the time to consult with the Supreme Military Defense Council, make a decision, receive approval from the Ministry Council, and then take it to the President of the Republic for the official nomination and announcement.

### **Recommendations**

FM recommends:

1. The institutions of Government, the F-FDTL, and the President of the Republic should consider this important issue, as the majority of the mandates will expire at the beginning of October.
2. The new Minister of Defense should consult and with the Supreme Military Defense Council (F-FDTL), in order to initiate the process of replacing the outgoing military chiefs.
3. The new Ministry of Defense must acknowledge the lack of a legal basis for the extension of the mandates of the CEMGFA and the Vice-CEMGFA, particularly because they have already passed the mandatory retirement age.

### **Bibliography**

Presidential Decree n.º 20/2016, from 19 May

Presidential Decree n.º 21/2016, from 19 May.

Presidential Decree n.º 47/2016, from 23 November

Decree Law n.º 28/2016, from July 13, First Alteration of Decree Law n.º 7/2014, from March 12 (F-FDTL Military Statute)

Presidential Decree n.º 64/2011, 65/2011, and also Presidential Decree n.º 66/2011, from 6 October.

Government Decree n.º 6/2016, from 11 May Rules of the Supreme Council of Military Defense

Constitution of Timor-Leste

Law of National Defense (Law n.º 3/2010), from 21 April