



**The Government's Dismissal and the Dissolution of the National
Parliament
"National Unity Must Be Protected"**

Mahein's Voice No. 127, December 11th, 2017



Photo: Timor Roman/Calisto da Costa, 2017

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2017



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Introduction

The 2017 Presidential and Parliamentary elections were milestones for Timorese democracy. This success marked the progress and maturity of Timor-Leste's citizens in political life. They involved contributions and participation from various parts of Timorese society and partners who supported the people of Timor-Leste during this time.

Never the less, after the July Parliamentary election, long negotiations ensued. Almost a month transpired between the announcement of the results and the inauguration of the members of the 4th Legislature. During this time, the party with the most votes, FRETILIN, led negotiations to form a coalition with other parties. Eventually, the formation of the 7th Constitutional Government by a minority coalition of FRETILIN and the Democratic Party (PD) sparked various debates and observations from Timorese society about whether minority government was constitutional. Finally, the opposition parties—the National Congress for Timorese Reconstruction (CNRT), the Popular Liberation Party (PLP), and KHUNTO—declared themselves part of the Parliamentary Majority Alliance (AMP) before the 7th Constitutional Government's program was even debated.

The opposition parties argue that the AMP can take power if the current Government falls. Using their majority voting power, they rejected the Government's first program. According to the Constitution of Timor-Leste, a Government falls if its program is rejected twice in the National Parliament. Currently, the Government has yet to present its second program to Parliament.

After the rejection of the Government's first program, the situation in the National Parliament became increasingly contentious, with many criticisms levelled by the opposition against the President of Parliament and the Government itself. Here debate and observations from the public focused on the possibilities of the dismissal of the Government, the dissolution of Parliament, and/or early elections.

Fundasaun Mahein (FM) commends the President of the Republic's ongoing efforts to meet with various organizations and hear citizens' opinions about the current political situation. Since the 7th Constitutional Government has not yet fallen, the President of the Republic should examine the possible scenarios that the Constitution allows in the event that the 7th Constitutional Government falls or the National Parliament is dissolved.

FM wants to give its opinion with regards to the current political situation and to provide analysis. This analysis involves identifying risks to national security that could arise if the Government is dismissed. Furthermore, FM intends to examine the measures that President of the Republic could take according to his constitutional duty.

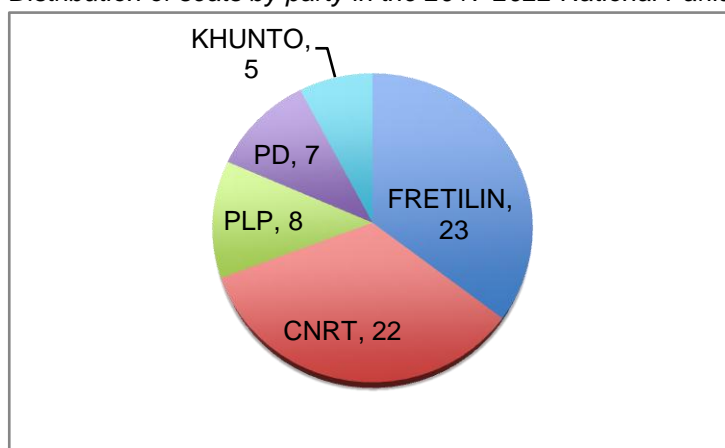
Methodology

This report analyses the political situation that Timor-Leste is currently confronting, involving the National Parliament and the 7th Constitutional Government. It also investigates constitutional procedures about the Government's dismissal, the dissolution of Parliament, and potential solutions permitted by the Constitution and other laws. In order to conclude this report, FM employed the method of *Security Sector Discussion (SSD)*. In SSD, researchers from FM discuss and analyse the materials related to this report and produce recommendations.

Election results

The results of the Parliamentary Election on July 22nd, 2017 showed that five political parties had crossed the 4% threshold to enter the National Parliament. These parties were FRETILIN (29.7%), the CNRT (29.5%), the PLP (10.6%), the PD (9.8%), and KHUNTO (6.4%). The results were validated by the decision of the Appellate Court and officially published on August 1st. The distribution of parliamentary seats by party is shown below.

Distribution of seats by party in the 2017-2022 National Parliament



The outcome of the 2017 Parliamentary Election showed that no party won an absolute majority that would have enabled it to form a government alone. Consequently, the election results required a coalition in the National Parliament to be able to obtain a majority and guarantee administrative stability.

Minority government and majority opposition

As the most-voted party, FRETILIN led the negotiations to form the Government. Negotiations lasted more than two months after the Appellate Court officially published the election results. FRETILIN managed to sign a coalition agreement with the PD on September 13th, 2017 and indicated FRETILIN General Secretary Dr. Mari Alkatiri as Prime Minister. Finally, the President of the Republic nominated Alkatiri as



Prime Minister of the 7th Constitutional Government on September 14th, 2017.¹ He was inaugurated on September 15th.

The PLP had previously intended to form a coalition with FRETILIN, but it soon withdrew. KHUNTO also exited the coalition just before FRETILIN and the PD signed a coalition agreement. The CNRT remained in opposition, in accordance with the decision of its party conference.

Debate and controversies subsequently emerged, linked to the fact that the Government had the backing of only 30 seats in the National Parliament and therefore lacked a majority. However, before the President of the Republic made the decision to allow a minority government, he consulted all the parties in the National Parliament. The CNRT, the PLP, and KHUNTO all reaffirmed their decision to remain in opposition.

In response to the Government's formation, the three opposition parties declared a Parliamentary Majority Alliance (AMP), which controlled 35 of the Parliament's 65 seats. This alliance was declared before the Government had even brought its program to the National Parliament. According to the opposition parties, the AMP can take power when the current Government falls.

The opposition parties demonstrated their determination by rejecting the Government's program in October 2017. The Rejection Motion criticized the Government for lacking a parliamentary majority. It also argued that the Government program was unrealistic, lacking in data, and incoherent. Finally, the Rejection Motion asked the Government to fix the program accordingly.

After almost two months, the 7th Constitutional Government had not presented another program. Now, the opposition parties are attempting to pass a censure motion in the National Parliament. Nevertheless, the Government promised that it would present its second program in a short time.

From these situations, FM observes the

The Government's Dismissal

Constitution Article 112 states:

1. *The following cause the dismissal of the Government:*
 - a) *The initiation of a new legislature;*
 - b) *The acceptance by the President of the Republic of the Prime Minister's resignation;*
 - c) *The death or permanent physical incapacity of the Prime Minister;*
 - d) *The rejection of the Government's program for the second consecutive time;*
 - e) *The rejection of a vote of confidence;*
 - f) *The approval of a censure motion by an absolute majority of the sitting members of Parliament.*
2. *The President of the Republic can dismiss the Prime Minister only in the cases specified above and when it is evidently necessary to protect the normal functioning of democratic institutions, after the*

¹ Presidential Decree N.º 57/2017 from September 14th



possibility that the opposition parties will respond to the Government's second program with another rejection. According to Timor-Leste's Constitution, this would lead to the Government's dismissal.

Consequences of the rejection of the Government's first program

The rejection motion from the opposition parties inflamed the political and security situation in the country. FM noted that various rumours have been spreading panic across the country. Furthermore, some businesses in the districts have sharply raised the prices of basic necessities.

The debates about the minority Government, its constitutionality, and the possibilities of the Government's dismissal, Parliament's dissolution, and/or early elections have become increasingly embittered. Each person's interpretation of the Constitution seems to vary according to the party with which they are affiliated. The opposition parties also accused the minority Government of being "unconstitutional." However, there has been no attempt to refer this matter to the Supreme Court of Justice so that they can conduct an impartial investigation in accordance with Constitution Article 150 line e.

FM observed also that discussions on social media were not constructive. Instead, they tended to be provocative, fomenting instability and damaging national unity.

Declarations by political parties leaders also promoted political instability. Despite invoking the national interest, these statements tended to encourage divisiveness.

Timor-Leste has had plenty of experience with irresponsible assertions by political leaders. The 2007 and 2012 elections demonstrated that politicians' statements could provoke violence. The victims were always ordinary people.

The Government's dismissal: possible scenarios

This report does not ask President of the Republic to follow a certain course of action. Instead, it provides analysis of possible scenarios in order to contribute to positive problem-solving now or after the possible fall of the Government. Whatever decision is made belongs to the constitutional duty of the President of the Republic. FM's potential scenarios are outlined below:

- 1) *The dismissal of the current Government and new negotiations to establish the 8th Constitutional Government. The establishment of a new government should be based on Constitution Article 106 n.º 1, which states:***

"The Prime Minister is nominated by the most-voted party or by an alliance of parties with a parliamentary majority. The President of the Republic appoints the Prime Minister, having consulted the political parties represented in the National Parliament."



This means that FRETILIN, as the most-voted party, would lead new negotiations to establish the 8th Constitutional Government. A similar process occurred in 2006, when the 1st Constitutional Government fell in the aftermath of Mari Alkatiri's resignation from his first stint as Prime Minister. After the fall of the Government, FRETILIN led the negotiations to form the 2nd and 3rd Constitutional Governments.

The Judicial Systems Monitoring Program NGO stated its position about selecting the Prime Minister according to Constitution Article 106 n.º 1:

“The Prime Minister is nominated by the most-voted party or by an alliance of parties with a parliamentary majority...”

This means that the Prime Minister is selected by the party or the alliance of parties that has the most votes or a parliamentary majority. The party with the highest number of votes or the alliance with a parliamentary majority possesses legitimacy because it received the people's consent via elections. It possesses constitutionality because the Constitution specifies this method of forming a Government.

Because no party won an absolute majority, the method of attaining an absolute majority involves negotiating with other parties in Parliament in order to attain one.

2) The resignation of the Government and the invitation of the second most-voted party (Opposition-AMP) to form the 8th Constitutional Government.

The Constitution does not mention the possibility of the second most-voted party forming the Government. It only mentions the most-voted party or an alliance of parties with a parliamentary majority.

A long discussion has been happening since 2007 concerning the possibility of “an alliance of parties with a parliamentary majority” forming the government. Two interpretations have emerged:

- a) The most-voted party should form an alliance.
- b) The other parties in Parliament can form an alliance (or the second most-voted party can form an alliance).

In 2007, this second interpretation became a reality when the original Parliamentary Majority Alliance—led by the second most-voted party, the CNRT, and excluding the most-voted party, FRETILIN—formed the Government. The same dynamic may occur in 2017. As the party that received the second largest number of votes, the CNRT formed the original Parliamentary Majority Alliance and nominated the Prime Minister for the 4th Constitutional Government. Although it had received the largest number of votes, FRETILIN did not begin any negotiations about forming a coalition. Furthermore, the President of the



Republic did not invite FRETILIN to offer its opinion about the formation of the Government. Instead, the President of the Republic invited the AMP to form the 4th Constitutional Government.

At the time, FRETILIN denounced this decision and did not recognize 4th Constitutional Government. However, FRETILIN did not bring this case to the Supreme Court of Justice, which could have conducted an inquiry into the President of the Republic's decision to let the AMP form the Government.

These events from 2007 could potentially serve to justify a certain interpretation of the clause about “*an alliance of parties with a parliamentary majority*” forming the government in 2017. According to this interpretation, when the current Government falls, the AMP could form the 8th Constitutional Government in its place.

These issues demand correct interpretation. FM encourages all parties involved to bring this controversy about Constitution Article 150 to the Supreme Court of Justice so that an inquiry can be conducted about the formation of the 4th Constitutional Government in 2007 and the possibility of the AMP forming the 8th Constitutional Government.

3) Early elections

A variety of arguments have emerged from Timorese society claiming that early elections should occur so that the people themselves can resolve this controversy. Normally, early elections only happen if the National Parliament dissolves.

The dissolution of the National Parliament occurs only in cases described in Constitution Article 86 line f) and Article 100.

Article 86 f):

“[The President of the Republic can] dissolve the National Parliament, in the case of a grave institutional crisis that does not permit the formation of government or the approval of the General State Budget for a period over sixty days, after consulting the political parties that have seats in Parliament and consulting the Council of State. Otherwise the act of dissolution is unconstitutional, being in violation of Article 100.”

Article 100:

- 1. The National Parliament cannot be dissolved in the six months following its election, in the last semester of the President of the Republic's mandate, or during a state of siege or a state of emergency. Otherwise the act of dissolution is unconstitutional.*
- 2. The dissolution of the National Parliament does not terminate the mandates of the Deputies until the first meeting of Parliament after the subsequent*



elections.

In the current situation, the National Parliament cannot be dissolved in the six months following its election on July 22nd, 2017. Therefore, it cannot be dissolved before January 22nd, 2018. Consequently, the dissolution of the National Parliament could possibly occur after this deadline passes. As specified by the Constitution, the President of the Republic must consult with the Council of State before making this decision.

According to Constitution Article 91 n.º 1, the duties of the Council of State include:

“a) Giving its opinion about the dissolution of the National Parliament”.

This is echoed by N.º 1/2005 Article 3:

“b) Giving its opinion about the dissolution of the National Parliament”.

Therefore, the Council of State is a consultative political organ for the President of the Republic and in cases involving the dissolution of the National Parliament he must previously consult the Council of State. Nevertheless, the dissolution of the National Parliament is a duty of the President of the Republic according to Constitution Article 86 line f).

There are various arguments about the risks that accompany this contingency. FM believes that the State should consider this option. However, early elections could have a negative impact on the public services that the State must provide to its citizens.

At the same time, an early election is a normal and constitutional practice in the case of the dissolution of the National Parliament. It is also a good exercise for democratic life in Timor-Leste. However, all parties involved must avoid taking risks that affect people and national unity.

Conclusion

FM commends the efforts of the President of the Republic to hear the opinions of various organizations and citizens about the current political impasse. Because the President of the Republic is a symbol of national unity and guarantees the normal functioning of democratic institutions, he should use his constitutional authority to resolve this situation.

At the same time, the ongoing political situation is actually a good exercise for Timorese democracy because it has provoked an extended political debate. The rules of the Constitution stipulate that a government can fall and the National Parliament can be dissolved. However, these should not become acts of political vengeance. All parties involved must weigh the risks towards the Timorese people and national unity.



Recommendations

1. The President of the Republic should continue engaging in dialogue with all political parties in Parliament, especially those in the opposition.
2. Governing bodies such as the State Council should consult with the President of the Republic before he makes a decision.
3. FM recommends that the President of the Republic also consult with the Supreme Council of Defence and Security with regards to decisions that affect national security.



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