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Dissolution of the National Parliament and the effect on the political legitimacy of the current Government

Introduction

Based on JSMP's observation of the political situation after the President of the Republic dissolved the National Parliament on 26 January 2018, a range of interpretations and debates have emerged amongst the public regarding the nature of the current Government as well as the National Parliament itself. There have also been debates about the request to remove the President of the Republic in relation with the decision to dissolve the National Parliament and declare early elections.

After observing this situation JSMP will attempt to analyse and interpret the Constitution and the relevant laws linked to these issues. The aim of this is to provide a reminder and explanation to the relevant State organs and institutions as well as the public in general about the constitutional and legal avenues available to deal with this issue.

JSMP will discuss these issues below:

1. Nature of the Government after the dissolution of the National Parliament

When talking about the Government, we need to have a sound and accurate understanding about the nature and role of the Government itself, so we can avoid creating confusion from interpretations that can harm or exacerbate the current political situation.

Article 103 of the Constitution states that the Government is a political and administrative organ. As a political organ, in a democracy the Government is known as the 'executive organ' which is a sovereign organ responsible for conducting and executing the general policy of the State. As an administrative organ the Government has the role of managing the regular administration of the State to guarantee the normal functioning of the State.

Article 103 of the Constitution in Portuguese states: The Government is the organ of sovereignty responsible for conducting and executing the general policy of the country and is the supreme organ of Public Administration.

The Tetum translation states: The Government is the sovereign organ responsible for conducting and executing the general policy of the country and is the supreme organ of Public Administration.

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Based on the spirit of Article 103 of the Constitution, the nature of the Government is twofold. The Government performs a role that is *political in nature* and the other role it performs is *administrative in nature*.

In this context the Government is “the supreme organ of Public Administration of the country” “*and it cannot stop or pause*” because public administration is the heart and soul of the country. If it stops, the entire country will not function and this could put the country into an even more serious political situation and it will threaten the existence of the country as a sovereign and independent state.

Meanwhile, the Government is a political organ, and the Government “*can stop or pause for some time in the performance of its duties or competencies set out in the Constitution*”, and this will depend on the political situation. The duties that are political in nature totally depend on its “*legitimacy*” that is obtained through the general elections to the National Parliament. Therefore this political role completely originates from the National Parliament. Therefore in the current political context, the dissolution of the National Parliament automatically affects the political legitimacy of the Government because the Government originates from the National Parliament.

The National Parliament is a political organ that has legitimacy. This organ has legitimacy because the people directly elect their members to represent the people in the law making process, supervising the work of the Government and political decision making in the national interest (Article 92 of the Constitution).

This is because after the elections before a Government can be formed, the National Parliament first needs to be formed. As a political organ, we can make the comparison with a house, whereby the National Parliament is the pillars and walls and the Government is the roof. When the roofs falls down there is no impact on the pillars and walls, but when the pillars and walls fall down, the roof will automatically fall.

Considering this logic, the President of the Republic does not need to dismiss the Government. The Government as the political organ will automatically fall or lose its “*political legitimacy*” with the dissolution of the National Parliament.

Therefore what happened to the VII Constitutional Government when the President dissolved the National Parliament?

When the National Parliament was dissolved or ceased to exist, the VII Constitutional Government as a political organ also collapses or loses its “*legitimacy*” or “*political power*” to conduct or execute the general policy of the country. In addition, when conducting and executing the general policy of the State (internal and external policy), the Government needs to be accountable to the President and the National Parliament (Article 107 of the Constitution). Now the Government can't do this because there is no National Parliament, although the mandate of the members of Parliament hasn't ended yet (Article 100 of the Constitution).

The current Government simply performs the role of “*managing the public administration of the country*”, so that the country can continue to move forward or function. With this reality in mind Article 102.3 (a) of the Constitution provides for the role of the Standing Committee when the National Parliament has been dissolved.

Article 102 (3) (a) states that the Standing Committee shall “*follow-up the activities of the Government and Public Administration*”. This means that although the Parliament has been dissolved, the Government will continue to function in relation to the administration of the country.

In this context the Government's competence is limited to managing the public administration of the country, and it has no competence to make or take political and legislative decisions.

This caretaker government cannot initiate new laws (Article 97.1 (c) of the Constitution), because draft laws are to be submitted to the National Parliament and or done with the authorization from the Parliament (Article 96 of the Constitution), and the Government also cannot produce any decree laws, cannot sign any agreements or international treaties, and in particular cannot exercise the competencies set out in Articles 115 and 116 of the Constitution, including certain competencies provided for in Article 117 of the Constitution, because it has no *political legitimacy*.

2. The National Parliament after the dissolution

Pursuant to Article 92 of the Constitution the National Parliament is the organ of sovereignty that represents all Timorese citizens and is vested with legislative, supervisory and political decision-making powers.

In addition to the President of the Republic, the National Parliament is also chosen through general elections (Article 65.1 of the Constitution). Therefore the National Parliament gives political legitimacy to the Government to conduct and execute the general policy of the country as provided for in the Constitution.

Did the National Parliament continue to exist and function after it was dissolved by the President?

The National Parliament as a sovereign organ and legislative organ or political organ no longer exists, because it has been dissolved, therefore its competencies are set out and limited to those provided for in Article 102.3 of the Constitution.

When examined from a constitutional perspective, upon its dissolution the National Parliament is reduced to the Standing Committee with a few members who have limited powers as provided for in Article 102.3 of the Constitution.

This Standing Committee does not have the competence to make laws, supervise or make important political decisions in relation to the internal and external interests of the State. In addition, according to the Constitution, the National Parliament does not exist because its composition must be made up of a minimum of 52 and a maximum of 65 members (Article 93.2). Based on information provided to JSMP the Standing Committee only has 29 members. Therefore, this Committee “*cannot be referred to as the National Parliament*”.

If so, can this Standing Committee hold a plenary session to discuss pending issues such as a motion of no confidence and removal?

The Standing Committee may not do so, because a motion of no confidence and removal can only be discussed and approved by the National Parliament, not by the Standing Committee (Article 111.1 of the Constitution) and a motion of no confidence cannot be tabled against a caretaker Government. While there is no National Parliament, there can be no discussion and approval of a motion of no confidence or issues relating to other national interests.

3. Dissolution of the National Parliament and the issue regarding the removal of the President of the Republic

Some members of the public have expressed a range of interpretations and opinions via social media that some political groups are thinking of removing the President of the Republic in relation to his decision to dissolve the National Parliament.

Article 79 of the Constitution details how the President can be removed from his position. The President can only be removed pursuant to this article when 1) convicted by the Supreme Court of Justice for crimes committed or; 2) serious violation of his/her constitutional obligations.

A process to remove the immunity of the President of the Republic must be proposed by one-fifth of the members of the National Parliament, which is effectively 13, and the decision approved by a two-third majority, which is effectively 43 of a total of 65 members of parliament (Article 79.3 and 19.7 of the Constitution).

Another circumstance in which the President of the Republic can lose his position happens automatically when he or she is absent from the national territory without the prior consent of the National Parliament or Standing Committee (where the National Parliament has been dissolved, like now) (Articles 80.1 and 80.2 of the Constitution).

When examining the constitutional requirements above, is it possible or not to remove the President of the Republic for deciding to dissolve the National Parliament?

Before we get to that stage, we need to first understand if the decision of the President is in accordance with the Constitution or not? The Supreme Court of Justice or Court of Appeal has sole competence to declare constitutionality and unconstitutionality (Article 126.1 (a) – (d) of the Constitution). In this context JSMP will try to share its thoughts after analysing the Constitution and the laws.

In JSMP's opinion the decision of the President still falls within the constitutional norms set out in Article 86 (f) of the Constitution. Even so, in the context of the rule of law and democracy, there is still space in the Constitution and the law to challenge this decision when some elements of society or state institutions do not accept the decision of the President.

Article 86 f) of the Constitution clearly provides two main requirements that set out the basis for dissolving the National Parliament within a time frame of less than six months which are not the same as the provisions of Article 100.1. These two

requirements are an institutional crisis preventing: a) *the formation of a Government*; and b) *the approval of the State Budget for a period in excess of 60 days*.

The legislature of the IV National Parliament began (swearing-in ceremony) on 5 September 2017. After establishing the National Parliament the Government was formed, namely the VII Constitutional Government, but there was no State Budget during this period that exceeded 60 days. From the date the members of National Parliament of the IV Legislature were sworn in on 5 September 2017 until the date the President of the Republic dissolved the National Parliament on 26 January 2018, there was a total of 143 days or more than 4 months. During this period the State of Timor-Leste had no 2018 State Budget.

This situation had a massive impact on the administration and functioning of the State. Therefore, the President has the constitutional and moral obligation to ensure the normal functioning of the State, and he has to make decisions and take action that can resolve the impasse and get the State functioning normally again.

JSMP is concerned that the President of the Republic should have immediately decreed the date of the election when he announced the dissolution of the National Parliament. Importantly, the date of the election cannot be less than 60 days pursuant to Article 17.1 of Law No. 6/2006 as amended by Law No. 9/2017 on the Law on the Election of the National Parliament to ensure that CNE and STAE will have enough time to properly and adequately prepare for the elections.

“Article 17 - Scheduling of the Election

1. After consulting the Government and the political parties with parliamentary seats, the President of the Republic shall schedule by decree the date for the election of the Members of Parliament at least 80 (eighty) days or, in the case of dissolution of the parliament, 60 (sixty) days, in advance”

Therefore, JSMP concludes that the decision of the President of the Republic was in accordance with the Constitution and even though there is a possibility to challenge this decision, it is not possible to request his removal because there is no National Parliament yet. The Standing Committee does not have the competence to discuss and approve a deliberation on this matter.

Finally, JSMP recommends:

- 1) For issues linked to the national interest, in particular the signing of international agreements, conventions or treaties between the State of Timor-Leste and other States could be entrusted to the President of the Republic to perform this role and the ratification of such could wait for the formation of the National Parliament after the election;
- 2) Politicians should not politicise the current political situation to create confusion and panic amongst the public to avoid an even bigger political crisis that could harm the nation-state;
- 3) The entire public can contribute to national stability by avoiding unnecessary public discussion through social media;
- 4) The relevant State institutions, in particular CNE and STAE can create a mechanism to facilitate everyone's participation in the upcoming early general

- election, to contribute towards finding a better solution and to avoid going around in circles;
- 5) The President of the Republic needs to decree the date of the early parliamentary election, to reduce the waiting time and the uncertainty and confusion amongst the public which can provide an opportunity for another crisis to occur;

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