



Opinion:

Debate on the interpretation of provisions relating to the competence of the President regarding veto and promulgation pursuant to Article 88 of the Constitution

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Introduction

Firstly, JSMP would like to congratulate the distinguished members of the National Parliament who have worked hard and managed to debate and approve the 2019 Budget Law, despite several challenges.

After carefully following and observing these debates, JSMP would like to share some thoughts to promote open discussion to contribute to national development and the national interest through analysis and interpretation of relevant constitutional and legal issues. Therefore, this opinion will focus on the interpretation of Article 88 of the Timor-Leste Constitution on Promulgation and Veto in relation to the 2019 State Budget Law.

These observations, analysis and interpretations are the independent point of view of JSMP and JSMP has no interest or other reason to support or benefit any group or party linked to the 2019 State Budget. In this opinion JSMP will not talk about the issue of unconstitutionality because this is the competence of the Court of Appeal/Supreme Court of Justice. This opinion is merely an opinion, therefore there is nothing binding or forcing other parties to follow it. This opinion simply outlines some thoughts and the organs of the State can consider and resolve this issue. JSMP's objective is to merely ensure that all decisions made by the State must be based on the norms in the Constitution and laws relevant to this issue in order to promote and guarantee the national interest based on the Democratic Rule of Law.

JSMP believes and has the conviction that if the sovereign organs of the State do not make sound and prudent decisions based on constitutional norms and the legal framework then this will set a bad precedent for the next generation and will have negative consequences and threaten the development of democracy in Timor-Leste.

Political Situation

The political impasse that occurred after the 2017 parliamentary elections has continued and has had a serious impact on the current political situation, especially in relation to the 2019 State Budget.

JSMP has observed that debates and discussions in the National Parliament have not created positive and conducive circumstances for political stability and national development. Political developments have indicated a tendency for people to give priority to the interests of their party rather than the national interest and they have not discussed or debated the national interest seriously. This political situation included the practice of voting to cancel the President's overseas State trip, which portrayed a negative image, even though some of the justifications linked to the national interest were not that clear or relevant.

The President vetoed the 2019 State Budget

The current political situation has occurred after the President vetoed Parliamentary Decree No. 4/5 on the 2019 State Budget Law on 23 January 2019 to request a new appraisal pursuant to Article 88.1 of the Timor-Leste Constitution. The National Parliament through a plenary meeting attended by 65 MPs carried out a new appraisal of this legislative diploma and made some

amendments based on the recommendations or message conveyed by the President on 31 January 2019. The vote on this legislative diploma resulted in 40 MPs in favor, 25 against, and zero abstentions.

In relation to this issue, a range of debates and interpretations have taken place involving ordinary citizens, jurists and experts on the Constitution, who are national citizens as well as foreigners. In addition, there has been open discussion or debate on social networks with a wide range of speculation about constitutional acts and exercises relating to the President vetoing Parliamentary Decree No. 4/5 on the 2019 State Budget. Some discussion and speculation tried to distort the President's act of exercising the constitutional power of veto, even though the President provided justification for this veto.

These interpretations have only created confusion for the public and could potentially result in political instability for the nation when some people take advantage of shortcomings/gaps in these constitutional provisions. Therefore, JSMP has attempted to share its thoughts, observations, analysis and interpretations in relation to the political, legal and constitutional dynamics through this opinion.

Issue of Promulgation and Veto

The Timor-Leste Constitution gives the prerogative to the President of the Republic to promulgate and veto legislative diplomas and this competence cannot be delegated to other organs. This competence is set out and clearly detailed in Article 88 of the Timor-Leste Constitution on Promulgation and Veto. These provisions are as follows:

- 1) Within thirty days after receiving any statute from the National Parliament for the purpose of its promulgation as law, the President of the Republic shall either promulgate the statute or exercise the right of veto, in which case he or she, based on substantive grounds, shall send a message to the National Parliament requesting a new appraisal of the statute;
- 2) If, within ninety days, the National Parliament confirms its vote by an absolute majority of its Members in full exercise of their functions, the President of the Republic shall promulgate the statute within eight days after receiving it;
- 3) However, a majority of two-thirds of the Members present shall be required to ratify statutes on matters provided for in Section 95 where that majority exceeds an absolute majority of the Members in full exercise of their functions.
- 4) Within forty days after receiving any statute from the Government for the purpose of its promulgation as law, the President of the Republic shall either promulgate the instrument or exercise the right of veto by way of a written communication to the Government containing the reasons for the veto.

Definition of Terms

Before moving on to the interpretation of these provisions, we first need to understand some of the terms used in these provisions. The terms are:

Appraisal

The term appraisal in this context means “take into consideration”. Therefore the phrase “providing a reappraisal or new appraisal” means “reconsidering”. What needs to be reconsidered in the case of veto? The diploma needs to be reconsidered, and the message or justification of the President of the Republic in vetoing this legislative diploma needs to be re-examined and discussed. When can this diploma be reconsidered to examine and discuss the message or justification of the President of the Republic? The reconsideration or new appraisal takes place when the National Parliament holds a plenary meeting to discuss or debate this diploma as well as the message of the President. This new appraisal is a normal or ordinary legislative process. The criteria relating to a quorum for deliberation or decision making is provided for in Article 47.2 of Law No. 15/2009 on the Parliamentary Rules of Procedure that states that the deliberations of the Plenary are taken with the presence of over half of its sitting members or a minimum of 33 MPs and the vote does not require an absolute majority, because this is the same as the normal legislative process, which only requires a simple majority and the diploma can be passed. When sent back to the President he needs to comply with the provisions set out in Article 88.1 of the Timor-Leste Constitution.

Confirming its Vote

The term confirming its vote is used to describe the situation where the National Parliament rejects the “veto” from the President. The criteria on “confirming its vote” is set out in Articles 88.2 & 88.3 of the Timor-Leste Constitution depending on the issue dealt with in the legislative diploma. 8 days is the period provided for promulgating a legislative diploma when confirming the vote, as set out in Article 88.2 of the Timor-Leste Constitution.

Promulgation

The term “promulgation” in this context is closely linked to recognising the authenticity of the legislative diploma or the state of recognising the legislative diploma as an obligation that everyone needs to fulfil. This means that before some legislative diplomas can become laws and enter into force, they must be promulgated by the President as provided for in Article 88.1 of the Timor-Leste Constitution.

Veto

The term “Veto” in this context means the competence and right granted by the Constitution to the President to reject or disagree or challenge or not recognise the authenticity of a legislative diploma from the National Parliament or a government diploma. The veto also serves as an important form of control in terms of legislative power in the form of a “*check and balance*”. This means that the President may disagree with a legislative diploma, based on substantive reasons or justifications.

Normally, there are two types of veto, namely a political veto and an unconstitutionality veto. The political veto occurs when it is felt that a legislative diploma or government diploma does not reflect the national interest. An unconstitutionality veto is when the President requests for the Court of Appeal, which also functions as the Supreme Court of Justice, to conduct a preventive review of a diploma. When the Supreme Court of Justice declares that a legislative diploma is

unconstitutional, based on this opinion or statement the President of the Republic will veto this legislative diploma and request for the National Parliament to review and amend this diploma. In addition, the veto can be total or partial. A total veto means vetoing the entire legislative diploma or government diploma. A partial veto is when only a section is vetoed.

The aim of vetoing a legislative diploma is to “request a new appraisal” and there is a requirement to present “substantive grounds or message” as set out in Article 88.1 of the Timor-Leste Constitution. However, the National Parliament can reject the veto of the President to “confirm its vote” based on the criteria set out in Articles 88.2 & 88.3 of the Timor-Leste Constitution.

Interpretation

Interpretation in this context will focus on paragraphs 1, 2 and 3 of Article 88 which are closely linked to the legislative diploma from the National Parliament and will specifically examine the issue of veto.

1) Article 88.1 of the Timor-Leste Constitution

The provisions in this subsection specifically talk about the process of promulgating and vetoing a legislative diploma from the National Parliament. The last sentence specifically states the aim of the veto is to “request a new appraisal” of the legislative diploma and the President's reason for the veto must include “a message based on substantive grounds”.

In this context the President does not force the National Parliament to do what he has recommended in his message. The National Parliament is vested with legislative powers and it has the prerogative to decide. The National Parliament can decide to “reject the veto” of the President of the Republic when it is felt that it has the political power to fulfil the criteria set out in Articles 88.2 & 88.3 of the Timor-Leste Constitution.

The President of the Republic in this context has a greater chance to effectively control all of the legislative diplomas from the National Parliament, when the National Parliament does not have enough political power to reject the veto of the President of the Republic. In this regard, the President can force the National Parliament to amend a legislative diploma based on the message that justifies the veto. When the National Parliament conducts a new appraisal of the legislative diploma to follow the recommendations of the President, the President can further exercise his right of veto to request a new appraisal.

2) Articles 88.2 & 88.3 of the Timor-Leste Constitution

Article 88.2 states that if within 90 days or 3 months the National Parliament does not conduct a new appraisal to reject the veto of the President to confirm its vote, then the criterion for confirming the vote is an absolute majority of its members in full exercise of their functions. However this criterion only applies for legislative diplomas that deal with issues not set out in Article 95 of the Timor-Leste Constitution. The State Budget Law is included in the legislative issues mentioned in Article 95, because it deals with the budget regime and or State budget.

When a legislative diploma deals with issues provided for in Article 95 of the Timor-Leste Constitution, the criterion/requirement set out in Article 88.3 of the Timor-Leste Constitution requires that a majority of two-thirds of MPs must be present, however the two-thirds of members present must be no less than 34 or higher than an absolute majority (50+1=33) of members in full exercise of their functions (65 MPs).

The total number of members based on this two-thirds figure will vary based on the number of MPs present. If all 65 members are present, then two-thirds of 65 will be 43. When this two-thirds is less than this number (42 or less), the confirmation of the vote is not valid and the President is not obliged to promulgate within 8 days. If there are only 60 members of parliament present, therefore two-thirds of 60 will be 40, and the number cannot be any lower than this, or cannot be 39 or below. If there are only 52 MPs present, therefore two-thirds of 52 will be 34, and there cannot be any less than this (33 and below) and 34 will be the minimum amount of the two-thirds of MPs present.

In the context of Article 88.3 the validity of the confirmation of vote will be determined based on the majority of the two-thirds of the members of parliament present. When the confirmation of vote is higher than two-thirds, there will be no problem and there will be more political and legal advantages. Can 34 MPs confirm the vote? This can happen when all of the MPs (34) provide their confirmation of vote, but when one MP abstains or rejects, the confirmation of vote will not be valid.

Conclusion

On 31 January 2019 the National Parliament conducted a new appraisal of the 2019 State Budget Law to make some amendments based on the message of the President when he vetoed this diploma. The vote resulted in 40 in favour and 25 against. Therefore the process of conducting a new appraisal of this diploma was carried out as per normal, so the legislative diploma was passed and had to adhere to the provisions of Article 88.1 of the Timor-Leste Constitution. During this 30 day period the President can promulgate or again exercise his right of veto to veto this legislative diploma.

Dili, 6 February 2019

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