

Analysis of the current situation

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Timor-Leste's parliament voted to reject the government's budget on Friday. This follows an extended period of instability, or political impasse, which began in 2017, perhaps immediately after the results of the July general election were announced.

I am trying to understand what has just happened and what's a better way to it than to share with you. A little reading of the Constitution and reading from other opinions helped to come to this brief. It has two parts. A compressed backgrounder to the current political standoff and a "what next" after the showdown last Friday. If you're already familiar the current situation, I suggest you jump right to the second part of this brief.

But first, a disclaimer: Number one, I am not an expert and I may not be right on every detail, so, I would be happy to hear your opinion on this. I also relied on private conversations and publicly accessible commentaries to help put together this brief. I am happy to be corrected because I am only trying to make sense of all this, with your help of course. Secondly, I am solely responsible for this post. I woke up this morning and noted a few messages on my phone asking for explanations so, here it is, a quick take.

Part 1 - Background

FRETILIN came out on top in the 2017 election if only by a slither with around 1500 votes more than the next political party, Xanana's CNRT. As the most voted party, FRETILIN was given opportunity to form government.

Negotiations were held with all parties and initially it appeared that PLP and KHUNTO were going to be FRETILIN's partner in the formation of new government. However FRETILIN also tried to negotiate a deal with CNRT and PD, in essence, an attempt to ensure a role for everyone in the new government.

However the deal soon fell through with PLP pulling out of the proposed alliance. FRETILIN then turned to PD to form government in addition to KHUNTO. However, this too didn't work as KHUNTO pulled out at the last minute leaving FRETILIN and PD to for a minority government.

In the parliament, CNRT, PLP and KHUNTO began to collaborate and moved together to derail the minority FRETILIN government calling its dismissal and the formation of a new government, presumably to be led by CNRT.

After FRETILIN government's program was rejected in the parliament and with the deadlock set to continue, the President dissolved the parliament and called for a snap election.

By this time, CNRT, PLP and KHUNTO had solidified their alliance and began to pressure the President to dismiss the current government and form a new government. While everyone publicly voiced their support for the President's decision, it is understood that the alliance deeply disagreed with the President's decision.

The snap election, which took place in May 2018, pitted FRETILIN and PD against CNRT-PLP-KHUNTO alliance, now called AMP, and other smaller parties. In the end, the AMP prevailed, winning 34 seats to form government in its own right. FRETILIN maintained its 23 seats, PD 5 seats (having lost 2), and 3 other seats went to a coalition of smaller parties. Remarkably, AMP also decided to split itself into 3 parliamentary benches representing CNRT with 21 seats, PLP 8 and KHUNTO 5.

AMP began the process to form its government headed by Taur Matan Ruak of PLP, a minor coalition in the AMP alliance. Taur then sent a list of candidates to the President to be sworn in. But the

President responded by asking Taur to reconsider at least a dozen candidates, most of whom were CNRT appointees.

Xanana, upon receiving the President's response decided to write to the latter a letter expressing his and his alliance's disappointment. However, the letter was not only delivered to the President, it was publicised on Facebook, a move which may have escalated the situation.

Positions hardened with the President moving to reject the candidates whilst AMP deciding to keep to the original list. Xanana, who had been nominated to the a ministerial post, withdrew his name. The gulf between President and the new government grew wider with each passing day.

Whilst PM Taur continued to dialogue with the President, Xanana broke off contact. Major government and parliamentary legislations were blocked by the President including the 2019 budget and amendments to the country's sovereign fund law (Petroleum Fund). On the other hand, government MPs blocked President's official visits abroad including visits to The Holly See, to Portugal, Indonesia and Japan.

CNRT spearheaded the criticism against the President's position, denouncing the latter's decisions regularly, from the floor of the National Parliament. Outside of the Parliament, CNRT also used social media platform such as Facebook to attack the President and the opposition parties whilst defending AMP's decisions.

In the end, the President's decision to not swear in the government candidates proved too much of a destabilizing factor in the AMP alliance. Friction inside the alliance began to emerge publicly during the 2020 budget process. One of the main disagreements was whether to honour 143 contracts signed in 2017 in the eve of the general election.

The 143 contracts in question, issued mainly for road projects, had been awarded under questionable circumstances. They may have been illegal to which the government decided not to honour even under pressure from CNRT.

There were also in-fighting between government ministers as they vie for control, over appointments to key public service and political positions, and over budget allocations. However, everyone tried their best to downplay the tension and keep the alliance together.

The 2020 budget discussion was dreadful for the PM as MPs, in particular government MPs, ripped the proposed legislation apart and censured individual members of government. Sensing that his budget was in trouble, Taur decided to withdraw the budget – a move allowed by law – to make necessary amendments before reintroducing it a week later (19th of December).

At issue was also the size of the budget which at over \$1.9 billion was the biggest ever proposed. MPs demanded the budget to be slashed to \$1.3 billion. Commission C which oversees the budget also issued a very critical report into the structure of the budget law.

On the 19th of December, the government sent the revised budget to the parliament and requested urgent deliberation which meant shorter discussion period. The budget went to the Commissions and finally it was sent to the floor on the 15th of January where it was given 3 days for general appreciation.

The mood at the debate was less combative this time between government and opposition MPs. Instead, whilst the opposition made use of all the time allocated to its MPs, government MPs, in particular CNRT, said very little. Finally, the chief of CNRT bench wrapped up their position by expressing their disappointment with the current government.

Duarte Nunes addressed the plenary by outlining CNRT's grievances including the failure of the PM to ensure the swearing in of their ministerial candidates and the inability or unwillingness of the

government to guarantee payment to the 143 contracts. According to Nunes, CNRT was the single biggest loser in the deal that is the AMP government. Although it was the biggest partner in the alliance, it had little or no control over the government.

The 2020 budget was rejected on the last day of deliberation with 13 votes in favour, 15 votes against, and 25 abstentions. FRETILIN MPs delivered most of the nay votes with 11, one vote from CNRT and 3 from PD. All of PLP's 8 MPs voted in favour and they were supported by 1 vote from PD and 4 from KHUNTO. The rest of CNRT MPs abstained in addition to an MP each from the other parties, namely PUDD, Mudansa, UDT, PD and KHUNTO.

How each party, other than CNRT, decided to vote the way it did will be the object of intense scrutiny in the coming days. If the mood in the major parties, FRETILIN and CNRT, is to block the budget, they only managed to do so thanks to the decisions made by 1 CNRT and 3 PD MPs. Was this a coincidence?

Part 2 – So, what's next?

We, the East Timorese are not short of constitutional experts but there is one that offers the most plausible interpretation of the Constitution in this situation (in my opinion anyway).

Manuel Tilman, a lawyer and a member of the Constituent Assembly (which drafted the present Constitution) offers an answer to this "what next" and it's not reassuring!

First, point 3 of Article 97 of the Constitution states that "Bills and draft legislation that have been rejected shall not be re-introduced in the same legislative session in which they have been tabled". Every legislature has 5 sessions and each session lasts one year. This means that after the rejection of the proposed bill, it cannot be reintroduced to the parliament until September when the new session begins.

However, point f of Article 86, on the powers of the President of the Republic over other State organs, states, "To dissolve the National Parliament in case of a serious institutional crisis preventing the formation of a government or the approval of the State Budget and lasting more than sixty days..."

This article therefore instructs the President to dissolve the parliament and call a snap election if the parliament fails to renegotiate the state budget within 60 days. This is perhaps the most significant article in the present context as it contemplates snap elections.

The Constitution treats the budget unlike other laws which can be reintroduced in another legislative session. The failure of the parliament to pass the state budget signals "serious institutional crisis" and this triggers the dissolution of parliament. So, it is very likely that Timor-Leste may be returning to the ballot boxes sometime before the middle of this year – as per Manuel Tilman's explanation.

And if Tilman is right, then from Monday the President will begin consultations with parliamentary political parties, and maybe key civic organizations (like he did in 2017), before convening the Council of State. Then the President will dissolve the parliament and will have up to 30 days to decide on the dates of the election.

Again, there are other opinions and some of them point to a totally different outcome, including the possibility of the prime minister stepping down to allow for the formation of a new government.

An alternative view points out that there are two solutions to this deadlock. As previously mentioned, the next budget proposal can only be made at the next legislative session, namely around mid-September. However, this is 8 months away, significantly longer than the 60 days allowed under Article 86 – in which the President would dissolve the parliament.

First, the prime minister presents his resignation, and/or the president dismisses the government, and the president then convenes the parliamentary political parties to negotiate the formation of a new government. A program and a budget proposal can then be presented by the new government. In second scenario, if the prime minister refuses to step down, and/or the president doesn't dismiss the government after 60 days, the president can dissolve the parliament and call a snap election. (This is the view of someone who's judgement I trust owing to his proven knowledge and experience.)

Whereas Manuel Tilman rejects any outcome other than dissolution of parliament and a snap election as solution to this deadlock, this second view however provides a way without the need of a snap election. But the president must secure this outcome within 60 days, I presume to begin immediately after the budget's rejection. Failure to do so will result in the dissolution of parliament and the country will head towards another election.

The President's declaration following the rejection of the budget also gives an indication that he's heading this way. He will speak to the prime minister and all political parties with representation in parliament to find a solution.

But this is no easy task. The President will need persuade key players to come to an agreement and break the current political deadlock without forcing the country into a new election. The current President has already presided over a snap election and he may not want his legacy to be remembered for elections or instabilities. Elections are costly and grinding, and on top of that, it may be seen by critics as the President's inability to maintain "the smooth functioning of democratic institutions" (Article 74). His has already been the object of constant attacks and smear campaigns since 2017 and his critics, CNRT in particular, accuse him of having caused the instability to favour FRETILIN.

Will the President be successful in this venture? A trusted friend sees the following. In the actual political situation, the prime minister will only present his resignation if he can get a guarantee that his party, PLP, is included in the new government and/or he continues to lead government. Otherwise, he would leave it up to the president to dismiss the government as he has already made clear earlier. However, the President will need a strong constitutional justification for the dismissal. One of the grounds on which the President can do this is to respond to a motion of no confidence by the parliament. But this move needs to come from CNRT, or at least, would require its full support. No matter how, CNRT has made it clear that they expect the president to make the move, in other words, they won't be the ones to take such initiative. If so, it appears that the country is on the inevitable path towards another election – that's 3 (or 4 if you include presidentials) elections in 3 years!

What is going to happen, then? We can only adopt a wait and see approach even with the best analysis we have. Politicians are good at coming up with creative and unexpected solutions. They may have their backs turned against each other today and emerge tomorrow immersed in intimate embrace and all is forgotten. It can be water under the bridge in the blink of an eye just as PM Taur Matan Ruak once said, "águas passadas não movem moinhos".