



Emergency Powers and COVID-19: Timor Leste as a case study

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What were the main mechanisms used to handle the COVID 19 challenges, both health and economic? With what effects on 'normal' government?

There were a number of measures used of an administrative, legal and political nature. Even before the first case was detected, the Government created an *Interministerial Commission* to deal with Covid-19, on 21 February. On 19 March, the Government approved Resolution 10/2020, restricting entrance to foreigners from certain countries and other measures to prevent the arrival of Covid-19. The first case was detected on March 21. On March 22, the Government closed all public and private schools (initially from March 23 to 28), while the Ministry of Higher Education, Science and Culture announced that higher education establishments were suspending classes (initially until April 4). The Ministry of Education changed the school year and the Catholic Church suspended masses.

The State of Emergency (SOE) (further explained on the next question) was declared for the first time by the President of the Republic on 27 March, after a request from the Government on 25 March and the formal authorization of the National Parliament on 26 March. The Government issued regulations under SOE on 28 March. The SOE was extended, with the intervention of the Government, National Parliament and President of the Republic, until June, before it expired. It was then again declared during the month of August (further explained in the next answer).

Administratively, the efforts of all of the Governmental organs and bodies involved were coordinated by the CIGC (*Centro Integrado de Gestão de Crises*), which worked as a Situation Room, under article 38.º of the National Security Law (Law n.º 02/2010, of April 21). Also, the Public Service Commission adopted rules for its operation and the work of public servants. On the same day, the Council of Ministers discussed the economic aspects and began to identify which non-essential public servants should not come to work.

The fight against the pandemic found Timor-Leste in the midst of a political crisis, after the failure to approve the State Budget for 2020 by the ruling coalition. The situation was very complex and led to the adoption of various measures directly and indirectly related to the prevention and fight against the pandemic of Covid-19. Economically, the first measures were enacted by Government Resolution 12/2020, of 31 March, which set out the policy for reducing economic impacts. However, because the Government was under the duodecimal regime of the State Budget of 2019,¹ different measures had to be adopted to actually implement the policy. In order to allow for the duodecimal execution of the state budget, on 30 March, the Minister of Finance asked Parliament to allow \$150 million to be

¹¹ Which means that the Government reverts to operating on monthly instalments of one twelfth of the previous 2019 budget: under article 31.º of Law n.º 13/2009 of 21 October 2009.

withdrawn from the Petroleum Fund² to deal with regular state expenditures as well as with the emergency. Parliamentarians allowed this option, which had already been used in previous periods of political crisis when it became impossible to approve the State Budget (v.g. 2018). Members of Parliament, however, decided to create a separate special fund to deal with Covid-19, in the total of \$150 million added to the original request of the Government for funds to cover normal government operations. The total amount negotiated during discussions reached \$250 million, including regular and Covid-19 expenditures. The President promulgated Law n.º 2/2020 on 6 April, authorizing the transfer of \$250 million from the Petroleum Fund and establishing the Covid-19 Special Fund, which was implemented by the Parliament's Resolution 2/2020, outlining measures to prevent Covid-19 in Timor-Leste. On 14 April, the President promulgated Decree-Law (DL) 12/2020, regulating the Covid-19 Fund. The regulations for the Covid-19 Fund were reviewed by Decree-law 19/2020 of 27 May. In early June, the Ministry of Finance released a report on the execution of the Covid-19 Fund, for the period of May 19 to 31, and the Covid-19 Fund Management Council published a more thorough one with data up to 10 June.

On 15 April, the Council of Ministers continued to discuss measures for economic alleviation and approved rules for executing expenditures from the Covid-19 Fund. On 17 April, the *Interministerial Commission* to Combat COVID-19 approved a series of measures to alleviate the economic effects of Covid-19 will do to Timor-Leste's economy, which were discussed and approved by the Council of Ministers of April 20. The more significant measures to fight the economic effects of the Pandemic were:

- DL 15/2020 of 30 April regarding a monetary support for households, providing cash support of \$100/month for each household where no member had an income superior to \$500/month;
- DL n.º 16/2020 of 30 April to support businesses that had to adopt lay-off procedures;
- DL n.º 17/2020 of 30 April allowing for an extra salary for public employees involved in the frontline service;
- DL n.º 21/2020 of 6 June establishing a temporary subsidy for Timorese citizens residing abroad;
- Decree-law 22/2020 of 6 June allowing for a moratorium on repayment of loans.

A number of other measures of economic relief were also implemented. On 7 April, the Government signed an agreement with Air North to enable thrice-weekly flights between Dili and Darwin for medical supplies, medical emergencies, and essential goods and services. Rice from Vietnam was bought to distribute among lower-income families. The distribution of telecommunications credit for student on distance learning. Credit on electricity services was granted. The Ministry of Justice temporarily exempted rent payments for public property. Government Resolution 13/2020 of 12 May set out the amounts of supplementary pay for essential workers, retroactive to 28 March. On 2 June, the Ministry of Education, Youth and Sport published their Contingency Plan to respond to Covid-19. Cross-border trade was limited by "despacho" (administrative measure) of the Ministry of the Interior on 8 June.

The situation of political crisis which continued to prevail for some months meant that in addition to dealing with the prevention and fight of the pandemic of Covid-19, leaders were also engaged in other political machinations. Prime Minister Taur Matan Ruak, who had presented his letter of resignation to the President of the Republic on 24 February, following the vote against the State Budget by the

² The Petroleum Fund, set up by Law n.º 9/2005, of 3 August, is the main source of funding of the State Budget and therefore strict rules were set in place to avoid its dilapidation, namely the necessary approval of the National Parliament for each withdrawal usually included in the annual State Budget.

National Parliament, withdrew his resignation on 8 April, which the President accepted a week later. On 18-19 May, the members of parliament from the new coalition (FRETILIN, PLP, KHUNTO and individual members of the PD), that had been trying to schedule the election of a new President of Parliament, considered that the absence of the President of Parliament (PPN Arão Noé) allowed for his substitution by the Vice-President of the National Parliament (VPPN) who carried out the subsequent election, not without confusion, where “Parliamentary order crumbled, with CNRT Members damaging the Parliamentary President's desk and attempting to prevent other MPs from electing a new President” (Lao Mamutuk). On 19 May, non-CNRT members elected Fretilin's Aniceto Guterres Lopes as President, although CNRT is challenging the election in court. The Court of Appeal refused to control this decision of the National Parliament, holding that the decision was an internal matter of the National Parliament, not subject to judicial control. On 25 May, the Government restructured itself and CNRT (which was part of the governing coalition until the end of 2019) instructed all its Ministers to resign. The Government has been governing with full powers in the context of the measures to prevent and fight the pandemic of Covid-19, while also reforming the organic structure of the Ministries and preparing the State Budget for 2021.

Was a constitutional emergency power available? If so, was it used? If not, why not?

The use of constitutional emergency powers has been the main constitutional instrument available for the Government to adopt the measures necessary to prevent and fight the pandemic of Covid-19.

On 23 March, the Council of Ministers requested to the President of the Republic to declare a state of emergency (SOE), under the terms of Article 85.^o (g) of the Constitution. The constitutional procedure demands that the President requests authorization from the National Parliament to declare the State of Emergency. On 26 March, Parliament debated the President's request extensively, with a speech by Prime Minister Taur Matan Ruak and, after some amendments, passed the authorization Law n.^o 1/2020, of March 27, unanimously. Subsequently, the President issued Decree 29/2020, of 27 March, declaring a state of emergency from 28 March until 26 April. Government Decree 3/2020, of 28 March, specified the Fundamental Rights restricted during the period of 30 days, namely the rights to international circulation, public administration work, private economic initiative, and set out the rules in relation to compulsory and voluntary isolation, validity periods of licenses and authorizations, the work of the administration of the Port of Dili, education, professional and vocational learning and distance learning.

The PM's Ministerial Diploma 14/2020 established the Integrated Crisis Management Center (CIGC), working as a Situation Room under article 31.^o of the National Security Law. On 3 April, the Government announced the spokespersons for the Situation Room: F-FDTL Captain Donaciano da Costa Gomes (Pedro Klamar Fuik), Dr. Sergio Lobo, Dr. Rui Maria de Araújo, and Dr. Odete Viegas. On the same day, the President, at the request of the Prime Minister, removed acting Health Minister Dra. Élia dos Reis Amaral from her position after a public announcement conflicting with the pronouncements of the CIGC. Decree-Law 24/2020, of June 10, defined the rules of the Integrated Crisis Management Center (CIGC). On the same day, by Government Resolution 18/2020, the Government created a *Commission to develop an economic recovery plan*.

The Government also announced, effective 4 April, the suspension of all international commercial and charter flights until further notice. Governmental Decree 6/2020, of 8 April, amended Decree 3/2020, of 28 March, with further restrictions to entry into national territory, as of 13 April. On 22 May, the Prime Minister allowed named foreigners into Timor-Leste.

On 22 April, the President asked National Parliament to extend the State of Emergency by 30 days, until 26 May. This was debated and approved on 27 April, by a vote of 37-23 (PLP, Fretilin and Khunto voted in favor, CNRT and Frente Mudansa opposed, and most PD abstained). Presidential Decree n.º 32/2020 of 27 April extended the State of Emergency for further 30 days, which was regulated by Governmental Decree n.º 08/2020, of 30 April.

On May 25, the Council of Ministers asked the President to extend the State of Emergency for another 30 days. On 26 May, the President asked for the National parliament's authorization, which was discussed and voted 40-1, authorizing the President to extend the State of Emergency until 26 June. The President issued Decree 35/2020, of 27 May, to declare the extension, which were regulated by the Governments Decree 09/2020, of 29 May. This third SOE phase was less restrictive and focused mainly on international travel, travel within the country, and quarantine/isolation when appropriate. On 1 June, the Ministry of the Interior issued a dispatch partially closing border posts, which was amended on 18 June, by further restricting cross-border trade and requiring trucks coming into Timor-Leste to change drivers at the border.

The succession of the State of Emergency periods ended midnight on 26 June, although some rules remained in place to prevent the Covid-19 virus from coming into Timor-Leste. On 27 July, the President vetoed a decree-law approved by the Council of Ministers on 17 June to establish a Legal Regime for Epidemiological and Health Surveillance (see below for more details). As a result, the Government requested the President issue a new period of State of Emergency. Despite parliament being recessed until September, Parliamentary authorization was provided, by Resolution of the National Parliament n.º 8/2020 of 5 August, adopted by the Permanent Commission and confirmed by the plenary under Law n.º 6/2020, of 12 August. The President declared the State of Emergency by way of Presidential Decree n.º 55 / 2020, of 5 August, which was regulated by Governmental Decree n.º 10/2020, of 6 August, mainly directed at the possibility of controlling the borders and imposing quarantine measures for suspected cases.

Were other forms of emergency power used? Did they fit within the constitutional framework?

The Health System Law n.º 10/2004 of 24 November permits the declaration of a state of sanitary emergency, which allows for the use of special powers by the Health Minister, but it does not appear to have been used for Covid-19. Instead, the Government attempted to regulate by way of a Decree Law (see above regarding the proposed decree law to establish a Legal Regime for Epidemiological and Health Surveillance) which was considered unconstitutional by the Court of Appeal; there are now doubts cast as to the limits of the exercise of such powers.

The Parliament approved the Civil Protection Law, which is pending presidential promulgation. This Law allows for the state of calamity to be declared, which is a less intrusive legal regime than the state of constitutional exception like the SOE or the State of Siege (SOS). If promulgated, these measures would allow civil authorities to adopt measures to combat Covid-19, which would allow for the limited restriction of the fundamental rights of the citizens. The President of the Republic is expected to decide very shortly on the promulgation of this Law.

In either case, were representatives involved in the approval or scrutiny of the measures taken?

Members of Parliament are permanently involved in the control of the Government actions. The National Parliament may control the legislation passed by the Government, under article 98.º of the

Constitution. The Parliament has controlled the political action of the Government by issuing reports on the Governmental action for prevention and fighting Covid-19 global pandemic in Timor-Leste.

The National Parliament has been involved in passing the relevant legislation, namely the budget matters and the use of the Covid-19 Fund, and/or by delaying the approval of certain laws, as happened with changes proposed by the Government to the Health System Law and the Immigration and Asylum Law. Parliamentary approval would have supported implementation of some of the measures restricting fundamental rights that were enforced during the SOE, but which were considered unconstitutional by the Court of Appeal under a Decree-Law; for example, the quarantine imposed for suspected cases was to be addressed through proposed changes to the Health System Law, and the stricter controls on the border were to be address in amendments to the Immigration and Asylum Law.

Were there other forms of oversight of the responses to the pandemic; for example, through courts?

As noted above, on July 27, the President vetoed a Decree-Law approved by the Council of Ministers on June 17 to establish a Legal Regime for Epidemiological and Health Surveillance, which would have amended the existing Health System Law to clarify the legal provisions on the governmental powers to fight Covid-19, namely powers on quarantine for suspected cases. The President was acting on the advice of the Court of Appeal after a preventive request on the constitutionality of the Decree-Law under article 149.⁹ of the Constitution, which decided that the decree-law was an unconstitutional violation of fundamental freedoms which could only be done by the National Parliament, which recessed at the end of July, until mid-September.

The decision of the Court is very unfortunate because it chose not to discuss the extent to which governmental regulation of the existing Health System Law could go. Not all the measures in the draft Decree Law, like testing or vaccination, were necessarily a restriction of Fundamental Rights of the citizens and therefore under the sole competence of the National Parliament; however, the Court did not differentiate. The Court also denied the Government the possibility of implementing the legislative obligations already imposed by the Health System Law, which in fact in many instances had already been assumed by the Public Administration. Further, the Court of Appeal equivocally referred to a Decree-Law authorized by a Law of the National Parliament, which either was the case or a mistake if referring to article 96.⁹ of the Constitution, which is not the adequate form for restricting fundamental rights. As a result, The Government requested the President issue a new period of State of Emergency, which was what in fact transpired.

Is there an end in sight to the use of emergency measures?

Considering the case-law of the Appeals Court on the regulation of the Health System Law and the inaction of the National Parliament on the proposed changes to the National Health Law and the Immigration Law, it is hard to find an end to the use of state of emergency measures. The foreseeability of a continuing situation of global pandemic further into 2020 makes it difficult to see what alternative the Government will be able to use to respond, in these times of extraordinary crisis.

How well did the measures taken work?

The measures adopted have, so far, worked very favourably. Timor-Leste has had relatively few cases of Covid-19 to date, the economic relief measures were adopted and implemented, and the political crisis was overcome.

What positive or negative lessons can be taken from the experiences in this case?

The measures needed in the prevention and fight of the global pandemic of Covid-19 have posed important challenges to the system of government in Timor-Leste. The Government, understandably, tried to maximize its administrative powers, while the Public Administration adopted broad measures understood to be allowed by the full extent of the law.

The Government tried to legally frame these administrative powers by legislating to amend the existing Health System Law, but this was rejected by the Court of Appeal after the constitutionality review requested by the President of the Republic. The decision of the Court determined that regulating the Health System Law was a competence of the National Parliament alone. The National Parliament chose to delay the discussion and approval of the changes proposed by the Government to the Health System Law and the Immigration Law.

The conduct of the President of the Republic, the Court of Appeal and the National Parliament appear to prefer the declaration of the State of Emergency to fight the exceptional challenges posed by the prevention and fight of the global pandemic of Covid-19 in Timor-Leste, presumably to avoid the institutionalization of exceptional powers to the Government during a state of constitutional normalcy. This is an understandable position, but only if: the pandemic is overcome in a reasonable period; there are no repeats in the near future; and there is no politization of the declaration of the State of Emergency.

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