

Appendix Three

Country Survey: Mozambique

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Contents

1.	INTRODUCTION	5
2.	LEGISLATIVE PROVISIONS	7
3.	PROCEDURE, LEGALITY AND CONSTITUTIONALITY OF RIGHTS LIMITING MEASURES.....	8
4.	STAKEHOLDER CONSULTATION.....	8
5.	BODY IN CHARGE OF COVID-19 DECISION MAKING PROCESS	9
6.	PROCEDURE FOR MAKING CHANGES.....	9
6.1.	<i>Summary of regulatory provisions</i>	10
7.	LEGAL OR OTHER CHALLENGES	17

1. Introduction

Mozambique declared a State of Emergency (SoE) on 30 March 2020 in response to COVID-19. An SoE is provided for in the Constitution of the Republic of Mozambique (CRM) to respond to situations of high threat to the State, such as cases of actual or imminent aggression, serious threats or disturbance of the constitutional order or public calamity.¹ The Constitution notes that: "The declaration of a state of siege or of emergency shall be reasoned and shall specify which freedoms and guarantees have been suspended or restricted."² The Constitution also makes a distinction between a "state of siege" and a "state of emergency", with the latter being less restrictive and seemingly more flexible.³ This provision requires that if the situation is based on less serious assumptions, the state of emergency shall be applied, but always respecting the principle of proportionality and limiting the means utilised and the duration to those strictly necessary to the restoration of constitutional normality.

Mozambique previously declared an SoE in 2019, in response to the cyclones Idai (13-21 March 2019) and Kenneth (21 – 29 April 2019) and the damage they caused in specific geographical areas in the central and northern provinces of Sofala and Cabo Delgado. The 2020 SoE was thus the first national declaration of an SoE. The Constitution provides that an SoE may not exceed 30 days, but is extendable for a maximum period of 30 days at a time for three times, if the reasons for its declaration remain.⁴

At the time of writing (June 2021) the SoE has already been extended three times – at the end of April, May and June 2021.

On 5 August 2020, as the reason for that declaration remained unchanged (the COVID-19 pandemic), the SoE had to be declared again, not anymore under the terms of the CRM, which were exhausted, but under the legal provision of Law n. 15/2014 of 20 June. This law established the legal framework for the management of disasters, covering the prevention, mitigation of the impact of disasters, development of relief and assistance actions, as well as the actions of reconstruction and recovery of the affected areas.

This also provided for a new law, being Law n. 10/2020 of 24 August on Disaster Risk Management and Reduction (*Lei de Gestão e Redução do Risco de Desastres*) to be tabled in Parliament and enacted,

¹ Article 290(1) CRM.

² Article 290(2) CRM

³ Art 291 CRM

⁴ Article 292 CRM.

amending Law n. 15/2014 and introducing the term 'pandemic'.⁵ The Minister of State Administration and Public Service (*Administração Estatal e Função Pública*) tabled the bill which was passed. Prior to passing, a parliamentary hearing was held by the Committee on Agriculture, Economy and Environment (*Comissão da Agricultura, Economia e Ambiente*) to obtain inputs on the draft law. The Minister of State Administration and Public Service clarified that the law introduced new elements, such as the concept of pandemic, for example, to be as comprehensive as possible and to respond to any type of disaster that may eventually occur in the country.⁶

Decree n. 79/2020 of 4 September ended the SoE and from 7 September 2020 Mozambique is in a state of 'public calamity' (*calamidade pública*). The preamble of Decree n. 79/2020 states:

Given the increase in the number of cases of infection by COVID-19 in the country, with a view to ensuring a better balance between the strategy of preventing and combating the COVID-19 pandemic and the need for a gradual return to normality and, at the same time, consolidate efforts to delay the spread of the disease, under the provisions of paragraph 1(a) of article 33 of Law n. 10/2020 of 24 August, the Council of Ministers decrees the Public Calamity.⁷

A situation of public calamity is considered to be an abnormal event caused by a major disaster, which causes damage and loss, severely compromising the response-capacity of the state. The current state of a public calamity will remain in place until formally terminated by the Government.

The processes following the declaration of the SoE were compliant with the Constitution as the declarations were ratified by Parliament enacting them into laws, and the subsequent decrees were passed by the Council of Ministers, outlining administrative measures for the implementation of the SoE.

The Constitution lists the following as non-derogable rights under an SoE: the right to life, the right to personal integrity, the right to civil capacity and to citizenship, the non-retroactivity of criminal law, the right of accused persons to a defence, and freedom of religion.⁸

⁵ *Lei de Gestão e Redução do Risco de Desastres, Lei 10/2020, de 24 Agosto*

⁶ See information available at website of the government of Mozambique "*Proposta de Lei de Gestão e Redução do Risco de Desastres vai suprir lacunas na Lei de Gestão de Calamidades*" - Ana Comoana"<https://www.portaldogoverno.gov.mz/index.php/por/Imprensa/Noticias/Proposta-de-Lei-de-Gestao-e-Reducao-do-Risco-de-Desastres-vai-suprir-lacunas-na-Lei-de-Gestao-de-Calamidades-Ana-Comoana> (accessed 9 June 2021).

⁷ Unofficial translation by author.

⁸ Article 294 CRM.

However, provision is made for the following measures to be taken restricting individual freedoms under an SoE:

- obligation to remain in a certain place;
- detention;
- detention in buildings not intended for persons accused or convicted of common crimes;
- restrictions relating to the inviolability of correspondence, the confidentiality of communication, the provision of information and the freedom of the press and of radio and television broadcasting;
- home search and apprehension;
- suspension of the freedom of assembly and demonstration;
- requisitions of goods and services.⁹

Detention was initially used for transgressions of SoE provisions. Transgressions were in some instances punished with imprisonment if the person was convicted of disobedience.¹⁰ The crime of disobedience is punishable with up to three months of imprisonment, or in the case of aggravated disobedience up to six months imprisonment.¹¹

2. Legislative provisions

The SoE was declared by the President in March 2020, ratified by Parliament and regulated by the Council of Ministers. The SoE, in line with constitutional requirements, ended on 5 August 2020. The relaxation from an SoE to a state of calamity was announced by the President on 7 September 2020 and regulations issued by means of Decree n. 79/2020 of 4 September by the Council of Ministers as provided for in the Disaster Management and Risk Reduction Law.¹² There does not appear to have been any consultation with external stakeholders prior to the declaration of the state of emergency.

⁹ Article 295 CRM.

¹⁰ According to the National Correctional Service (June 2020), between 30 April-30 June 2020, 1227 people were imprisoned for disobedience: 278 people in April; 416 in May and 533 in June. The majority of the people imprisoned were between 22-35 years old, but around 10% were children between 16-18 years old.

¹¹ Articles 412 and 413 of the Penal Code.

¹² Articles 33 and 34, Law 10/2020 of 24 August.

3. Procedure, legality and constitutionality of rights limiting measures

At the start of the SoE it was observed, at least in Maputo, that the police were enforcing an unofficial curfew, approaching and arresting persons in public after 8 pm, especially if there was reason to believe that such persons had been drinking alcohol. The decrees following the SoE did not establish any curfew and the police had no legal basis for arresting people found outdoors. However, the above-mentioned decrees prohibited the opening of commercial establishments such as bars and shebeens for the sale and consumption of alcoholic beverages, and if a person was found consuming alcohol in shebeens for example), regardless of the time of day, he or she would be arrested for the violation of measures established by decree.

4. Stakeholder consultation

It is not known if there were stakeholder consultations prior to the SoE declaration, but it seems unlikely.

Changes in the provision or enforcement of the SoE provisions happened following pressure from external stakeholders raising concerns about particular issues. For example, on 15 June 2020 REFORMAR sent an open letter to the Government highlighting problems and irregularities in the enforcement of SoE.¹³ Following the open letter, the crime of disobedience under the SoE provisions (see above) initially attracting imprisonment up to three months (aggravated disobedience with an imprisonment up to six months) was declassified with imprisonment of three to 15 days, always replaced with a fine, as established in article 6(1) and 6(2) of Presidential Decree 21/2020 of June 26th.¹⁴

¹³ See REFORMAR's Open Letter available at: <https://reformar.co.mz/publicacoes/carta-aberta-impacto-estado-de-emergencia-1.pdf/view> (accessed 8 June 2021).

¹⁴ Presidential Decree 21/2020 of June 26th available at: https://www.rsm.global/mozambique/sites/default/files/lei_8_2020_br_122_i_2.o_suplemento_serie_20203.pdf (accessed 8 June 2021).

5. Body in charge of COVID-19 decision making process

The Council of Ministers (or Cabinet) has the power to specify the SoE measures and these are described in the CRM. This includes, amongst others to maintain public order and social discipline, and issue decrees under the legislative authority of the Parliament.¹⁵ While Parliament develops and promulgates law, it is the Council of Ministers that will issue decrees to add detail and specificity to the laws.

6. Procedure for making changes

Changes were made on a monthly basis. Presidential decrees were drafted by the President and submitted to Parliament for ratification. If Parliament refuses to ratify it, the Presidential Decree is sent back to the President, specifying the reason for such decision and proposing possible changes. If Parliament ratifies the Presidential Decree, the Council of Ministers determines the specific implementation measures. For example, if the Presidential Decree determines the reopening of the school, then the Minister of Education determines how the return will operate through a decree (e.g., which students return to school, how many times a week, number of hours per day, etc.).

¹⁵ Art 203 CRM.

6.1. Summary of regulatory provisions

Table 1 Text

Relevant legislation and timeline	Main characteristic	Details of the legislation
Presidential Decree 11/2020 of 30 March	First declaration of SoE by the President	
Law 1/2020 of 3 March	Parliament ratifies the declaration and enacts the Law	Provisions regarding access to justice and courts. Regarding courts' operation, the general rule is that all procedures are subject to the judicial recess regime until further notice, which means that courts are only handling urgent matters.
Decree 12/2020 of 2 April	Council of Ministers outlines administrative measures to be taken.	Home quarantine; A special protection regime for high-risk citizens was created; Entertainment establishments, including museums, theatres, libraries, bars, pools, clubs, sports fields, beaches and gyms are closed; Public and private entities (except for those mentioned above) may continue to function, provided that the workforce on site is reduced to 1/3 and the prevention measures are complied with; Collective transport of people is limited to 1/3 of the vehicle capacity, reduction of hospital visits to a maximum of two persons per day for each patient, ban on visits to patients with COVID, suspension of the issuing of official documents, suspension and cancellation of visas, closure of certain border crossings, closure of educational and vocational education establishments, suspension of collective religious services and celebrations, limitation of participants in funeral ceremonies, ban on visits to prisons.
Decree 14/2020 of 9 April	Council of Ministers amends the previous Decree (12/2020 of 2 April)	backtracking on some of the measures around port operations and capacity limitations in public transport but instituting other obligations such as use of masks in public transports.
Presidential Decree 12/2020 of 29 April	Presidential Decree extends the SoE for 30 days from May 01, 2020 to May, 30 2020	
Law 04/2020 of 30 April	Parliament ratifies Presidential Decree 12/2020	

Relevant legislation and timeline	Main characteristic	Details of the legislation
Decree 26/2020 of 8 May	Council of Ministers sets out new administrative measures for the extension of the SoE	<ul style="list-style-type: none"> • The closure of educational and vocational training establishments; prohibition of public gatherings of more than 20 people; closure of commercial establishments such as bars and shebeens for the sale and consumption of alcoholic beverages were invoked. • People engaged in the following would be at risk of arrests and detention: <ul style="list-style-type: none"> • found without a mask in places of crowding of people such as public roads, in markets and common areas. • Engaging in cultural, recreational and sporting activities in public spaces (Article 15 n. 1); • Operating bars and tents selling alcoholic beverages (Article 15 n. 2c); • Collective services and religious celebrations are suspended in all places of worship. • Conducting funeral ceremonies exceeding 20 people (Article 17); • keeping a market in operation, outside the hours of 6 am and 5 pm (Article 23 n.1).
Presidential Decree 14/2020 of 29 May	Presidential Decree for the second extension of SoE from May 31, 2020 to June 29, 2020	
Law 06/2020 of 31 May	Parliament ratifies the Declaration enacted through Presidential Decree no. 14/2000 of 29 May.	
Decree 36/2020 of 2 of June	The Council of Minister repeals previous decrees and enacts administrative measures	It regulates the quarantine regime, as well as, among other measures, visits to hospitals, the expansion of the screening and testing for COVID-19 and the use of masks.
Presidential Decree 21/2020 of 26 June	The third extension of SoE from June 30, 2020 to July 29, 2020	

Relevant legislation and timeline	Main characteristic	Details of the legislation
Law 08/2020 of 29 June	Parliament ratifies the Declaration enacted through Presidential Decree 21/2000	The law regulates restrictions on rights and freedoms, and access to justice. The crime of disobedience ¹⁶ eligible for imprisonment of three to 15 days.
Decree 51/2020 of 1 July	The Council of Minister repeals previous decrees and enacts administrative measures aimed at containing the spread of the	It defines, as general measures to prevent and combat the pandemic of COVID-19, the wearing of masks, frequent hand washing with soap and water or ash, minimum interpersonal distance of 1.5 m, cough etiquette and no sharing of utensils for personal use; regulating quarantine and isolation, among others.
Presidential Decree 23/2020 of 5 August	Declaration of the SoE for public calamity based on the Parliament's Resolution no. 72/2020	
Law 9/2020 of 7 of August	Parliament ratifies the Declaration of the SoE under Public Calamity Law foreseen in Presidential Decree n. 23/2020	
Decree 69/2020, of 11 August	The Council of Minister enacts administrative measures addressing the new EoS for public calamity	<ul style="list-style-type: none"> • 14-day home quarantine mandatory for all those who have had confirmed contact with COVID-19 patients. • Prohibition of hospital visits to patients with COVID-19, as well as a limitation of 2 visitors per day to other patients. • The ban on prison visits is maintained. • The use of masks and/or visors is mandatory in all common areas, public spaces, markets and in transport. • Suspension of entry visas. • Cultural and recreational activities in public spaces are prohibited; • Cinemas, theatres, casinos and gyms may reopen from September 1, subject to the existence of a contingency plan

¹⁶ Article 5, no 1 of Law 8/2020 of 29 June.

Relevant legislation and timeline	Main characteristic	Details of the legislation
		<p>and verification of adequate conditions by the health authorities.</p> <ul style="list-style-type: none"> • Discotheques are closed, as well as game rooms (except casinos), bars and stalls for the sale of alcoholic beverages; public swimming pools; sports pavilions; playing fields; monuments and the like, except in the case of State ceremonies. · Private events must be limited to a maximum of 30 participants. · Restaurants must close at 10 pm and bar service (serving alcoholic beverages) is prohibited.
Law 10/2020 of 24 August	Disaster Management and Risk Reduction Law	In a situation of a public calamity, the Government is entitled to adopt various measures, and arrange activities and operations across different sectors and services. The law introduces the term “pandemic”. Article 34 (6) (i) allows for proportionate use of coercive means in order to ensure compliance with the measures.
Decree 76/2020 of 1 September	Approves the Regulations of the Disaster Risk Management and Reduction Law	
Decree 79/2020, of 4 September	The SoE ended at midnight on 7 September 2020 and was downgraded to a situation of public calamity with a Red Alert.	<p>During the state of public calamity, the following prevention measures remain in effect:</p> <ul style="list-style-type: none"> • General measures to prevent the pandemic, including wearing a facemask and social distancing; • Continued quarantine, isolation, and hospitalization policies defined under the SoE • Closure of clubs, bars, and informal stalls which sell alcoholic beverages; • Suspension of team sport activities; • Reduced hours of operation for markets; • Passenger limits for buses, vans, and other methods of public transportation.

Relevant legislation and timeline	Main characteristic	Details of the legislation
		<p>The state of public calamity allows for the gradual resumption of the following:</p> <ul style="list-style-type: none"> • Issuance of national identification cards, visas, and other documents; • Resumption of commercial passenger flights with select countries on a reciprocal basis; • Resumption of in person classes for the 12th grade on October 1; • Resumption of in person classes for other levels of secondary and primary education once authorized by their respective ministers depending on the epidemiological situation and assessment by health authorities on a case-by-case basis; • Beach access in compliance with prevention measures resumed on September 15 with the exception of group sport activities, musical performances, and alcohol consumption; • Restaurants will be allowed to open indoor areas provided they observe social distancing and other prevention measures; • Public and private institutions can conduct operations in conformance with preventative measures; limit of 40 people for events; • Religious services are permitted at 50 percent capacity, up to 150 attendees.
Decree 102/2020 of 23 November	The same measures of September were applied in November	
Decree 110/2020 of 18 December		<ul style="list-style-type: none"> • Reopening of bars and stalls for the sale of alcoholic beverages, in the periods between 9 am and 4 pm from Sunday to Thursday and 9 am hours to 7 pm from Friday to Saturday.

Relevant legislation and timeline	Main characteristic	Details of the legislation
		<ul style="list-style-type: none"> • The following was closed: a) discotheques; b) gaming rooms, with the exception of Casinos. • Private events must have a maximum limit of 50 (fifty) participants if held in closed or semi-open spaces (rooms, tents or equivalent), or 150 (one hundred and fifty) people if held outdoors, ensuring the distance of at least 2 meters and strict observance of measures to prevent and combat the COVID-19 pandemic. • While the Situation of Public Calamity is in force, the maximum number of participants in the holding of funeral ceremonies is 50 (fifty) people.
Decree 1/2021 of 13 January	measures once more become more severe	<ul style="list-style-type: none"> • The following are closed: a) discotheques; b) game rooms and casinos; c) theatres; d) cinemas; e) auditoriums; f) museums; g) galleries; h) cultural centres; i) public swimming pools; j) gyms and other public and private places for the practice of physical exercise, except to attend to therapeutic services, duly proven; and k) bars and stalls for the sale of alcoholic beverages, with the exception of bottle stores which must remain closed on Sundays. • Private social events must have a maximum limit of 30 (thirty) participants if held in closed or semi-open spaces (rooms, tents or equivalent), or of 50 (fifty) people if held outdoors. • It is forbidden to go to the beach as a recreation place for bathers, but walking and physical activities in spaces defined for pedestrians, such as sidewalks, and without crowding, are allowed.

Relevant legislation and timeline	Main characteristic	Details of the legislation
		<ul style="list-style-type: none"> • As long as the Situation of Public Calamity is in force, the maximum number of participants in the holding funeral ceremonies is 20 (twenty) people. • In prisons, the visit of a maximum of two people per month is allowed for each inmate.
<p>Decree 2/2021 of 4 February</p>		<ul style="list-style-type: none"> • Suspension of all in-person classes in the institutions of Primary, Secondary, Technical, Vocational Training and Higher Education throughout the country • The following is closed: a) discotheques; b) game rooms and casinos; c) theatres; d) cinemas; e) auditoriums; f) museums; g) galleries; h) cultural and similar centres; i) public swimming pools; j) gyms and other public and private places for the practice of physical exercises, except to attend to therapeutic services, duly proven; and k) bars. • Restaurants allowed to operate from 6 am until 8 pm and food stalls from 6 am until 5 pm. • Mandatory curfew between 9 pm and 4 am in the Greater Maputo Metropolitan Area.

7. Legal or other challenges

Ensuring that the public is informed of what the laws and rules are, was a major challenge. Disseminating the various laws, regulations and general information was difficult in an environment where internet connectivity is varied, there is limited resources for printed matter, and literacy levels low in some sectors of the population, or parts of the country. This created the space for speculation and fake news to flourish. This resulted in confusion in both what the laws require but also their application.

Provincial and municipal governments seem to have taken a number of measures beyond what the law mandates and enforcement and sanctions, especially in the beginning, was not specific and open to abuse.