

This NL is based on the legislative framework in force as at 2 April 2020. However, the competent bodies of the State are expected to approve and publish the regulations that put into effect the measures to contain the spread of the new Coronavirus that is responsible for the COVID-19 pandemic (see article 4 of Law 1/2020 which ratified the Declaration of the State of Emergency, appearing in Presidential Decree 11/2020 of 30 March). Therefore, TTA will update this NL as and when necessary.

MOZAMBIQUE

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CORONAVIRUS: ACCESS TO JUSTICE DURING THE STATE OF EMERGENCY

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We are facing an international public health emergency declared by the World Health Organization due to a worldwide pandemic of the new Coronavirus and the President of the Republic (by Presidential Decree 11/2020 of 30 March) has declared a state of emergency throughout Mozambique. The Mozambican parliament (Assembleia da República) then ratified the Presidential Decree by Law 1/2020 of 31 March and approved a set of exceptional and temporary measures in response to the national health crisis, in particular, in relation to the issue of access to justice.

The measures taken under the state of emergency will, to a large extent, limit a set of rights, freedoms and guarantees. The limits on these rights are also expected to place limitations on access to justice and the courts, given that it is physically and legally impossible to do a wide range of legal acts.

Specific measures have been introduced in the justice sector that impact civil, administrative and employment proceedings. Article 2(1) of Law 1/2020 of 31 March provides that, during the state of emergency, procedural acts and proceedings will be subject to the rules that apply to court holidays. However, *this does not apply to urgent acts, including interim injunctions, which should go ahead in cases that involve fundamental rights, such as those relating to defendants in custody and to minors at risk.*

This immediately means two things. First, the courts have not been fully and indiscriminately closed. In other words, some procedural steps will continue to be taken and some cases will continue as normal due to their nature or importance. Second, in order to safeguard public health, special rules have been introduced that apply to civil court proceedings and time limits, and to administrative and employment proceedings and time limits. This is the case for both the applicable time limits and the steps themselves.

In summary, this solution is designed to ensure that citizens and businesses maintain their rights, except during the state of emergency, when they will not be able to freely use the normal means of dispute resolution. However, in cases of particular urgency or clear social importance, their rights will be safeguarded. This happens in all cases that concern rights, freedoms and guarantees, and in all cases involving the protection of other socially important rights and interests, such as the case of minors at risk.

Therefore, during the state of emergency, interim measures relating to minors at risk in general, such as maintenance payments, regulation of parental powers, and the measures to protect minors must still go ahead. Similarly, all urgent acts should continue to be done. These include (i) interim injunctions, including applications, decisions and enforcement, if their purpose is to protect the useful effect of rights protected by legal actions, and (ii) proceedings relating to defendants in custody, such as, legalisations, consideration of applications for parole, and the examination of applications for fixing or reduction of bonds.

However, it may be the case that other urgent acts, beyond those indicated in the law, are needed. The situation of the state of emergency is developing rapidly and unpredictably, and citizens are complaining about other urgent acts. Therefore, similarly to what has happened with the court holiday rules, we believe, provided the courts have the appropriate public health conditions, the legislature will allow parties to continue to do procedural acts. Furthermore, if they do not do those acts, we believe there will be no negative consequences. However, in cases involving urgent procedural steps, if the parties fail to take those steps, they will be subject to the usual legal consequences of their behaviour. These consequences include the expiry of time periods laid down by law or determined by the judge.

In light of the above, time limits in administrative and disciplinary procedures are also suspended. In other words, these periods will not begin to run again until the end of the state of emergency. Therefore, in judicial, administrative or disciplinary proceedings, the parties are not required to do any acts

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For example, if a period was running to file a defence, to list witnesses, to lodge an appeal, or to do an administrative act or an act in a disciplinary procedure, the time limits are suspended. When the state of emergency ends, as the periods were suspended, the question will be whether the part of the period that ran before the suspension still counts, or whether, on the contrary, a new period starts to run. Law 1/2020 of 31 March is silent on this point. Looking at the general rules, article 283(2) of the Code of Civil Procedure establishes the rule that, in the cases specified in that article, the part of the period that has passed up to the point in question does not count. While it is true that this rule exists, there is no doubt that it applies only in exceptional situations. Therefore, as the legislature is silent, the general rule applies and it provides that the period that had run up to the date of until the enactment of a state of emergency is counted, because the party could have done the act in question up to that point.

Once the state of emergency ends, procedural, administrative and disciplinary periods will begin to run again from the point they had reached when the state of emergency took effect. Another measure taken has to do with limitation and expiry periods. In all processes and procedures, claim are time-barred and rights expire if they are not exercised before the period ends. Whatever the jurisdiction, or even in cases of administrative or disciplinary procedures, the parties are not penalised by the expiry of the period and, at the end of the state of emergency, and as in the previous situation, the periods begin to run again.

Finally, taking into account the strict requirements that apply to procedural acts, the legislature has determined that the President of the Supreme Court, the President of the Administrative Court and the Prosecutor General of the Republic may introduce any additional measures they consider appropriate, in the context of preventing the Coronavirus (COVID-19). Furthermore, the Mozambican Bar Association can be heard on these matters. Beyond the measures contained in the Law, the functioning of the courts should take into account not only the special characteristics of the sector, but also the fact the legislature was keen to leave it to the bodies that know the sector best to take whatever measures they see fit. One issue of the utmost importance has not been resolved by the legislature, but we do expect the state administration or justice body called on to do so to introduce a regulation. This issue is the creation of a more flexible rule to make it possible to invoke a justified impediment in ongoing judicial proceedings.

Indeed, rules should be created for the judicial proceedings in which the applicable periods are not suspended with respect to their conciliation and enforcement to address the possibility of a party or their representative being forced into a period of isolation due to a possible risk of COVID-19 infection. As far as we are concerned, that would not be enough to ground a plea of justified impediment to doing the procedural acts that must be done in person before the courts or other tribunals, along the lines existing today. Therefore, it is necessary to increase the flexibility of its invocation and the means of proof allowed, in addition to extending its duration until the end of the exceptional situation of prevention, containment, mitigation and treatment of COVID-19, for the good of the health of all citizens.

In any case, these or other measures will not be limited to the ones set out in Law 1/2020 of 31 March, alone, but to the whole set of administrative measures that have been taken by the Ministry of Health and which, in the context of the authorisation given by law, will certainly be taken by the Council of Ministers.