

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

Global Vision, Local Experience.

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CORONAVIRUS: CIVIL REQUISITION

The grounds for declaring the state of emergency result from the need to ensure, with the greatest number of available resources, the maintenance of healthcare for the people through the national health system.

Presidential Decree 11/2020 of 30 March declared a state of emergency in Mozambique due to the COVID-19 pandemic and this was ratified by the parliament in Law 1/2020 of 31 March. The Council of Ministers then issued Decree 12/2020 of 2 April, which introduces a set of urgent exceptional measures that are necessary, appropriate and proportionate to the situation. The goal of these measures is to prevent the spread of the COVID-19 pandemic, to safeguard human life and public health, and to ensure that services function properly.

In the context of the above measures and the possibility of temporary restrictions on rights and freedoms, the government has decreed a civil requisition (conscription) of all doctors, nurses and other health care personnel outside the National Health System. Naturally, this does not apply to health professionals who cannot provide medical care in the current context due to them being particularly vulnerable to COVID-19.

Now the government has recognised this need, the civil requisition will be put into effect by the health minister. We are now expecting a ministerial order to indicate the purpose and duration of civil requisition, the authority responsible for carrying it out, and the work arrangements for the conscripted staff. The order will also need to indicate who the exception will apply to. Besides this, the order will have to answer the question of whether the conscripted staff will receive any pay and/or compensation over and above the wages or salary due under the contract of employment or professional category in question.

Civil requisition is a mechanism that ensures the functioning of certain fundamental activities, whose momentary or continuous paralysis would cause serious disruption to social, economic and even political life in part of the country in a sector of national life or in a part of the population. It is based on the *individual or collective provision of services, the provision of movable or immovable property, the temporary use of any property, public services and mixed or private economy state companies.*

Under the Mozambican legal-constitutional order, it is paramount to understand from the outset that the grounds for requisition to be decreed result from the need to ensure, with the largest number of available resources, the maintenance of healthcare for all people through the public health system. It includes the express provision that all citizens qualified to provide care must be put to work with the medical and public health authorities as soon as they have been asked to help.

Based on this legal-constitutional requirement, in the current circumstances, the government decided to go ahead with the civil requisition of doctors, nurses and other health personnel, to ensure the proper functioning of essential services of public interest, such as medical, hospital and medicine services.

Indeed, these are restrictive measures taken on the basis of the state of emergency, taking into account the importance, at this time, of the role of health services and other similar services. However, there is nothing to prevent other requisitions being declared during the state of emergency, not only of medical and other professionals, but also of property.

One problem Mozambique faces is the result of not having legislation that establishes the principles and basic rules of civil requisition to ensure the functioning of public services or the provision of essential products citizens.

Civil requisition does not allow the people who are conscripted to refuse or obstruct compliance with the order.

From the outset, it is essential to know who can be conscripted. Based on the Decree (article 2), the answer seems to us, in principle, to be that the Decree applies to any Mozambican or foreign citizen that is in the country and is a licensed to work as a doctor, nurse or other health profession, but is currently outside the National Health System. The express reference to professionals who are outside the National Health System is because anyone who is in the NHS does not need to be conscripted and can be required to work on the basis of the administrative and hierarchical organisation to which they are subject.

The communication to people subject to the requisition must be made through the media. It takes effect immediately and, in individual cases, it may be communicated by a document sent to the conscript. The communication can be made as soon as the legislation that determines the requisition enters into force. Nevertheless, as this is an urgent measure, it can also be communicated through professional associations, employers, or trade unions, which, in their organisation and operation, have effective mechanisms to communicate with their members. However, the Ministry of Health is responsible for creating the conditions to carry out requisition and it can determine the terms on which this communication will be made.

The Decree provides that doctors, nurses and other healthcare personnel who are particularly vulnerable to the COVID-19 pandemic will be excluded from the civil requisition. The Decree does not define vulnerable people, but we believe it will cover the same people who are subject to the special protection arrangements under article 6 of Decree 11/2020 of 2 April. These arrangements apply, among others, to pregnant women, people aged 60 and over, patients considered at risk, such as renal patients, patients with hypertension, diabetics, cardiovascular patients, patients with chronic respiratory disease, cancer patients, and anyone else who can be considered vulnerable.

Finally, an issue that will have to wait for regulation by the Minister responsible for the area of health concerns the payment arrangements, rights and privileges of the people who are conscripted. It is not known whether the state will offer them the same conditions it provides health and medical professionals who are members of the National Health System, or even if they might have better conditions.

Civil requisition does not allow the people who are conscripted to refuse or obstruct compliance with the order. The range of penalties they may incur include civil liability for any damage caused by the breach of their duties under the civil requisition, criminal responsibility based on committing the crime of disobedience, and disciplinary responsibility, especially within the organisation to which they are attached when it has disciplinary jurisdiction over the person who has been conscripted.