

LEGAL RULES ON DISASTER MANAGEMENT AND RISK REDUCTION - LAW 10/2020 OF 24 AUGUST

It is only 6 years since the entry into force of the Law establishing the legal rules on disaster management (Law 15/2014 of 20 June). However, the Covid-19 pandemic has forced the approval by the Mozambican Parliament of Law 10/2020 of 24 August. This new law repeals Law 15/2014 of 20 June.

It is only 6 years since the entry into force of the Law establishing the legal rules on disaster management (Law 15/2014 of 20 June). However, the Covid-19 pandemic has forced the approval by the Mozambican Parliament of Law 10/2020 of 24 August. This new law repeals Law 15/2014 of 20 June and establishes the new Legal Rules on Disaster Management and Risk Reduction. These rules cover risk reduction, disaster management, and sustainable recovery, to build human, infrastructural and ecosystem resilience, and adaptation to climate change (Legal Rules on Disaster Management and Risk Reduction).

The Legal Rules on Disaster Management and Risk Reduction have established a clearly broad range of risks or threats to the country and there is a particular emphasis on epidemics and pandemics as possible risk situations. This shows a primary focus on the extraordinary public health circumstances that Mozambique in particular and the world at large are currently experiencing.

Instead of implementing specific legislative measures with deep impact on companies from different sectors and society in general, the Legal Rules on Disaster Management and Risk Reduction are wide-ranging and complex.

It is clear that the legislature has focused on ensuring that disaster management and risk reduction system bodies have the power to make assessments, standardise decision-making processes, monitor and signal risk or threat events, coordinate actions and response mechanisms, mobilise resources, and establish prevention programmes. The bodies in question comprise not only the Government, but also the various central, provincial and local bodies of the newly constituted Disaster Management and Risk Reduction Coordination, a legal person under public law, which will operate under the tutelage of the Government.

The activation of the political and institutional coordination structures with territorial jurisdiction implies the activation of civil protection emergency plans at the territorial level. There is no doubt that the local administration bodies of the State seem to have been excluded from the management of these extraordinary events.

With the entry into force of this law, the system to manage disasters and reduce risks now comprises the following distinct stages: (i) early warning and alert phase; (ii) response phase; (iii) prevention, adaptation, mitigation and resilience phase. The cornerstone of all these stages is that it is always for the Government to establish and regulate the behaviour required of people and of public and private bodies and institutions, whether Mozambican or foreign, whose object is to protect, anticipate, or reduce the impact of confirmed or imminent events posing a risk or threat.

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It seems clear that, within the framework of the risk and disaster management system, the Government can adopt measures as distinct as (i) the civil mobilisation of people, for determined periods of time, (ii) the establishment, for reasons of their own security or that of operations, of limits or conditions on the movement or stay of people, other living beings or vehicles, (iii) the establishment of cordons sanitaires, (iv) the streamlining of the use of public services, (v) the early preparation of mechanisms to acquire goods and services in emergency situations for the State to respond to the necessary situations. Besides this general list of measures, through the Regulation of this Law or an empirical evaluation, with the discretion these rules offer them, the bodies of the disaster management and risk reduction system will determine the specific measures to be observed at any given time.

The legal uncertainty of these arrangements is compounded by two factors. First, there is no clarification of the penalties that apply for violating the Legal Rules on Disaster Management and Risk Reduction or of the measures decreed by the bodies disaster management and risk reduction system. Second, the applicability of these rules is not made subject to the prior constitutional decree of any state of calamity under the Constitution of the Republic. As for the latter, it seems clear that the Government is not subject to a timeframe or limit on the duration of the measures and restrictions.

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These should remain in force for as long as necessary while the above risks or threats to the country cause disturbances to people's lives, and to the economic and social fabric of the country. Ultimately, it will be for the courts and for the safeguard of the principle of proportionality to correct any excesses committed.