**BILL WATCH 14/2020**

**[14th April 2020]**

Covid-19 and the Law : Part 1

The Covid-19 pandemic has reached Zimbabwe with seventeen reported cases to date, three of whom have tragically died. After initial delays, the Government has finally enacted laws which give it powers to combat the disease.

In this Bill Watch we shall describe the statutes which give the Government powers to act in an emergency such as this and shall then analyse the measures the Government has already taken to meet the emergency.

Before we do so we must emphasise that the Government has no inherent, extra-legal power to take action in an emergency such as the one posed by Covid-19. The Government cannot act outside the law: everything it does, even in an emergency, must be authorised by a law enacted in accordance with the Constitution. In other words, the Government is bound by the rule of law.

The Statutes Giving the State Power to Take Action

1. The Emergency Powers Act

This is the first and most far-reaching statute available to the Government. We shall not go into the powers it confers on the Government because it becomes operative only if the President issues a proclamation declaring a state of public emergency under section 113 of the Constitution, and the President has not done so ‒ perhaps because he considered other laws were adequate, perhaps because he thought Parliament might not be able to re-assemble within two weeks to approve his declaration by a two-thirds majority as required by section 113(2) of the Constitution.

2. The Civil Protection Act

Under section 27 of this Act, the President can declare a state of disaster if he considers that extraordinary measures are needed to assist and protect people against a disaster ‒ a term that is defined in the Act to include an epidemic such as Covid-19 [section 2]. He must publish the declaration in a statutory instrument “as soon as possible” after making it, and the Minister of Local Government must inform Parliament about it “on the date that it [Parliament] next sits after the declaration is made” *[section 28 of the Act – note that unlike a declaration of a state of emergency, a declaration of a state of disaster under the Civil Protection Act does not have to be approved by Parliament]*. A declaration of a state of disaster lasts for three months, and during that time civil protection officers can order people to keep stocks of essential supplies of fuel, food and medicines, to supply information and to perform essential services *[section 22 of the Act]*. Also, funds from the National Civil Protection Fund can be utilised to deal with the disaster.

The powers exercisable under the Act are not very great, which may be why, after the President declared a state of disaster on the 17th March, more robust measures were taken under the Public Health Act.

3. The Public Health Act *[*[*link*](http://www.veritaszim.net/node/3190)*]*

This Act, which came into force in 2018, gives the Government extensive powers to deal with “formidable epidemic diseases” ‒ and as we shall explain, Covid-19 has been declared to be such a disease in SI 77 of 2020 *[*[*link*](http://www.veritaszim.net/node/4037)*].*

Under section 68 of the Act, the Minister of Health and Child Care can make regulations to deal with formidable epidemic diseases ‒ and his powers are almost frighteningly wide: his regulations can order quarantines and the isolation and detention of patients; they can provide for the closing of schools and churches, the restriction of gatherings and the closing of places of entertainment including bars and liquor outlets, order medical examinations, establish isolation hospitals, and order the evacuation and even the destruction of buildings. Regulations imposing quarantines and isolation can be backed up, if necessary by the use of force and, in cases of “absolute necessity”, by the use of firearms.

Many Initial Measures Legally Ineffective

From a legal point of view ‒ and we emphasise that this bulletin is concerned solely with the law ‒ the Government did not start well.

Initial measures to combat Covid-19 were announced by the President in addresses to the nation on the 17th and 23rd March but were not followed up quickly enough with legal instruments to give them validity. These measures were:

* A declaration of a state of disaster. The President announced this on the 17th March but it was not followed by a report to Parliament, as required by the Civil Protection Act, and the statutory instrument containing the declaration was not published “as soon as possible”, as required by the Act but six days later (in SI 76 of 2020 *[*[*link*](http://www.veritaszim.net/node/4036)*]*, published on the 23rd March).
* The banning of gatherings of more than 100 people, reduced to 50 people in the President’s address of the 23rd March. The ban did not become legal until the 28th March, with the publication of SI 83 of 2020 *[*[*link*](http://www.veritaszim.net/node/4046)*]* (which banned gatherings of more than two people in public places).
* The closing of borders. The President announced this on the 23rd March but, like the banning of gatherings, it did not become legal until the publication of SI 83 of 2020 *[*[*link*](http://www.veritaszim.net/node/4046)*]* on the 28th March.

Other measures announced by the President, such as the closure of government schools, the restriction of hospital visits and the cancellation of Independence Day celebrations, could be achieved by administrative action without the need for special legislation.

Measures Currently in Force

On the 23rd March the Minister of Health and Child Care published the Public Health (COVID-19 Prevention, Containment and Treatment) Regulations (SI 77 of 2020) *[*[*link*](http://www.veritaszim.net/node/4037)*].* The regulations:

* declare Covid-19 to be a formidable epidemic disease
* prohibit gatherings of more than 100 people, whatever their purpose
* permit compulsory testing, detention, quarantine and treatment, and
* give the Minister of Health power to publish orders in the Gazette providing for most of the matters for which regulations can be made under section 28 of the Public Health Act *[see above]*. Rather oddly, though perhaps wisely, the regulations require him to consult the President before publishing any orders.

Five days later, on the 28th March, the Minister published the Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) Order (SI 83 of 2020) *[*[*link*](http://www.veritaszim.net/node/4046)*]*. This order:

* provides for a 21-day national lock-down beginning on Monday 30th March and ending at midnight on Sunday the 19th April
* prohibits gatherings of more than two people in public places
* closes all airports except in Harare, Bulawayo and Victoria Falls
* permits the Minister of Home Affairs to close ports of entry such as Beitbridge and Plumtree to most traffic
* prohibits the hoarding of medical supplies and food, and
* requires local authorities, if so ordered, to make land and premises available for isolation and quarantine.

In Part 2 of this Bulletin we shall discuss the legality of these measures and the way in which they are being enforced, before (in Part 3) examining some of the individual measures in more detail.

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