



**Does parliament have an oversight role during a State of Disaster?**

# **THE DISASTER MANAGEMENT AMENDMENT BILL, 2020**


**Dr Pieter Groenewald, MP**

# Introduction



- On 30 January 2020, the Director-General of the World Health Organisation (“the WHO”) declared the novel Corona virus (COVID-19) outbreak a public health emergency of international concern.
- Following this announcement the Minister responsible for Cooperative Government and Traditional Affairs declared a National State of Disaster in terms of section 27 of the Disaster Management Act, 2002 (Act No. 57 of 2002) (“The Disaster Management Act”).
- Various sets of regulations were promulgated following the declaration of the National State of Disaster, which imposed a national lockdown.

# International legislation

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- International responses to the COVID-19 pandemic have been varied.
  - Whether an emergency, state of emergency (in law) or a disaster was called seems to make a difference to the level in which restrictions can be and are imposed on citizens.
  - The various reports of the excessive use of power by law enforcement and arguably unnecessary restrictions on the movement of goods and people, calls into question whether South Africa is honouring its obligations as set out in international and regional instruments (ICPPR and African Charter on Human and Peoples' Rights).
  - The human rights abuses that have been recorded to date stand in stark contrast to the African Charter that holds that no derogation on human rights can be made. This begs the question whether the country is in a state of disaster or a state of emergency.

# South African legislation

- In South Africa, Heads of State may call a State of Emergency (in law), which is provided for in the Constitution, which is underpinned by rigorous parliamentary/legislative processes and oversight.
- The South African Government's choice to call the COVID-19 pandemic a State of Disaster and not a State of Emergency could be, in part, to avoid images of the brutal states of emergencies that were used in the 1980s to suppress public dissent.
- South Africa is a signatory to various international instruments on human rights, notably the International Convention on Civil and Political Rights (ICCPR), which allows signatories to take measures to derogate from the Covenant including limitations on human rights.
- However, South Africa is also a signatory to the African Charter on Human and Peoples' Rights, which stands in stark contrast to the ICCPR in that it does not allow states of emergency nor the possibility of derogations on human rights.
- South Africa is a constitutional democracy where the people's voices should be heard through the elected parliament as well as public participation.



## Impact of the National State of Disaster

- The National State of Disaster as well as the accompanying regulations had severe consequences and a negative impact on the lives of every citizen in South Africa.
- Citizens' basic human rights were restricted and certain behaviours and actions were prohibited.
- The economic consequences were disastrous and millions of people lost their jobs.
- This might or might not have been necessary to save lives.
- Some regulations are regarded as rational and necessary and other in public opinion were irrational and not aligned with the goal to flatten the curve of the viral infection rate.
- The people however do have a say, their voices are not heard and parliament as elected by the people to ensure accountability and oversight has no role in approving regulations or scrutinizing the rationality of such.

# Legislative accountability



- The Disaster Management Act does not currently provide adequate legislative accountability and oversight over the regulations published in terms of it, the duration of a state of disaster, nor in respect of the extension of a state of disaster.
- In a constitutional democracy any legislation and the regulations promulgated in terms of such, which has such severe consequences and which impacts all the citizens and their human rights should be subject to more legislative accountability, scrutiny and oversight.
- The people's Parliament which should be an activist legislature and champion democracy may not allow legislation to create a void in terms of oversight and accountability.

## Objects of the Bill



- To amend the Disaster Management Act, 2002 (Act No. 57 of 2002) in order to amend the duration of a State of Disaster.
- The Bill further seeks to provide that only the National Assembly, Provincial Legislature or Municipal Council may resolve to extend a declaration of a National, Provincial or Local State of Disaster respectively and for how long.
- The Bill also provides for the requisite majorities required in the National Assembly, Provincial legislature and Municipal Council in order to extend the respective state of disasters.
- The Bill further provides that a resolution to extend a national, provincial or local state of disaster may only be adopted after a public debate.
- The Bill finally seeks to provide for oversight by the National Assembly over a National State of Disaster and consequent regulations, and oversight a by Provincial Legislature regarding a Provincial State of Disaster.





**The South African Parliament should be an activist legislature championing democracy and ensuring accountability and oversight**