



Prepared by: British Red Cross

IFRC Review of Emergency Decrees: BOTSWANA

Overview

Since the 20th March Botswana has been introducing measures declaring a public health emergency, prohibiting, or prescribing the conditions for, entry into Botswana, and restricting business and restaurant hours.

On 31 March 2020 President Masisi¹ declared a State of Emergency from midnight on 2 April 2020² and announced the recall of Parliament to approve the continuation of the state of emergency beyond the 21-day limit in the Constitution.

In the announcement of the State of Emergency, the President said he would be making State of Emergency Regulations, but as yet, no such regulations appear to have been published. It would appear that such regulations could/ will be enacted under the Emergency Power Act 1966.³ This Act empowers the President to make such regulations as appear to him to be necessary or expedient for securing the public safety, the defence of the Republic, the maintenance of public order and the suppression of mutiny, rebellion and riot, and for maintaining supplies and services essential to the life of the community.⁴

Before the announcement of the State of Emergency, the following instruments had been made:

- a) ~~Directions for the prevention of the spread of COVID-19~~ [revoked];⁵
- b) Public Health (Declaration of a Public Health Emergency) Order 2020 (SI 30 of 2020);⁶
- c) ~~Public Health (Prohibition of Entry into Botswana) Order 2020~~ [revoked];⁷
- d) Liquor (Amendment) Regulations 2020;⁸
- e) Shop and Restaurant Hours (Restaurant Hours) Regulations 2020;⁹
- f) Immigration (Points of Entry) Order 2020;¹⁰

¹ <https://www.facebook.com/BotswanaGovernment/posts/2867383003344339>

² Proclamation of State of Emergency: <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-31-no-31.pdf>

³ <https://botswanalaws.com/alphabetical-list-of-statutes/emergency-powers>

⁴ Emergency Powers Act, s. 3(1).

⁵ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-20-no-23.pdf>, p. 2552.

⁶ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-20-no-23.pdf>, C.137.

⁷ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-20-no-23.pdf>, C.138.

⁸ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-20-no-23.pdf>, C.139.

⁹ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-20-no-23.pdf>, C.140.

¹⁰ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-20-no-23.pdf>, C.141.

- g) Public Health (Prevention of Introduction of COVID-19 into Botswana) Order 2020;¹¹
- h) Public Health (Prohibition of Entry into Botswana) Order 2020;¹²
- i) Public Finance Management (Covid-19 Pandemic (Corona Virus) Relief Fund) Order, 2020;¹³
- j) ~~Public Health (Declaration of a Public Health Emergency) Order, 2020 (S.I. No. 39 of 2020)~~ [revoked];¹⁴
- k) Trade (Amendment) Regulations, 2020;¹⁵
- l) Liquor (Restaurants) (Revocation) Regulations, 2020;¹⁶
- m) Liquor (Amendment) Regulations, 2020;¹⁷
- n) Liquor (Amendment) Regulations, 2020;¹⁸
- o) Traditional Beer (Amendment) Regulations, 2020;¹⁹
- p) Road Transport (Permits) (Suspension of Permits) Regulations, 2020;²⁰
- q) Gambling (Suspension of Licences) Regulations, 2020;²¹
- r) Designated Places of Entry, Exit, Landing, Loading and Examination of Goods into Botswana Notice (G.N. No. 146 of 2020);²²
- s) Directions for the Prevention of the Spread of Covid-19 (G.N. No. 147 of 2020)²³ (referred to as the ‘COVID-19 Prevention Directions’); and
- t) Essential Supplies and Services (Availability of Supplies at Fair Price) Regulations 2020.²⁴

Most of these regulations or orders were made under the Public Health Act 2013.²⁵ Part V of the 2013 Act makes provision for notifiable and communicable diseases; Part VI contains special provisions regarding diseases subject to the International Health Regulations and Part VIII addresses the prevention of the introduction of diseases and control of diseases (including medical surveillance or isolation, powers of health officers etc).

Beyond the Public Health Act there appears to be no generic disaster management legislation. General powers for the President to declare a State of Emergency are contained the Constitution²⁶ and his powers under the Emergency Powers Act are mentioned above.

Although no general disaster management legislation appears to be in place, Botswana published a National Policy of Disaster Management in 1996²⁷ and a National Disaster Risk Reduction Strategy 2013 to 2018 in, I presume, 2012/2013.²⁸

¹¹ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-24-no-26.pdf>; C.149.

¹² <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-24-no-26.pdf>; C.150.

¹³ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-25-no-27.pdf>; C. 151.

¹⁴ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-25-no-27.pdf>; C. 154

¹⁵ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-25-no-27.pdf>; C. 155.

¹⁶ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-25-no-27.pdf>; C. 156.

¹⁷ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-25-no-27.pdf>; C. 158.

¹⁸ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-25-no-27.pdf>; C. 159.

¹⁹ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-25-no-27.pdf>; C. 160.

²⁰ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-25-no-27.pdf>; C. 162.

²¹ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-25-no-27.pdf>; C. 163.

²² <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-27-no-29.pdf>, p. 2894.

²³ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-27-no-29.pdf>, p. 2895.

²⁴ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-27-no-29.pdf>, C.210

²⁵ <https://botswanalaws.com/StatutesActpdf/2013Actpdf/PUBLIC%20HEALTH%20ACT,%2011%20OF%202013.pdf>

²⁶ <http://www.elaws.gov.bw/default.php?UID=602>, s. 17.

²⁷ <https://www.ifrc.org/Docs/idrl/281EN.pdf>

²⁸ <https://www.undp.org/content/dam/botswana/docs/Gov%20and%20HR/Botswana%20National%20Disaster%20Risk%20Reduction%20Strategy-April%202013.pdf>

The Red Cross Society of Botswana Act 1968²⁹ provides that the objects of the Society include to carry on and assist in work in the improvement of health, the prevention of disease.³⁰

International Disaster Response Law in Botswana: A study on legal preparedness for facilitating and regulating international disaster assistance was published in 2013 ('the 2013 IDRL Report').³¹

1. Is there coordination between state and non-state actors, e.g. through a national emergency response mechanism?

None is expressly mentioned in any of the COVID-19 measures published to date.

The National Policy of Disaster Management³² refers in places to coordination and provides that overall national responsibility rests with the Office of the President, the overall coordinator of disaster management being the Deputy Permanent Secretary in that office. The DPS is responsible for convening and chairing the National Committee on Disaster Preparedness which is responsible for developing a disaster management strategy and overseeing implementation of disaster plans and activities. The Committee, in addition to Government departments, should include the Botswana Red Cross and representatives of NGOs and UN agencies as appropriate.³³ At local level responsibility rests with the District Commissioner and at village level with traditional leaders "in partnership with NGOs where these are perceived to have a strong presence on the ground."³⁴

2. Is there mention of the role of Red Cross (RC) or humanitarian actors? In what areas/sectors? What responsibilities are ascribed to RC?

There is no explicit reference to the RC or humanitarian organisations in the published COVID-19 measures.

As noted, though, the Botswana RC and NGOs should be on the National Committee on Disaster Preparedness which, despite the name, appears to have a role in implementing disaster plans. The Botswana Red Cross has the standing functions in relation to diseases under the Red Cross Society of Botswana Act.

There is no reference to the RC being on the Committee established to distribute the Corona Virus Relief Fund.

3. Are there exceptions to travel restrictions that will facilitate the movement of RC/humanitarian relief teams and/or aid across borders? What (if any) quarantine requirements or other conditions are attached?

It is not entirely clear what travel restrictions are currently in place.

The Public Health (Prohibition of Entry into Botswana) Order prohibits any person (other than a citizen or non-citizen resident in Botswana) from a listed country entering Botswana until further

²⁹ http://iccdb.webfactional.com/documents/implementations/pdf/Botswana_-_Red_Cross_Society_of_Botswana_Act_1968.pdf

³⁰ Red Cross Society of Botswana Act 1968, s. 4.

³¹ [https://www.ifrc.org/PageFiles/139570/A%20study%20on%20International%20Disaster%20Response%20Law%20\(IDRL\)%20in%20Botswana%20final%20web%20version.pdf](https://www.ifrc.org/PageFiles/139570/A%20study%20on%20International%20Disaster%20Response%20Law%20(IDRL)%20in%20Botswana%20final%20web%20version.pdf)

³² <https://www.ifrc.org/Docs/idrl/281EN.pdf>

³³ National Policy of Disaster Management, p. 13.

³⁴ National Policy of Disaster Management, p. 14.

notice.³⁵ The COVID-19 Prevention Directions³⁶ reinforce that “all persons coming into Botswana from high risk countries... or any other country, shall not be allowed entry into Botswana until further notice” and current visas of persons from high risk countries are cancelled.” No exceptions are stated.

The Immigration (Points of Entry) Order 2020 specifies the border posts, rail entry points and airports listed in the order as the only points of entry into Botswana.

The Designated Places of Entry, Exit, Landing, Loading and Examination of Goods into Botswana Notice³⁷ provides that specified goods may only be imported by licensed suppliers and the goods must be brought in through posts or airports specified in the Notice. The essential goods are: commercial goods; medical equipment and supplies (including sanitisers, surgical gloves, soap, antiseptics, bleach, surgical spirit, methylated spirit, disinfectants, baby wipes, wet wipes and face masks); and pharmaceutical supplies.

Although powers exist under the Public Health Act for the Minister of Health by order to apply, for example, requirements for examination and isolation of persons arriving in Botswana – and the Public Health (Prevention of Introduction of COVID-19 into Botswana) Order says those powers apply - it is not clear what measures (if any) have yet been mandated.

The Road Transport (Suspension of Permits) Regulations 2020 suspend permits issued under s. 6(1) (e) of the Road Transport (Permits) Act.³⁸ Section 6(1)(e) provides for the issue of public transport permits, so it seems that only this category of permits has been suspended. Permits for, for eg, the transport of goods (whether within Botswana or trans-border) appears not to have been suspended.

However, in none of these measures is there reference to any exceptions, whether in general or specifically referring to the RC or humanitarian organisations.

4. Are there exceptions to quarantines, curfews and other restrictions on movement that allow RC/humanitarian organizations access to vulnerable populations (including for psychosocial or non-medical aid)?

To date, the principal restrictions imposed within Botswana appear to be the prohibition of public gatherings of more than 10 persons;³⁹ restrictions on the hours of opening for shops and restaurants; suspension of licences for gambling establishments, amusement arcades, hair or beauty parlours and gyms;⁴⁰ restrictions on the sale of liquor; directions for social distancing⁴¹ and the prohibition of visits to rehabilitation centres, including prisons, refugee camps and centres for illegal immigrants.⁴²

There are no express exceptions or exemptions for RC and humanitarian organisations from these measures and the only exception for visits to rehabilitation centres is offered to consulting attorneys.⁴³

5. Have any special legal facilities or exemptions been put in place for the importation of medical aid or other relief items or personnel (International Disaster Response Law)? What (if any) quarantine requirements or other conditions are attached?

³⁵ Public Health (Prohibition of Entry into Botswana) Order 2020, article 2.

³⁶ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-27-no-29.pdf>, p 2895.

³⁷ <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-27-no-29.pdf>, p 2894.

³⁸ <https://botswanalaws.com/alphabetical-list-of-statutes/road-transport-permits#Ch6903s6>

³⁹ COVID-19 Prevention Directions, 2(f).

⁴⁰ COVID-19 Prevention Directions, 3.

⁴¹ COVID-19 Prevention Directions, 4.

⁴² COVID-19 Prevention Directions, 4(d).

⁴³ COVID-19 Prevention Directions, 4(d).

Only licensed suppliers (under, presumably the Customs Act⁴⁴) may import essential goods into Botswana. It is not clear who or what is a licensed supplier. But there are no exceptions to this requirement.

There appear to be no measures yet in place dealing with the examination or quarantining of persons or goods entering Botswana.

Reliance appears to still be placed on whatever pre-existing measures and arrangements are in place. These were considered in detail in the 2013 IDRL Report.⁴⁵

6. Is the RC (or humanitarian organizations) categorized as 'essential' or 'emergency' services, for the purposes of exemptions to restrictions on business operations and opening hours?

Not for these purposes. Supplies which they may need to bring into Botswana would appear to fall within the categories of 'essential goods' that may be imported, but only by licensed suppliers.

7. What other measures are provided in the emergency decrees? (for governmental actors, for communities, for health workers, etc).

Most of the measures are described above.

Additional measures include:

(a) the establishment of a COVID-19 Relief Fund;⁴⁶ and

(b) prohibiting traders from increasing the cost of key supplies by more than the costs incurred to procure or produce the supplies. The supplies are: medical supplies and equipment (including sanitisers, gloves, masks and hygiene supplies); pharmaceutical supplies; food supplies; and commercial goods.⁴⁷

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⁴⁴ <https://botswanalaws.com/alphabetical-list-of-statutes/customs>

⁴⁵ 2013 IDRL Report, pp 48 to 68.

⁴⁶ Public Finance Management (Covid-19 Pandemic (Corona Virus) Relief Fund) Order, 2020; <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-25-no-27.pdf>.

⁴⁷ Essential Supplies and Services (Availability of Supplies at Fair Price) Regulations 2020; <https://gazettes.africa/archive/bw/2020/bw-government-gazette-dated-2020-03-25-no-27.pdf>.