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IFRC Review of Emergency Decrees: Cuba

Overview

The first officially confirmed case of coronavirus in Cuba occurred on 10 March 2020.¹ As at 25 May 2020 there have been 1,947 confirmed cases.²

Public Health Legal Framework

Under Law No. 41 of 13 July 1983 on Public Health (“Law No. 41”), Article 64 establishes that in situations occasioned by natural disasters or other nature that involves grave and immediate threats to health, the Ministry of Public Health (Ministerio de Salud Pública “MINSAP”) dictates the sanitary and anti-epidemic measures that the situation demands.

Decree 139 of 22 February 1988 creates regulations which supplement Law No. 41 (“Health Regulations”). These require that when faced with hygienic-epidemiological or other situations that due to their gravity and possible risk to health are considered an emergency, MINSAP will dictate the provisions and adopt the measures that lead to a better organisation and functionality of health and epidemiological services to confront the situation.³ Under the Decree, situations of emergency include ‘epidemics and pandemics’.⁴

Decree-Law 54 of 23 April 1982, provides that MINSAP may create permanent or temporary administrative organs for sanitary inspection, which it considers necessary for the effective application and fulfilment of the aims cited in the Decree-Law.⁵ Exercising this power, Ministerial Resolution 215 of 27 August 1987 creates regulations regarding the State Sanitary Inspection (“SSI Regulations”). The SSI has as its fundamental objectives to control and ensure compliance with laws relating to sanitation-hygiene and anti-epidemic norms tending to prevent, reduce or eradicate public health contamination and the sanitisation of conditions of life, study and work of the population’.⁶

Emergency laws introduced

¹ <http://www.granma.cu/informacion-minsap/2020-03-11/nota-informativa-del-ministerio-de-salud-publica-tres-turistas-en-cuba-resultaron-positivos-al-nuevo-coronavirus>

² <https://coronavirus.jhu.edu/map.html>

³ Health Regulations, Article 108

⁴ Health Regulations, Article 109(a)

⁵ Decree Law 54, Article 6

⁶ SSI Regulations, Article 8

On 20 and 24 March 2020, the Cuban Government announced a raft of measures it would introduce as part of its “Plan of Measures to confront Covid-19”.⁷

On 23 March MINSAP passed Resolution 82/2020, in which it identified a situation of ‘epidemiologic emergency’ within Cuba,⁸ and introduced various sanitary, hygienic and epidemiological measures to permit a better organisation and functionality of health and other public services and activities linked to the population.⁹ These include conditions for obligatory isolation,¹⁰ and conditions for the application of quarantine.¹¹ The resolution also created a ‘Technical Working Group’, presided over by MINSAP with the involvement of other ministries, the Academy of Sciences and BIOCUBAFARMA.¹²

MINSAP supplemented these measures with further resolutions on 23 March,¹³ 9 April,¹⁴ and 11 May.¹⁵ The last of these included provisions requiring the public to remain in their homes except when strictly necessary for a specified number of reasons,¹⁶ the closure of the majority of locations, centres, establishments and spaces that entail the presence of groups of people,¹⁷ and the closure of maritime borders and airports.¹⁸

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

The ‘Plan of measures to confront Covid-19’ involves the State, companies, the non-governmental sector and the general population.¹⁹ The plan, however, has not been made public, which makes it difficult to know to what extent co-ordination between State non-state actors occurs.

The Technical Working Group, which is coordinating the Government’s response to Covid-19, does not appear to include non-state actors as participants.²⁰ Nor does the Temporary Working Group, which along with its provincial counterparts, are created to coordinate and monitor the implementation of the Government’s health measures at a provincial level.²¹

⁷ <http://www.granma.cu/cuba-covid-19/2020-03-20/en-vivo-gobierno-cubano-encabezado-por-el-presidente-informa-reforzamiento-de-medidas-contra-la-covid-19> (“20 March Measures”) and <http://www.granma.cu/cuba-covid-19/2020-03-24/el-primer-secretario-del-pcc-y-el-presidente-activaron-los-consejos-de-defensa-en-el-pais-24-03-2020-01-03-10> (“24 March Measures”).

⁸ <https://www.gacetaoficial.gob.cu/sites/default/files/goc-2020-ex19.pdf> (“Resolution 82/2020”), Preamble.

⁹ Resolution 82/2020, Preamble.

¹⁰ Resolution 82/2020, TERCERO.

¹¹ Resolution 82/2020, QUINTO.

¹² <https://www.gacetaoficial.gob.cu/sites/default/files/goc-2020-ex19.pdf> Resolution 82/2020, p. 272.

¹³ https://www.gacetaoficial.gob.cu/sites/default/files/goc-2020-ex20_0.pdf (“Joint Resolution 1/2020”), p. 278.

¹⁴ https://www.gacetaoficial.gob.cu/sites/default/files/goc-2020-ex20_0.pdf, (“Resolution 84/2020”), p. 277.

¹⁵ https://www.gacetaoficial.gob.cu/sites/default/files/goc-2020-ex25_0.pdf, (“Resolution 128/2020”), p. 295.

¹⁶ Resolution 128/2020, TERCERO (d).

¹⁷ Resolution 128/2020, DECIMO.

¹⁸ Resolution 128/2020, DECIMO PRIMERO

¹⁹ https://files.sld.cu/editorhome/files/2020/05/MINSAP_Protocolo-de-Actuación-Nacional-para-la-COVID-19_versión-1.4_mayo-2020.pdf, p. 5.

²⁰ Resolution 82/2020, PRIMERO.

²¹ Resolution 82/2020, SEGUNDO.

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

The emergency legislation introduced in response to the Covid-19 pandemic, does not contain provisions regarding the role of the RC or humanitarian actors.

However, Law No. 41 does provide that the Cuban National Society of the Red Cross (“CRC”) ‘with the character of a voluntary society, participates and collaborates in the activities of public health, in conformity with the established in its statutes and regulations, and in accordance with the prescriptions contained within the legislation of the of the Republic of Cuba on the subject.’²²

Furthermore, the Health Regulations provide that the participation and collaboration in health activities by the CRC, will be given effect in conformity with Law No. 41, through the entering into of agreements and programs between the CRC and MINSAP.²³

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?

Exit

According to the measures announced on 24 March (“24 March Measures”), Cubans will not be able to leave Cuba, unless leaving for ‘humanitarian reasons’.²⁴ It appears that similar provisions are not in place for foreign nationals.

Entry

The 20 March and 24 March Measures allowed residents of Cuba to enter the country. Tourists, however, were not permitted. Non-residence were not permitted to enter the country by air. Non-residence visiting for reasons other than tourism who were attempting to enter into the country by sea, were subject to ‘treatment measures’.²⁵ Resolution 82/2020 created obligatory isolation measures for, *inter alia*, those who entered the country from 24 March onwards.²⁶ Obligatory isolation was to last 14 days and would take place in territorial centres.²⁷

As mentioned previously, however, maritime borders and airports are now closed.²⁸ No exception appears within the emergency legislation for humanitarian organisations, including components of the International Red Cross and Red Crescent Movement. However, the International Civil Aviation Organization (“ICAO”) reports that ‘Aircraft operations only in the interest of medical collaboration, humanitarian aid and cargo

²² Law No. 41, Article 9.

²³ Health Resolutions, Article 9.

²⁴ <http://www.granma.cu/cuba-covid-19/2020-03-24/el-primer-secretario-del-pcc-y-el-presidente-activaron-los-consejos-de-defensa-en-el-pais-24-03-2020-01-03-10>, 5.

²⁵ 20 March Measures.

²⁶ Resolution 82/2020, TERCERO.

²⁷ Resolution 82/2020, TERCERO.

²⁸ Resolution 128/2020, DECIMO PRIMERO

transfer, are allowed, in compliance with the established sanitary measures'.²⁹ For the time being, it appears that a similar exception for maritime entry is not in place.

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)?

Consideration of the resolutions currently available to the public suggest that there are currently no exceptions to quarantines, curfews and other restrictions on movement for RC/humanitarian organisations.

However, in its latest 'Covid-19 Outbreak Operational Update',³⁰ the IFRC reports on activities which the CRC could feasibly only undertake if CRC: 1. were either considered part of the Technical Working Group or the Temporary Working Group; 2. had been provided special exemptions by these groups; or 3. had otherwise entered into agreements with the Cuban Government to undertake such work, as per Article 9 of the Health Resolutions.

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?

As mentioned in response to Q. 3, the ICAO reports that 'Aircraft operations only in the interest of medical collaboration, humanitarian aid and cargo transfer, are allowed, in compliance with the established sanitary measures'.³¹ The ICAO further reports that for such flights, airline crew members will be exempt from the entry ban and will be allowed to enter for the limited minimum period so that they can complete their departure flight duties and not affect the operation of the airline. These in turn will not be quarantined, but will remain isolated during the time of stay in the country and until they return to their obligations.³²

No such caveat appears for humanitarian personnel within the ICAO report nor within the aforementioned Covid-19 measures.

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?

They are not.³³

²⁹ <https://www.icao.int/safety/Pages/COVID-19-Airport-Status.aspx>, Cuba, accessed 24 May 2020.

³⁰ <http://adore.ifrc.org/Download.aspx?FileId=306033>, p. 21

³¹ <https://www.icao.int/safety/Pages/COVID-19-Airport-Status.aspx>, Cuba, accessed 24 May 2020.

³² <https://www.icao.int/safety/Pages/COVID-19-Airport-Status.aspx>, Cuba, accessed 24 May 2020.

³³ Resolution 128/2020, DECIMO.

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

Covid-19 related measures have been introduced by the following Government ministries: the Cuban Central Bank,³⁴ the Ministry for Higher Education,³⁵ Ministry of foreign commerce and foreign investment,³⁶ Ministry of Finance and Prices,³⁷ and the Ministry of Construction,³⁸ which focus on the social and economic aspects of the crisis.

Prior to the passing of these resolutions, the Cuban Government provided a helpful summary of the measures, which form part of its 'Plan of measures to confront Covid-19'.³⁹ These include: increased police powers to aid with enforcement of the new measures;⁴⁰ increased production of food;⁴¹ health information dissemination efforts;⁴² educational arrangements;⁴³ suspension of sporting events;⁴⁴ and the suspension or reduction of tax liabilities,⁴⁵ amongst others.

8. Have restrictions been adopted or put in place that ban the export of protective medical equipment?

No.

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25 May 2020

³⁴ https://www.gacetaoficial.gob.cu/sites/default/files/goc-2020-ex20_0.pdf, ("Resolution 49/2020"), p.275; https://www.gacetaoficial.gob.cu/sites/default/files/goc-2020-ex20_0.pdf, ("Resolution 55/2020"), p. 275.

³⁵ <https://www.gacetaoficial.gob.cu/sites/default/files/goc-2020-ex27.pdf>, ("Resolution 51/2020"), p. 302; https://www.gacetaoficial.gob.cu/sites/default/files/goc-2020-ex24_0.pdf, ("Resolution 49/2020"), p. 291; https://www.gacetaoficial.gob.cu/sites/default/files/goc-2020-ex24_0.pdf, ("Resolution 48/2020"), p. 289.

³⁶ <https://www.gacetaoficial.gob.cu/sites/default/files/goc-2020-ex27.pdf> ("Resolution 280/2020"), p. 301.

³⁷ https://www.gacetaoficial.gob.cu/sites/default/files/goc-2020-ex22_0.pdf ("Resolution 148/2020"), p. 283, ("Resolution 149/2020"), p. 284, and ("Resolution 150/2020"), p. 285.

³⁸ https://www.gacetaoficial.gob.cu/sites/default/files/goc-2020-ex21_0.pdf ("Resolution 109/2020"), p. 281

³⁹ <http://www.granma.cu/cuba-covid-19/2020-03-24/el-primer-secretario-del-pcc-y-el-presidente-activaron-los-consejos-de-defensa-en-el-pais-24-03-2020-01-03-10>

⁴⁰ 24 March Measures, 13

⁴¹ 24 March Measures, 16

⁴² 24 March Measures, 17

⁴³ 24 March Measures, 19, 20, 21, 25-29

⁴⁴ 24 March Measures, 23

⁴⁵ 24 March Measures, 39, 40.