



## WHITE & CASE

### IFRC COVID-19 Emergency Decree Pro Bono Research: El Salvador

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- **Questions to be answered by close of business Friday, 27 March are listed below.**
- **Please be sure to include English translations of relevant text where possible.**

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

Article 2 of “Executive Decree No. 12 – State of National Emergency due to the COVID-19 Epidemic”<sup>1</sup> provides that humanitarian entities (among others) must collaborate and support to prevent, supervise and control the COVID-19 epidemic, in particular with respect to healthcare, food and facilities for treatment of the population.

The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) is coordinating support to Salvadoran government entities during the COVID-19 pandemic through different initiatives. For example, through the delivery of medical supplies and equipment to hospitals and health care workers, and the collection of funds from various donors to support the Ministerio de Salud (MINSAL, Salvadoran Ministry of Health) in the supply of equipment for the hospital specialized in COVID-19 cases that is being built at the Centro de Ferias y Convenciones (CIFCO, the national convention center).<sup>2</sup>

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

Please see answer to question 1 above regarding mention of humanitarian actors in the emergency decrees. RC is not specifically mentioned.

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?

On March 11, 2020 the President of El Salvador, Nayib Bukele, declared that no foreigners could enter the country. The only exceptions are residents or diplomats.<sup>3</sup> Although the original order was only put in place for twenty-one days, there has been no indication that this order has been lifted. As of March 13, 2020 there is also a mandatory thirty day quarantine to be completed in a containment center for

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<sup>1</sup> Diario Oficial, Executive Decree 12, March 11, 2020 (<https://www.diariooficial.gob.sv/diarios/do-2020/03-marzo/11-03-2020.pdf>).

<sup>2</sup> Naciones Unidas, El Salvador, EL SALVADOR: emergencia COVID-19 Informe de situación No.4 al 14 abril 2020 ([https://reliefweb.int/sites/reliefweb.int/files/resources/UN\\_Situation%20Report%204\\_COVID19\\_del%2010%20al%2014%20ABR\\_2020.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/UN_Situation%20Report%204_COVID19_del%2010%20al%2014%20ABR_2020.pdf))

<sup>3</sup> Diario Oficial, Executive Decree 13, March 11, 2020 (<https://www.diariooficial.gob.sv/diarios/do-2020/03-marzo/11-03-2020.pdf>).

anyone entering the country.<sup>4</sup> There are reports that individuals have been detained for longer than thirty days, without any indication when they will be released.<sup>5</sup> The Supreme Court has denounced the arbitrary detention of citizens in both police and quarantine centers.<sup>6</sup> On April 23, 2020 the Minister of Health indicated that the condition of the patient, not the number of days in quarantine, would determine when individuals would be released from containment centers.<sup>7</sup>

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)?

On March 21, 2020, El Salvador implemented a stay at home order for all citizens. There are exceptions including:

- One person per household may leave the home to buy food and medical items, at most twice a week (Exception A);
- Anyone who is assisting children, the elderly, the disabled, or other vulnerable individuals in obtaining medical care (Exception C);
- Individuals who work in health care (Exception E);
- Public employees who are combating COVID: including the Health Ministry, firefighters, the national police. This exception specifically includes the Red Cross (Exception G);
- Individuals who distribute food or necessary household items (Exception J).

The language of Exception G, which includes the Red Cross, does not address psychosocial or non-medical aid. The exception applies to those exclusively fighting COVID. However, Exception J will likely cover non-medical aid that is essential to survival, such as food. The decree makes no mention of mental health services.<sup>8</sup> However, as of April 13, 2020 the Red Cross is no longer listed as an essential or emergency service.<sup>9</sup>

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?

El Salvador has suspended certain tariffs and has simplified the import process for donated goods. Any item imported as a donation for a humanitarian, non-profit, educational, or community purpose will not be taxed in any form. The decree specifically mentions goods delivered to the Red Cross as falling within this exemption. Usually, these items are free from taxes, but the Economic Ministry has to certify the goods and the National Assembly must approve them. That process has been suspended to

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<sup>4</sup> "Migración Recomienda No Viajar A El Salvador" (Travelling to El Salvador Not Recommended), El Salvador Government, March 13, 2020 (<http://www.migracion.gob.sv/noticias/migracion-recomienda-no-viajar-a-el-salvador/>).

<sup>5</sup> "Maestra afirma que lleva 37 días en centro de cuarentena" (Teacher has been in quarantine center for 37 days), *Elsalvador.com*, April 19, 2020 (<https://www.elsalvador.com/eldiariodehoy/maestro-afirma-37-dias-en-centro-cuarentena/707187/2020/>); "Abogado cumple 40 días en cuarentena y no sabe respuestas tras 5 pruebas" (Lawyer in quarantine for forty days and he doesn't have answers after five tests), *Elsalvador.com*, April 21, 2020 (<https://www.elsalvador.com/eldiariodehoy/abogado-40-dias-cuarentena-sin-respuesta-covid-19/707829/2020/>).

<sup>6</sup> "El Salvador: President Defies Supreme Court", Human Rights Watch, April 17, 2020 (<https://www.hrw.org/news/2020/04/17/el-salvador-president-defies-supreme-court#>).

<sup>7</sup> "La cuarentena depende de la condición de la persona, no del tiempo confinado, dice ministro de Salud" (Quarantine depends on the condition of the person, not the length of confinement, says the minister of health), *Elsalvador.com*, April 23, 2020 (<https://www.elsalvador.com/noticias/nacional/ministro-de-salud-personas-cuarentena-sintomas/708292/2020/>).

<sup>8</sup> Diario Oficial, Executive Decree 12, March 11, 2020 (<https://www.diariooficial.gob.sv/diarios/do-2020/03-marzo/11-03-2020.pdf>).

<sup>9</sup> Diario Oficial, Executive Decree 19, April 13, 2020 (<https://www.diariooficial.gob.sv/diarios/do-2020/04-abril/13-04-2020.pdf>).

temporarily simplify the transfer of goods.<sup>10</sup> Even certain goods that are not being donated, but that are essential, will not be taxed. These goods include food basics such as flour, red beans, medical supplies, and other basic goods such as soap.<sup>11</sup>

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?

No, as of April 13, 2020, the RC is no longer categorized as an essential or emergency service for the purposes of exemptions to restrictions on business operations and opening hours pursuant to the most recent “Executive Decree No. 19 – Extraordinary Prevention and Containment Measures to Declare the National Territory as an Area Subject to Sanitary Control, in order to Contain the COVID-19 Pandemic.”

However, before Executive Decree No. 19, the RC was exempt from COVID-19 restrictions and was categorized as a public entity pursuant to “Executive Decree No. 14 – Extraordinary Prevention and Containment Measures to Declare the National Territory as an Area Subject to Sanitary Control, in order to Contain the COVID-19 Pandemic.”

Please see below an English translation of Executive Decree No. 14 and Executive Decree No. 19.

#### Executive Decree No. 14

“Purpose.

Art. 1 - The purpose of this decree is to declare the national territory as an area subject to sanitary control, taking as extraordinary sanitary measures restricting all people to remain in their primary residences and restricting of activities other than those strictly indicated in this decree, in order to prevent the spread of the COVID-19 pandemic, for which sanitary prevention and containment measures are dictated and developed.

Persons who can circulate:

Art. 2 - The following persons are exempt from the application of this decree:

[...]

e) Public employees in functions exclusively related to fighting the pandemic such as: all the areas of the Ministry of Health, FOSALUD, [...] Red Cross [...]. [...]<sup>12</sup>

#### Executive Decree No. 19

“Purpose.

Art. 1 - The purpose of this decree is to declare the national territory as an area subject to sanitary control in order to prevent the spread of the COVID-19 pandemic. For this, we adopt the following extraordinary measures:

a) The entire population must remain in their home and may only leave their home or residence, in the cases authorized by this decree.

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<sup>10</sup> Diario Oficial, Legislative Assembly Decree 603, March 20, 2020 (<https://www.diariooficial.gob.sv/diarios/do-2020/03-marzo/20-03-2020.pdf>).

<sup>11</sup> Diario Oficial, Legislative Assembly Decree 604, March 20, 2020 (<https://www.diariooficial.gob.sv/diarios/do-2020/03-marzo/20-03-2020.pdf>).

<sup>12</sup> Diario Oficial, Executive Decree 14, March 30, 2020 (<https://www.diariooficial.gob.sv/diarios/do-2020/03-marzo/30-03-2020.pdf>).

[...]

g) Every person who is authorized to circulate in the national territory must necessarily wear a mask.

Persons who can circulate:

Art. 2 - The following persons are exempt from the application of this decree:

[...]

g) Public employees in functions exclusively related to fighting the pandemic such as: all the areas of the Ministry of Health, Ministry of Economy, [...] FOSALUD [...]. [...]"<sup>13</sup>

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

Certain governmental actors, health workers and other workers listed in article 2 of Executive Decree No. 19 and further summarized below are allowed to circulate as normal, provided that they wear a mask at all times. Please see answer to question 6 above.

#### Government actors

Public employees in functions exclusively related to fighting the pandemic such as: all the areas of the Ministry of Health, Ministry of Economy, Ministry of Transportation, Ministry of Agriculture, Executive Office, Public Ministry, Central Reserve Bank, International Commission Against the Impunity of El Salvador, the municipalities, public and private ambulance services, firefighters, police, military, zookeepers, National Directorate of Medicines, General Directorate of Customs of the Ministry of Finance, judges, magistrates and court employees and public officials and employees authorized by each head of the institutions that provide public services or social services, directly and strictly related to the fight against the pandemic, among others.

#### Communities

People who care for children, the elderly, people with disabilities, vulnerable, with chronic diseases.

#### Health workers

Employees of the different health agencies, pharmacies, medical personnel, nurses whose job is the personal care of older adults or people with any illness, doctors, paramedics, nurses, personnel from hospitals, laboratories and private clinics.

#### Others

The media, press and transportation of merchandise, food and basic necessities.

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

As of March 12, 2020, there were no restrictions that banned the import of protective medical equipment. The General Directorate of Customs of the Ministry of Finance indicated that imports of hygiene supplies, cleaning and medical equipment that will be used for the prevention of the coronavirus COVID-19 would be given priority with respect to its entry into El Salvador.<sup>14</sup>

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<sup>13</sup> Diario Oficial, Executive Decree 19, April 13, 2020 (<https://www.diariooficial.gob.sv/diarios/do-2020/04-abril/13-04-2020.pdf>).

<sup>14</sup> "No Existen Restricciones para el ingreso y salida de mercancías ante la pandemia del Coronavirus COVID 19", Ministro de Hacienda, Gobierno de El Salvador, March 1, 2020 (<https://www.mh.gob.sv/pmh/es/Novedades/12802-No-Existen-Restricciones-ingreso-salida-mercancias-pandemia-Coronavirus-COVID-19.html>)

Pursuant to Decree No. 603 passed on March 20, 2020, any donations for the benefit of people affected COVID- 19 (including protective medical equipment) for the government or humanitarian organizations, among others, are exempt from import duties.<sup>15</sup> Further, under Decree No. 604 passed on March 20, 2020, the government eliminated import duties on medicines for respiratory diseases, hygiene and cleaning products, as well as other food products.<sup>16</sup>

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<sup>15</sup> Diario Oficial, Legislative Assembly Decree 603, March 20, 2020 (<https://www.diariooficial.gob.sv/diarios/do-2020/03-marzo/20-03-2020.pdf>).

<sup>16</sup> Diario Oficial, Legislative Assembly Decree 604, March 20, 2020 (<https://www.diariooficial.gob.sv/diarios/do-2020/03-marzo/20-03-2020.pdf>).