



Prepared by: British Red Cross

IFRC Review of Emergency Decrees: SOUTH AFRICA v1.0 25 03 20

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Overview

The first officially confirmed case of coronavirus in South Africa occurred on 5 March 2020.¹ As at 25 March 2020 there were 709 confirmed cases.²

On 15 March 2020, the COVID-19 pandemic was declared as a national disaster in accordance with the Disaster Management Act 2002 (DMA)³ and a Declaration of a National State of Disaster was made under that Act on the same date.⁴

On 18 March 2020 Regulations were made under section 27(2) of the DMA containing measures necessary to prevent an escalation of the disaster or to alleviate, contain and minimise the effects of the disaster ('the COVID-19 Regulations'). On 23 March 2020, President Ramaphosa announced a 21-day lockdown and the introduction of further measures under the DMA from midnight on 26 March 2020.⁵ Further regulations, which amend the COVID-19 Regulations,⁶ were made on 25th March to give effect to the President's announcement, accompanied by directions under the DMA to municipalities and provinces.⁷

Regulations have also been made under the National Ports Act 2005⁸ ('Ports Regulations') and the International Air Services (COVID-19 Restrictions on the Movement of Air Travel) Regulations 2020 ('Air Travel Regulations')⁹ to introduce restrictions on the embarkation and disembarkation of passengers.

¹ <https://www.thesouthafrican.com/news/world-news/first-coronavirus-case-south-africa-who-is-it-where-reported/>

² <https://www.gov.za/speeches/minister-zweli-mkhize-confirms-total-709-cases-coronavirus-covid-19-25-mar-2020-0000> .

³ https://www.gov.za/sites/default/files/gcis_document/202003/43096gon312.pdf. The DMA has been amended by the Disaster Management (Amendment) Act 2015: https://www.gov.za/sites/default/files/gcis_document/201512/39520act16of2015disastermanamendact.pdf .

⁴ https://www.gov.za/sites/default/files/gcis_document/202003/43096gon313.pdf

⁵ <http://www.cogta.gov.za/?p=7795>

⁶ https://www.gov.za/sites/default/files/gcis_document/202003/4314825-3cogta.pdf

⁷ https://www.gov.za/sites/default/files/gcis_document/202003/4314725-3cogta.pdf

⁸ https://www.gov.za/sites/default/files/gcis_document/202003/43103gen173.pdf

⁹ https://www.gov.za/sites/default/files/gcis_document/202003/43105gen175.pdf



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It should also be noted that a number of regulations have been introduced relaxing competition laws,¹⁰ but this analysis focuses on the legislation mentioned above which, together, is referred to in this review as the “emergency measures”.

The President has established a National Command Council on Coronavirus comprising the President and Cabinet Ministers to coordinate all aspects of the emergency response.¹¹

The President has also announced the establishment of a Solidarity Fund to which South African businesses, organisations and individuals, and members of the international community, can contribute.¹²

The Government of South Africa is maintaining a webpage containing COVID-19 regulations and guidance: <https://www.gov.za/coronavirus/guidelines>.

For completeness, although it does not appear to have been relied on to date, South Africa’s standing Public Health Act (36 of 1919) also makes provision and enables regulations etc to be made to respond to outbreaks of infectious diseases.¹³

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

There is no specific reference to coordination with non-state actors in any of the emergency measures.

The COVID-19 Regulations contain provision releasing the resources of a number of Government departments but make no specific reference to the coordination of their activities. Where non-state actors are mentioned, the language is that of direction: i.e.: (a) providing that donor funding received to assist with the national state of disaster must be paid into the Reconstruction and Development Fund,¹⁴ or

¹⁰ <https://www.gov.za/documents/competition-act-coronavirus-covid-19-block-exemption-healthcare-sector-19-mar-2020-0000>; <https://www.gov.za/documents/competition-act-coronavirus-covid-19-block-exemption-retail-property-sector-24-mar-2020>; <https://www.gov.za/documents/competition-act-coronavirus-covid-19-block-exemption-banking-sector-23-mar-2020-0000>; <https://www.gov.za/documents/competition-act-regulations-consumer-and-customer-protection-and-national-disaster>;

¹¹ <https://www.gov.za/speeches/statement-president-cyril-ramaphosa-measures-combat-covid-19-epidemic-15-mar-2020-0000>

¹² <https://www.sanews.gov.za/south-africa/solidarity-fund-assist-vulnerable>

¹³ <https://www.gov.za/documents/public-health-act-24-jun-1919-0000>

¹⁴ COVID-19 Regulations, reg. 2(6).

(b) that the Minister of Health has power to issue directions to address, prevent and combat the spread of COVID-19; the directions may include “the sourcing of human resources from the Expanded Public Works Programme, retired health professionals and Non-Governmental Organisations to render services in identified sites”.¹⁵

More generally, the pandemic is being handled under the framework of the DMA and the National Disaster Management Framework.¹⁶

The DMA provides that:

- (a) relevant non-governmental and international organisations and relief agencies should be members of the National Disaster Management Advisory Forum; the Forum is a body “in which national, provincial and local government and other disaster management role-players consult one another and co-ordinate their actions on matters relating to disaster management;”¹⁷
- (b) the NDMF should facilitate: (i) the involvement of the private sector, non-governmental organisations, traditional leaders, technical experts and volunteers in disaster management; (ii) community participation in disaster management; and (iii) partnerships for purposes of subparagraphs (i) and (ii) between organs of state and the private sector, non-governmental organisations and communities;¹⁸
- (c) national organs of state must prepare disaster management plans and coordinate and align the implementation of their plans with those of other organs of state and institutional role-players [undefined];¹⁹ and
- (d) in the event of a national disaster, the national executive is primarily responsible for the coordination and management of national disasters.²⁰

The NDMF supports the obligations in the DMA: for example, by stating that the National Disaster Advisory Forum must include relevant NGOs, international relief agencies, community-based organisations (CBOs);²¹ which should also be included in national disaster risk planning.²² The NDMF also refers to the need for South Africa “to strengthen its engagement with [...] international organisations.... tap into the extensive expertise and resources of these agencies [and] establish appropriate protocols to clarify procedures for

¹⁵ COVID-19 Regulations, reg. 10(1)(iii).

¹⁶ <http://www.ndmc.gov.za/Frameworks/Disaster%20Management%20Framework.pdf>

¹⁷ DMA, s. 5.

¹⁸ DMA, s. 7(2)(f).

¹⁹ DMA, s. 25(1)(b).

²⁰ DMA, s. 26(1).

²¹ NDMF, para 1.3.1.1.

²² NDMF, para 1.3.2.

requesting external assistance....”²³ The NDMF states that the Department of Foreign Affairs is the lead national department responsible for promoting and facilitating South Africa’s role in international co-operation in disaster risk management. It must, in liaison with the NDMC and the relevant organs of state, forge links with national agencies that render relief assistance internationally, as well as with international agencies, organisations and institutions involved in disaster risk management. Both the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies (IFRCS) are included in a list of international organisations with whom links must be forged.

However, these provisions of the NDMF are primarily directed at DRR and disaster planning. There is no similar provision specifying the role of non-government organisations during a disaster response.

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 express mention of the RC and no responsibilities appear to be ascribed to it.

The only mention of non-government organisations in the emergency measures is in the power given to the Minister of Health to source human resources from NGOs.²⁴

Outside the emergency measures, it is noted that the South African Red Cross is an Official Auxiliary to the Government in Humanitarian Aid and under the South African Red Cross Society and Legal Protection of Certain Emblems Act, if requested, the Society may place its medical personnel and resources at the disposal of the State. Medical personnel and resources which are utilised in this manner are subject to the laws applicable to similar personnel and resources of the State.²⁵

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?

Although there are no express exceptions applying to the RC or humanitarian organisations, they may be able to take advantage of the exceptions applying to the providers of essential services or goods.

²³ NDMF, para 1.4.5.

²⁴ COVID-19 Regulations, reg. 10(1)(iii).

²⁵ South African Red Cross Society and Legal Protection of Certain Emblems Act, s. 5.

The initial restrictions on travel were contained principally in the Ports Regulations and the International Air Travel Regulations.

The Port Regulations:

- (a) prohibit passenger and crew changes in designated ports;
- (b) suspend embarkation and disembarkation of passengers.²⁶

The International Air Travel Regulations:

- (a) subject air crew from specified high risk countries to medical screening and quarantine for up to 21 days;
- (b) suspend the disembarkation of a foreign national from high risk countries unless the passenger is:
 - (i) a returning South African citizen and a permanent resident disembarking,
 - (ii) a foreign national embarking, or
 - (iii) an emergency medical evacuee disembarking.²⁷

Neither set of regulations include exceptions for RC/ humanitarian relief personnel.

In the amendments to the COVID-19 Regulations made on 25 March, more general, additional travel restrictions were imposed:

- (a) All borders are closed during the lockdown;²⁸
- (b) Movement between provinces and between metropolitan and district areas is prohibited;²⁹
- (c) International travellers who arrived in South Africa prior to or after the lockdown must remain in their place of temporary residence for the duration of the lockdown or 14 days and may be subject to screening and quarantine.³⁰

However, although the Republic's borders may be closed, there is an exception for the transportation of fuel and essential goods³¹ (See Q4 for the meaning of essential goods and services) That exception, though, does not appear to apply to movement between provinces and between areas, although that may be covered by the more general exceptions for essential services.

²⁶ Ports Regulations, reg 3.

²⁷ International Air Travel Regulations, reg 4.

²⁸ COVID-19 Regulations, reg. 11B(6)(a).

²⁹ COVID-19 Regulations, reg. 11B(1)(a)(iii) and (iv).

³⁰ COVID-19 Regulations, reg. 11B(6)(c).

³¹ COVID-19 Regulations, reg. 11B(6)(a).

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)?

Although there are no express exceptions applying to the RC or humanitarian organisations, they may in some cases be able to take advantage of the exceptions applying to the providers of essential services or goods.

Submission to examination and quarantine

Under the COVID-19 Regulations, it appears that an enforcement officer (member of SA Police Service or Defence Force) can require a person who is confirmed as having contracted COVID-19 or who has been in contact with a person who is a carrier of COVID-19 to:

- (a) submit to medical examination,
- (b) be admitted to a health establishment or into quarantine or an isolation site, or
- (c) submit to mandatory treatment, quarantine or isolation.³²

A warrant can be issued to enforce this if a person is confirmed as having been infected or “who is on reasonable grounds suspected of having contracted Covid-19 or who has been in contact with, or on reasonable grounds, suspected to have been in contact with a person who is a carrier or infected with COVID-19”.

No express exceptions are given to these provisions.

Visits to correctional centers etc

Visits by “members of the public” (undefined) to Correctional Centers, Remand facilities, holding cells, military detention facilities and Dept of Social development facilities, including Child and Youth Care Center shelters, One stop centers and Treatment Centres, are suspended for 30 days (with the possibility of the period being extended).³³

Lockdown measures

From midnight on 26 March until midnight on Thursday 16 April (the period may be extended), every person is confined to their place of residence, unless strictly for the purpose of performing an essential service, obtaining an essential good or service, collecting a social grant or seeking emergency, lifesaving or chronic medical attention.³⁴

³² COVID-19 Regulations, reg.4.

³³ COVID-19 Regulations, reg. 7.

³⁴ COVID-19 Regulations, reg.11B(1)(a)(i).

All businesses and other entities shall cease operations, save for a business or entity involved in the manufacturing, supply or provision of an essential good or service.³⁵

Retail shops and shopping malls must be closed except for those where essential goods are sold so long as control measures are taken. Any place not involved in the provision of an essential good or service must remain closed to all persons.³⁶

Commuting transport services are prohibited except bus and taxi services and private vehicles used for a limited number of purposes including rendering essential services and obtaining essential goods.³⁷

Essential goods and services

Essential goods and essential service are defined in Annexure B to the COVID-19 Regulations:

(a) **Essential goods** include any food products; cleaning and hygiene products; and medical and hospital supplies, equipment and personal protective equipment and chemicals, packaging and ancillary products used in the manufacture of medical and hospital supplies.

(b) **Essential services** include:

- (i) medical health (including mental health), laboratory and medical services;
- (ii) disaster management, fire prevention, firefighting and emergency services;
- (iii) care services and social relief of distress provided to older persons, mentally ill, persons with disabilities, the sick and children;
- (iv) production, manufacturing, supply, logistics, transport, delivery, critical maintenance and repair in relation to the rendering of essential services including components and equipment; and
- (v) transport and logistics in respect of essential goods to neighbouring countries.³⁸

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 COVID-19 Regulations, reg. 11B(1)(b).

³⁶ COVID-19 Regulations, reg. 11B(1)(c) and (e).

³⁷ COVID-19 Regulations, reg. 11C(1).

³⁸ COVID-19 Regulations, Annexure B.

Again, express provision appears not to have been made. However, it should be noted that both the Ports Regulations and the International Air Travel Regulations expressly provide that the loading and off-loading of cargo is permitted.³⁹ The COVID-19 Regulations also now permit fuel and essential goods to cross the otherwise closed borders.

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?

Again, although the RC/ humanitarian organisations not expressly included in the list of essential services, the list would seem to include categories of work which the RC/ humanitarian organisations would undertake.

It should be noted however that any person claiming to perform an essential service must be designated by their “head of institution” (in the private sector, chief executive or equivalent or a delegate) in writing on a form corresponding to one attached to the COVID-19 Regulations.

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

A requirement for organs of the state to prepare and submit reports to the National Disaster Management Centre;⁴⁰

Provision for the release of resources (funding, personnel, equipment) by organs of the state;⁴¹

Provision that donor funding received to assist with the disaster must be paid into the Reconstruction and Development Fund established under the Reconstruction and Development Fund Act and used strictly for the purposes of implementing the COVID-19 Regulations, and directions;⁴²

Closure of schools and partial care facilities;⁴³

³⁹ Ports Regulations, reg. 3(4); Air Travel Regulations, reg. 4(5).

⁴⁰ Classification of a National Disaster.

⁴¹ COVID-19 Regulations, reg.2.

⁴² COVID-19 Regulations, reg. 2(2).

⁴³ COVID-19 Regulations, reg. 6.



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Suspension of visits to correctional facilities etc;⁴⁴

Limitation on sale, dispensing and gathering of liquor;⁴⁵

Emergency procurement procedures;⁴⁶

Authority to issue directions to, eg, source personnel, provide equipment and identify mortuaries;⁴⁷

A person who intentionally misrepresents that he, she or any other person is infected with COVID-19 is guilty of an offence.⁴⁸

Anyone who creates or spreads fake news about COVID-19 can be prosecuted. This applies to the creators of fake COVID-19 news and those who spread the news through social media and other channels.⁴⁹

Prevention and prohibition of gatherings at ports and airports;⁵⁰

Exemption from the Competition Act of agreements or practices in the health care sector,⁵¹ banking sector⁵², retail property sector⁵³; and

Provision to prevent excessive and unjust pricing and protect consumers.⁵⁴

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⁴⁴ COVID-19 Regulations, reg. 7.

⁴⁵ COVID-19 Regulations, reg. 8.

⁴⁶ COVID-19 Regulations, reg. 9.

⁴⁷ COVID-19 Regulations, reg. 10.

⁴⁸ COVID-19 Regulations, reg. 11(4).

⁴⁹ COVID-19 Regulations, reg. 11(5).

⁵⁰ Ports Regulations, reg. 6; International Air Travel Regulations, reg. 9.

⁵¹ COVID-19 Block Exemption for the Healthcare Sector 2020.

https://www.gov.za/sites/default/files/gcis_document/202003/4311419-3dti.pdf

⁵² https://www.gov.za/sites/default/files/gcis_document/202003/43127rg11058gon355.pdf

⁵³ https://www.gov.za/sites/default/files/gcis_document/202003/43134rg11059gon358.pdf

⁵⁴ Competition Act (89/1998): Consumer and Customer Protection and National Disaster Management Regulations and Directions https://www.gov.za/sites/default/files/gcis_document/202003/4311619-3dti.pdf



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