

WHITE & CASE



IFRC COVID-19 Emergency Decree Pro Bono Research: Eswatini

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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?

Yes - in response to the coronavirus, the Eswatini Government declared a National Emergency on 17 March 2020. This involved the establishment of a “National Emergency Plan”, which is coordinated by the “National Emergency Management Committee” and the “National Emergency Task Team”.

Through this National Emergency Plan, there is a direct coordination between state and non-state actors. The National Emergency Management Committee is a cabinet sub-committee consisting of state actors: the Deputy Prime Minister is chair, and the Committee includes ten other ministers such as the Minister of Public Works and Transport, the Minister of Finance, and the Minister of Health. Their function is to coordinate national and regional emergency management measures, and to act as an interface between the government and the international community.

Equally, the National Emergency Task Force comprises non-state actors, such as representatives and members of the emaSwati Royal Family, the Conference of Churches, and representatives from organizations such as the Eswatini Red Cross Society and UNICEF. A full list is available at the link below.

<http://www.gov.sz/index.php/latest-news/204-latest-news/2408-national-emergency-management-coordination-structures-2>

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 only reference to the Red Cross in relation to Covid-19 is that the “National Emergency Task Force” includes a representative from the Baphalali Eswatini Red Cross Society. They are one of twenty-eight members, which includes other humanitarian actors such as the UNICEF country representative.

The roles of these humanitarian actors are not individually outlined. Rather, the role of all twenty-eight Task Force members is defined as being to “coordinate preparedness and response activities”, to “enlist suitable persons to be volunteers in the coronavirus response”, and to “mount multi-organizational exercises as may be necessary to test emergency plans and procedures”.

<http://www.gov.sz/index.php/latest-news/204-latest-news/2408-national-emergency-management-coordination-structures-2>

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?

As of 08 April 2020, Eswatini remains in lockdown (which came into effect on 27 March 2020) and under a state of National Emergency. Specifically, this is a “Partial Lockdown” and the government called for a stop to “unnecessary travel”. The government update from the Prime Minister published on 01 April 2020 states that:

“The partial lockdown allows us to travel only for food supplies, medication, and for the workers in essential services. All other travel remains strictly prohibited.”

The activities of the Red Cross or other humanitarian relief teams would satisfy the definition of “essential services”, which in the Prime Minister’s statement on 27 March 2020 was defined as those

“...providing or acquiring essential services such as healthcare, food, or banking services.”

Therefore, it appears that the Red Cross, or other humanitarian relief teams, may continue to operate despite the partial lockdown.

<http://www.gov.sz/index.php/latest-news/204-latest-news>

[https://www.africanews.com/2020/04/02/coronavirus-eswatini-partial-lockdown-update-covid-19//](https://www.africanews.com/2020/04/02/coronavirus-eswatini-partial-lockdown-update-covid-19/)

<https://swazimedia.blogspot.com/2020/03/swaziland-coronavirus-partial-lockdown.html>

[https://www.africanews.com/2020/03/27/coronavirus-eswatini-prime-ministers-statement//](https://www.africanews.com/2020/03/27/coronavirus-eswatini-prime-ministers-statement/)

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)?

The COVID Regulations define “essential travel” as “travel on official government business, company or organization business, or for medical reasons.”¹ Exceptions can be granted by any Ministers “from time to time, as maybe required” for a number of reasons which include “taking steps to facilitate international assistance.”²

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?

Under the COVID Regulations, quarantine is defined as:

“separating asymptomatic individuals potentially exposed to a disease from non-exposed individuals in such a manner as to prevent the possible spread of infection or contamination”.

No specific exemption is provided for medical aid or personnel, however:

- a) The COVID Regulations provide also a definition of “donor” as “an individual, corporation or organization that is a contributor of cash, kind or other assets”; (the role of donors is not clarified in the Regulation).
- b) The COVID Regulations also provide that “[t]he Prime Minister may issue guidelines to address, prevent and combat the spread of COVID-19 in any area of the Kingdom of Eswatini, which

¹ Coronavirus (COVID-19) Regulations, 7 March 2020, Part I, Preliminary provisions (‘COVID Regulations’).

² *Ibid.*, Art. 32(10)(c).

directions may include the sourcing of human resources from retired health professionals and Non-Governmental Organizations to render services in identified sites;³

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?

There are several elements in emaSwati law that suggest that the Baphalali Eswatini Red Cross Society ('ERC') is considered a parastatal entity carrying out governmental functions:

- a) the ERC (successor of the British Red Cross after the independence of what was then called Swaziland) is officially recognized by the Baphalali Swaziland Red Cross Society Act no. 41 of 1970 ('Red Cross Act'); the Red Cross Act recognizes the ERC as “a *voluntary aid society auxiliary to the public authorities*”;
- b) The [official page](#) of the Disaster Management Agency lists the contact details of the representatives of the ERC;
- c) Again, the [website](#) of the emaSwati government lists the ERC as a “*public enterprise*”.

The COVID Regulations provide that the definition of “*essential industries*”(i.e. those that may continue to operate during the National emergency) shall be provided by the Minister responsible for commerce⁴ and that such industries “*shall adhere to the directives and guidelines issued in respect of hygiene conditions and limitations of exposure to persons with Covid 19.*”⁵ The Prime Minister explained that Essential Industries are expected to continue operating while observing the proper hygiene standards that will protect employees from the pandemic.⁶

The Ministry of Commerce, Industry and Trade listed the type of services which are considered “essential services” for the purpose of the COVID Regulations. The Ministry of Commerce, Industry, and Trade ('MCIT') Guidelines published on March 25th list, *inter alia*, “health workers and Emergency Response Workers” as well as pharmacies. On April 2nd the MCIT specified that the essential services defined as “Medical and Health” include: “Hospitals; Devices and Equipment; Pharmaceuticals; Funders; Doctors, nurses, paramedics e.t.c.”

The MCIT clarified that the services authorized to continue carrying out their operations must hold “*Permits for Eswatini Essential Industries*”,⁷ which “*are aimed at assisting essential industries operate efficiently and may need to be produced when required by Government officials, including armed forces, as well as inspectors. For cross-border traders, the permits will help them have smooth passage into and out of our neighbouring countries. It is also essential for those doing cross border trade to further provide a copy of the permit to the transporter for ease of travel.*”

The Red Cross operations could likely be considered medical and health services or funders. Moreover, the fact that the ERC is recognized by emaSwati law would likely provide a privileged channel for obtaining the authorization to operate.

In general, the country seems open to receive international support, as appears from a recent statement of the Prime Minister:

“ . . . financial resources are urgently needed to procure more health equipment and material so desperately needed to effectively manage the spread of the virus. An assessment of the overall amount of financial resources required to fight this pandemic is underway and the public will be informed. To this

³ *Ibid.*, Art. 32(1).

⁴ *Ibid.*, Art. 23 (1).

⁵ *Ibid.*, Art. 23 (2).

⁶ Prime Minister’s Statement (PMS) 24 March 2020.

⁷ MTIC’s Statement of 3 April 2020.

end, Government fully appreciates the generosity of all our international friends and local companies that have already donated towards the response.”⁸

It also appears that some non-governmental operators have already intervened:

“Our gratitude goes to our international partners, companies and Non-Governmental Organisational who are working in close collaboration with Government in this COVID 19 response.”⁹

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

The emergency decrees as of April 8, 2020 outline a number of other provisions to be taken, including:

- Government and Parliament are to ensure that sufficient funds are made available specifically for the fight against COVID-19.
- The cancellation of the King’s birthday celebration. The budget set aside for the King’s birthday celebration will be re-directed to the fight against the Coronavirus pandemic.
- Government is tasked to work in collaboration with Regional Administrators, Chief, traditional authorities and all relevant sectors to upscale the Preparedness and Response plan in communities. Security forces will be part of the COVID-19 National Emergency Response.
- A socio economic analysis on the impact of the pandemic on business will be undertaken.
- The Ministry of Health will provide training sessions on the importance of strict hygiene and other measures of controlling the spread of the virus.
- All public and private gatherings attracting 50 or more people are suspended until further notice.
- Visitation to hospitals is restricted.
- Visits to correctional facilities are suspended.
- Government will further strengthen monitoring, detection, testing and screening in all ports of entry including informal border crossings as well as intensify border patrols.
- Government will activate the Unit of Volunteers providing Community Based Disaster Risk Management support at community-based level to ensure educational messages reach all EmaSwati in their communities.
- The Ministry of Health continues to train more responders at public health and health facility levels.
- Creation of Emergency coordination structures that will implement the COVID-19 Emergency Plan. Committees include a Cabinet sub-committee, Emergency Task Force, Regional and Sector Committees.
- Electronic payments and online banking services should be used, where possible, rather than physically visiting banks or ATMs. Elderly grants shall be disbursed through electronic payment system henceforth.
- Public transport will only operate for essential movement and with one (1) meter distance between passengers.
- Employers need to ensure that worker density in the workplace is not more than one person per square metre. Employers are expected to provide facilities for employees to wash their hands before entering the workplace, every two hours and upon leaving the workplace.
- In all food outlets and banks, the public is restricted to 20 individuals and a distance of 1-2 meters between each other.
- All public gatherings of more than 20 people are prohibited. For purpose of this paragraph, public gatherings include but not limited to: religious activities, sports events, conferences, wedding

⁸ PMS’s Statement of 1 April 2020.

⁹ PMS’ Statement of 9 April 2020.

celebrations, music concerts, parties, gymnasiums, or other activities or place where the public gathers.

- The army and the police will be deployed to ensure compliance with all measures. Chiefs and traditional authorities will take a leading role in enforcing these measures in their communities.
- Government economic interventions:
 - The Central Bank has reduced the discount rate by 100 basis points. This reduces the cost of debt by 1%.
 - Government has reduced the price of fuel with effect from midnight 2 April 2020.
 - The increase in the price of electricity has been suspended for two months.
 - The renewal of motor vehicles registration has been extended without attracting penalties to the 29th May.
 - Taxpayers projecting losses are expected to file loss provisional returns and no tax payment will be required. The provisions do not provide more than the term “taxpayers”, thus it is reasonable to assume that “taxpayers” would include individuals AND companies.
 - Government is engaging the transport sector with a view to assist with a small subsidy to ensure the industry to continue transporting workers in essential services and citizens embarking on essential travel.

<https://ecsahc.org/wp-content/uploads/2020/03/PM-statement-17-March-2020.pdf.pdf>

[https://www.africanews.com/2020/03/24/coronavirus-eswatini-prime-minister-s-statement//](https://www.africanews.com/2020/03/24/coronavirus-eswatini-prime-minister-s-statement/)

<https://www.africanews.com/2020/03/24/coronavirus-eswatini-prime-minister-s-statement//>

<http://www.gov.sz/index.php/latest-news/204-latest-news/2414-government-press-statement-24-march>

<http://www.gov.sz/index.php/latest-news/204-latest-news/2430-partial-lockdown-update-covid-19-01-april>

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

No.