



IFRC Review of Emergency Decrees: LESOTHO v1.0 02 04 20

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Overview

Limited information is available on the actions taken by the Lesotho Government to date and much of this review is based on online newspaper reports and the Lesotho Law Lii website which is maintaining a page dedicated to Lesotho's response to COVID-19:

<https://lesotholii.org/content/lesothos-response-covid-19>.

As at the date of writing, Lesotho appears to have no recorded COVID-19 cases.

A declaration of a state of emergency (the 'Declaration') was made with effect from 18 March 2020, with notice of the declaration published on 27 March.¹ A memorandum detailing the decisions of the Cabinet prior to the declaration has been published ('Cabinet Minutes').² A national "lockdown" was launched on 19th March 2020.³

The Lesotho Parliament has been prorogued on the grounds that it would be inadvisable to have large gatherings because of COVID-19,⁴ although this prorogation is being challenged.⁵

The Declaration was made under section 23(1) of the Constitution.⁶ The Declaration provides that:

- a) specified essential services may remain open;
- b) specified non-essential services shall remain closed;
- c) all persons are prohibited from leaving their places of residence except in extreme circumstances specified in Public Health Regulations (to be subsequently made);
- d) gatherings are prohibited except for funerals which are limited to 50;
- e) members of the public, including members of the diplomatic corps and international organisations, are ordered to refrain from travelling outside of and into Lesotho, except those who are essential suppliers of health services, groceries and essential household goods;
- f) members of the press are prohibited from publishing fake news;
- g) the Minister for health shall publish regulations in respect of COVID-19 in line with international health standards provided by WHO on the pandemic and the Public Health Order 1970
- h) all forms of activities including entertainment, sports, recreation and places of worship are prohibited; and
- i) the Lesotho Defence Force and Mounted Police Service shall operationalise all these measures.⁷

The Public Health Order 1970 provides for: the prevention and control of communicable disease; diseases subject to the International Health Regulations; and the prevention and introduction of

¹ <https://www.gov.ls/declaration-of-covid-19-state-of-emergency-notice-2020/>

² <https://lesotholii.org/ls/Cabinet%20decision.pdf>

³ <https://www.gov.ls/wp-content/uploads/2020/03/LOCKDOWN-OBSERVATION-PRESS-RELEASE.pdf>

⁴ See Letter of Prime Minister to King 20 March 2020: <https://lesotholii.org/ls/Letter%20of%20PM%20Thabane%20to%20HM%20Prorogation%20of%20Parliament.pdf>

⁵ <https://lesotholii.org/ls/ParliamentProrogation.pdf>

⁶ https://www.gov.ls/wp-content/uploads/2018/04/Lesotho_Constitution.pdf

⁷ Declaration, para3 to 5.

diseases.⁸ In addition to standing powers such as those enabling a health officer to detain a person certified to be suffering from a communicable disease for treatment⁹ and inspect and disinfect premises, there are powers to enable the Minister to make regulations. No regulations under the Order, which are expressly mentioned in the Declaration, appear to have been made, or at least, could not be found online.

Other legislation of potential relevance, although not apparently used to date, includes the Disaster Management Act (No 2 of 1987) ('DMA')¹⁰ and the Emergency Powers Act (which is referenced in the DMA but could not be found online). The DMA provides for the declaration of a state of disaster¹¹ and gives the Minister emergency powers in addition to those in the Emergency Powers Act.¹² The Lesotho Red Cross Society (MRCS) is established under the Lesotho Red Cross Society Act 1967.¹³ The Lesotho RC is recognised as a voluntary aid society auxiliary to the public authorities and its objects include "...in the case of catastrophes or public disasters, to provide the victims with relief ... [and] to carry on and assist in the work for the improvement of health, the prevention of disease."¹⁴

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

The Cabinet Minutes state that the Government is to establish a COVID-19 National Command Centre and that the Cabinet will meet every two days.¹⁵ In the absence of any other published instruments, there is no specific reference to coordination with non-state actors.

Beyond this there is no specific provision on coordination in the emergency measures. Under the DMA, there should be a National Disaster Management Plan and Disaster Management Manual (neither could be found online).¹⁶ If a state of disaster was declared under the DMA, a National Disaster Relief Task Force should be established, which comprises Ministers.¹⁷

There is also a standing National Disaster Management Authority¹⁸ whose functions include taking "all necessary measures in order to prevent, alleviate, contain and minimise the effects of disaster".¹⁹ The Authority has a board comprising principally Ministry Principal Secretaries but the minister appoints 3 representatives of NGOs on the recommendation of NGOs.²⁰ There are a number of working groups which should also comprise representatives of the Lesotho Council of NGOs, NGOs and other agencies directly involved with disaster management.²¹

⁸ https://lesotholii.org/ls/legislation/act/12/Public_Health_Order_1970.pdf

⁹ Public Health Order 1970, s. 10

¹⁰ <https://www.ifrc.org/docs/idrl/862EN.pdf>

¹¹ It may be that definition of disaster in the DMA, would not include a pandemic- see s 2.

¹² DMA, s.4.

¹³ <https://www.ifrc.org/docs/IDRL/Lesotho%20Red%20Cross%20Society%20Act.%201967.pdf>

¹⁴ Lesotho Red Cross Society Act of 1968, s. 4(1)(b) and (c).

¹⁵ Cabinet Minutes, para 2 (v).

¹⁶ DMA, s. 5.

¹⁷ DMA, s. 8.

¹⁸ <https://www.govserv.org/LS/Maseru/827158530672659/Disaster-Management-Authority---Lesotho%22>

¹⁹ DMA, s. 13(n).

²⁰ DMA, s. 14

²¹ DMA, s. 12.

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 mention in the emergency measures. There are apparently roles for NGOs under the DMA (see above).

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?

The Declaration includes the prohibition on members of the public, including members of the diplomatic corps and international organisations, from travelling outside of and into Lesotho.²² There is no explicit exception for the RC or humanitarian organisations, but there is a general exception for those who are essential suppliers of health services, groceries and essential household goods.²³

No quarantine measures are mentioned in the Declaration.

The Cabinet Minutes, however, record decisions that:

- a) a COVID-19 clearance certificate declaring a traveller corona-free issued by the department of health of the country of origin shall be an additional and critical requirement for visa applications for all travellers intending to visit Lesotho;
- b) the certificate is required to board a plane;
- c) all travellers must complete a public health self-declaration form;
- d) there will be a compulsory 14-day quarantine in designated facilities at their own cost for all travellers (foreigners and Lesotho nationals) arriving in Lesotho from all affected countries.²⁴

The Cabinet Minutes mention no exceptions from these requirements.

The regulations under the Public Health Order, when made, could also deal with such matters

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 Declaration prohibits all persons from leaving their place of residence, except in extreme circumstances specified in the Public Health Regulations.²⁵ Any exceptions will depend on what those regulations say and it may therefore be something in respect of which the IFRC or National Society may wish to make representations.

The Cabinet Minutes also mention a prohibition on all non-essential travel for citizens²⁶ and visits to correctional facilities will “be reduced considerably”.²⁷ The managers of institutions in the public,

²² Declaration, para 3(e).

²³ Declaration, para 3(e).

²⁴ Cabinet Minutes, para 2 (iii).

²⁵ Declaration, para 3(c).

²⁶ Cabinet Minutes, para 2 (ii) (e).

²⁷ Cabinet Minutes, para 2 (ii) (d).

private and civil society sectors must devise and implement workplace programmes designed to ensure the safety of employees and clients including the provision of personal protective equipment and hand sanitisers, ventilation of buildings, promotion of coughing etiquette, one metre space and routine temperature monitoring.²⁸ It is not clear, in the absence of Public Health Regulations, if this is yet legally enforceable.

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?

No provision of this nature appears to have been made yet. Reliance appears to still be placed on whatever pre-existing measures and arrangements are in place.

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 expressly. However, the list of essential services in the Declaration includes health services, pharmacies and medical stores and any other business or enterprise provided for in the Public Health Regulations.²⁹

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

The measures in force are outlined, so far as they can be, in the overview (above).

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²⁸ Cabinet Minutes, para 2 (ii) (f).

²⁹ Declaration, para 3(a).