

IFRC Review of Emergency Decrees: MALAWI

Overview

If any legal instruments have been issued relating to COVID-19, none could be found online. This review is therefore based primarily on press reports of statements by the President and government of Malawi.

From press articles,¹ it would appear that President Mutharika declared a state of disaster on 20 March and put in place the following measures:

- a) All schools, public and private (including public and private colleges) were closed by Monday 23rd March 2020;
- b) All public gatherings are restricted to less than 100 people, including funerals, weddings, church, political gatherings and government meetings;
- c) A travel ban on foreign nationals from countries highly affected by the Coronavirus disease

SADC countries may be exempted from the travel ban and returning residents and nationals from coronavirus affected countries are reported as being subjected to screening and self or institutional quarantine.²

Subsequent measures taken appear to include:

- a) “‘decongesting’ ...prisons by pardoning the sick, old and lactating mothers;”
- b) limiting the passengers in public community transport, a ban on passengers standing in minibuses and buses, the mandatory washing of hands with soap before boarding buses and a reduction in number of passengers from 15 to 8
- c) suspension of cross border passenger buses.³

The declaration of a state of disaster may have been made under the Disaster Preparedness and Relief Act 1991 (‘DRPA’).⁴ Section 32 of the DRPA enable the President to declare a state of disaster for a period of three months (which may be extended). Under the DPRPA the Minister (it is not clear which Minister) may, where a state of disaster has been declared and civil protection organisations in an area are unable to provide adequate civil protection to meet the disaster:

¹ See, ‘Mutharika lays out Malawi ‘response plan’ on coronavirus: bans gatherings of 100 people, schools closing’ Nyasa Times, 20 March 2020; <https://www.nyasatimes.com/mutharika-lays-out-malawi-response-plan-on-coronavirus-bans-gatherings-of-100-people-schools-closing/> ; ‘Malawi President Mutharika declares state of disaster on coronavirus....Orders closure of public, privates school effective Monday,’ The Maravi Post, 20 March 2020: <https://www.maravipost.com/malawi-president-mutharika-declares-state-of-distance-on-coronavirus-orders-closer-of-public-privates-school-effective-monday/>; Joyce Banda brands Malawi’s coronavirus response pathetic’ Nyasa Times, 31 March 2020: <https://www.nyasatimes.com/joyce-banda-brands-malawis-coronavirus-response-pathetic/>

² ‘Coronavirus: Malawi imposes travel ban,’ Malawi 24, 20 March 2020 <https://malawi24.com/2020/03/20/coronavirus-malawi-imposes-travel-ban/>

³ ‘Malawi brings in new measures to fight coronavirus: to decongest prisons, passenger buses’ 27 March 2020 Nyasa Times: <https://www.nyasatimes.com/malawi-brings-in-new-measures-to-fight-coronavirus-to-decongest-prisons-passenger-buses/>

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https://malawilii.org/system/files/consolidatedlegislation/3305/disaster_preparedness_relief_act_pdf_17349.pdf

- a) take over any power or duty conferred or imposed by or under the DPRA on area civil protection officers; and
- b) Confer or impose on any person or authority any power or duty conferred on or imposed on any civil protection officer or any other person by or under the DRPA, provided notice is given in the Gazette.⁵

Beyond addressing states of disaster in this way, the DRPA establishes a framework for disaster management and provides for the creation and management of a disaster appeal fund.

The other legislation of potential relevance is the Public Health Act (Chap 34:01).⁶ Part III of this Act deals with the notification of infectious disease; Part IV with the prevention and suppression of infectious disease (including powers to inspect and remove to hospital); Part V makes special provision regarding certain formidable epidemic or endemic diseases and Part VI deals with the prevention of the introduction of infectious diseases (including powers to enforce precautions at borders and isolation or surveillance of individuals).

The Malawi Red Cross Society (MRCS) is established under the Malawi Red Cross Society Act 1968.⁷ The Malawi 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 work for the improvement of health, the prevention of disease.”⁸

‘International Disaster Response Law in Botswana: A study on legal preparedness for facilitating and regulating international disaster assistance’ was published in 2015 (‘the 2015 IDRL Report’).⁹

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

In the absence of any published instruments, there is no specific reference to coordination with non-state actors.

It has been reported that a Special Committee of Cabinet Ministers on Corona has been appointed to:

- a) provide overall policy guidance on assessing the impact;
- b) oversee the cross-Government response to the threat posed by COVID-19;
- c) receive updates on COVID-19 and ensure that the same is relayed to Malawians;
- d) recommend proactive measures to prevent the occurrence and subsequent spread of corona virus;
- e) provide oversight for cross-Government initiatives against the COVID-19 threat; and facilitate implementation of activities aimed at mitigating the impact of the disease on the social-economic development of the country.¹⁰

⁵ Recent copies of the Malawi Gazette appear unavailable online.

⁶ https://malawilii.org/system/files/consolidatedlegislation/3401/mlw21328_pdf_18359.pdf

⁷ <https://malawilii.org/mw/legislation/act/1966/51>

⁸ Malawi Red Cross Society Act of 1968, s. 5(1)(b) and (c).

⁹ <https://www.ifrc.org/docs/IDRL/MalawiIDRL%20Report%20Draft%20LR.pdf>

¹⁰ Government of Malawi: Statement on Coronavirus Outbreak 11 March 2020 The Marabi Post <https://www.maravipost.com/government-of-malawi-statement-on-coronavirus-outbreakcovid-19/>

More generally, the DPRA appoints the Principal Secretary in the Department of Disaster and Management Affairs as the Commissioner for Disaster Preparedness and Relief who is mandated to coordinate all disaster preparedness and disaster relief activities in Malawi.¹¹

The DPRA also creates the National Disaster Preparedness and Relief Committee ('the DRM Committee'), comprising a high level committee of Principal Secretaries plus a maximum of five members which could include national and international NGOs appointed by the Minister.¹² The DRM Committee is chaired by the Chief Secretary to the President and Cabinet. At the time of the 2015 IDRL Report, the members of the DRM Committee from civil society were World Vision International, Malawi Red Cross Society, Action Aid and Council for Non-Governmental Organisations for Malawi (CONGOMA). The DRM Committee is generally responsible for overseeing the co-ordination and planning of all activities aimed at alleviating disasters in Malawi.¹³ Below the DRM Committee is the National Disaster Preparedness and Relief Technical Committee. The Committee is the national disaster risk management platform. At the time of the IDRL Report, its members were drawn from Government, NGOs, media, academia, private sector, UN and donor agencies.

In its role of co-ordination and oversight, the DRM Committee has established planning and civil protection sub-committees responsible for specific areas which are sometimes referred to as clusters.

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

In the absence of official publication of measures, it is impossible to say. There is no mention in the press reports. It is noted though that the 2015 IDRL Report referred to the participation of such organisations in disaster management structures.

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?

In the absence of official publication of measures, it is impossible to say. Press reports suggest that there may be a travel ban on individuals. There is no mention of exceptions other than for nationals of SADC countries.

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)?

At the date of writing, it appears that there are no curfew or general quarantine or lockdown provisions in place, other than the banning of public gatherings.

The powers that might enable these measures to be taken in the future appear not to contain any express exemptions.

¹¹ DPRA, ss. 3 and 4.

¹² DPRA, ss 5 and 6.

¹³ DRPA, s.13.

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 yet to have been made. Reliance appears to still be placed on whatever pre-existing measures and arrangements are in place. The 2015 IDRL Report considered these in detail.¹⁴

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?

At the time of writing, there appear to be no restrictions on business operations. No provision is included in the enabling powers expressly referring to exceptions or exemptions for the RC or humanitarian organisations.

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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¹⁴ IDRL 2015 Report, pp, 44 – 61.