



Legal Preparedness for Responding to Disasters and Communicable Disease Emergencies: study report

Cambodia

This study was prepared by the International Federation of Red Cross and Red Crescent Societies (IFRC) International Disaster Response Laws, Rules and Principles (IDRL) Programme with funding support provided by the Asian Development Bank (ADB) Regional Pooled Fund of the Greater Mekong Sub-Region Communicable Disease Control Project.

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Suggested citation: IFRC/ADB. Legal Preparedness for Responding to Disasters and Communicable Disease Emergencies in Cambodia (2009)

Most documents referred to in this report are available electronically on CD ROM. To obtain a copy or for any queries about this study or the IDRL Programme, please contact:

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This study involved input from a number of people who provided valuable comments, technical expertise, experiences and feedback. In particular the Project Team would like to thank the following:

Cambodian Red Cross: Mme. Pum Chantinie, Secretary-General; H.E. Ouk Damry, First Vice President; H.E. Uy Sam Ath, Director, Disaster Management Department; and H.E. Dr Sok Long, Director of Health Management Department.

National Committee for Disaster Management: H.E. Peou Samy, Secretary General; and H.E. Ross Sovann, Deputy Secretary General and Chief of Emergency Coordination Centre.

Ministry of Health: Dr. Sok Touch, Director of Communicable Disease Control Department; and Mr. Ly Sovan, Deputy Director General of Communicable Disease Department.

World Health Organization: Rodger Doran, Coordinator, Emergency and Humanitarian Action Programme for Mekong Countries; and Maggs MacGuinness, Technical Officer Pandemic Planning, Cambodia.

International Federation of Red Cross and Red Crescent Societies: Vincent Toutain, Head of Cambodia Office; and Lak Mony Rasmey, Office Manager and Programme Coordinator, Cambodia Office.

Table of contents

Acknowledgements	<i>1</i>
Executive summary	<i>6</i>
Acronyms and abbreviations	<i>10</i>

Chapter 1: Background to project and methodology *12*

1.1 What is Legal Preparedness and why is it important?	<i>13</i>
1.2 Project description, objectives and methodology	<i>14</i>
1.3 Selection of topics covered in this report	<i>15</i>

Chapter 2: Overview of applicable international and regional standards and agreements *16*

2.1 International instruments	<i>17</i>
2.2 Regional instruments	<i>21</i>
2.3 Bilateral Instruments	<i>23</i>

Chapter 3: Country background - disaster risks and legal framework *25*

3.1 Disaster risks	<i>26</i>
3.2 Communicable disease risks	<i>27</i>
3.3 Government and legislative structure	<i>27</i>
3.4 Legal system	<i>28</i>

Chapter 4: Overview of national laws and policies for disaster management and communicable disease control *29*

4.1 Legal and policy framework for disaster management	<i>30</i>
4.2 Legal and policy framework for communicable disease emergencies	<i>31</i>
4.3 Overall analysis and recommendations	<i>32</i>

Chapter 5: Early warning and declaration of a disaster or communicable disease emergency *34*

5.1 Early warning for disaster	<i>35</i>
5.2 Declaration of a disaster	<i>35</i>
5.3 Surveillance and notification of communicable disease outbreaks	<i>36</i>
5.4 Recommendations	<i>37</i>

Chapter 6: Institutional arrangements *38*

6.1 Institutional arrangements for disaster management	<i>39</i>
6.2 Institutional arrangements for communicable disease emergencies	<i>43</i>
6.3 Recommendations	<i>46</i>

Chapter 7: Requests for international assistance *48*

7.1 Requests for international disaster relief and initial recovery assistance	<i>49</i>
7.2 Requests for international assistance for a communicable disease emergency	<i>50</i>
7.3 Recommendations	<i>50</i>

Chapter 8: Legal status of foreign entities providing assistance *51*

8.1 Diplomatic missions	<i>52</i>
8.2 UN, IFRC and international organizations	<i>52</i>
8.3 International NGOs	<i>53</i>
8.4 Private companies and organizations	<i>54</i>
8.5 Recommendations	<i>54</i>

Chapter 9: International humanitarian transport arrangements *56*

9.1 Aircraft	<i>57</i>
9.2 Land vehicles	<i>58</i>
9.3 Inspection of transport and quarantine measures	<i>58</i>
9.4 Recommendations	<i>60</i>

Chapter 10: Customs and tax arrangements for international humanitarian relief *61*

10.1 Customs, duties and import/export tax exemptions	<i>62</i>
10.2 Other taxes, charges and currency exchanges	<i>65</i>
10.3 Recommendations	<i>66</i>

Chapter 11: International relief personnel *69*

11.1 Entry permits and visas	<i>70</i>
11.2 Recognition of professional qualifications and licenses	<i>73</i>
11.3 Recommendations	<i>73</i>

Chapter 12: Rights and freedoms *75*

12.1 General rights and freedoms	<i>76</i>
12.2 Confidential information	<i>78</i>
12.3 Safety and security	<i>78</i>
12.4 Recommendations	<i>79</i>

Chapter 13: Quality, accountability and transparency *81*

13.1 Accountability and transparency of the government	<i>82</i>
13.2 Quality and accountability of international relief	<i>82</i>
13.3 Recommendations	<i>83</i>

Summary of recommendations *85*

End notes *95*

Annexes

Annex 1: List of consultations *101*

Annex 2: List of references *103*

Executive summary

Why is legal preparedness important for Cambodia?

Legal issues are often overlooked as part of preparedness planning for disasters and communicable diseases. Recent research from large-scale disaster operations around the world, conducted by the International Federation of Red Cross and Red Crescent Societies (IFRC) has demonstrated that vital international support can be hampered by the domestic legal framework.¹ Furthermore, concerns about potential pandemics have heightened the need to ensure that legal issues are anticipated and managed in advance of an outbreak situation, to enable a rapid response. There are a number of international and regional legal instruments and standards which have been developed to address many of these issues, many of which are applicable to Cambodia; however, these are not always implemented effectively at the domestic level.

Cambodia is vulnerable to a range of natural hazards, in particular flooding and drought, as well as communicable diseases such as Severe Acute Respiratory Syndrome (SARS) and pandemic influenza. Having a comprehensive legal framework in place will facilitate fast mobilization and response in the event of an emergency and will contribute to good coordination and information exchange between different humanitarian partners regardless of whether they are local, national or international.

About this study

This legal research study was conducted in Cambodia between June 2008 and April 2009. The study aimed to:

1. Identify gaps and areas of good practice in addressing legal issues and implementing the key regional and international instruments relevant to disaster and communicable disease emergencies in Laos;
2. Recommend legal and policy measures to minimize legal barriers and encourage effective national and international responses to disasters and communicable diseases in Laos.

The research process involved:

- Legal document collection and analysis against key international and regional instruments;
- A survey of key stakeholders;
- Consultation meetings with UN, INGOs and governmental officials; and
- A high-level meeting held in January 2009 to discuss the findings and recommendations of the study with the Government of Cambodia and other partners.

Two international texts were used as the principal basis for analysis: the *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (IDRL Guidelines) of 2007*² and the *International Health Regulations of 2005 (IHRs)*³. Additionally, consideration was given to the *ASEAN Agreement on Disaster Management and Emergency Response of 2005* and the *Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters (HFA)* as well as a number of agreements and declarations developed within the Mekong region. In addition to an examination of the implementation of these instruments, the study also identifies and recommends other measures which may help to minimize legal barriers for preparing and responding effectively to disasters and communicable diseases in Cambodia.

The institutional and legal framework for disasters and communicable disease emergencies in Cambodia

It is clear that, although disaster management and communicable disease control are given a reasonable degree of priority within national planning, the legal framework remains somewhat dispersed and fragmented. Different aspects of disaster management and communicable disease control are covered by instruments of varying legal weight and are not always

[Return to Table of Contents](#)

cross-referenced or compatible with others.

In disaster situations, the main national body responsible is the National Committee for Disaster Management (NCDM), which is headed by the Prime Minister and comprises 16 Ministers and other high ranking officials including from the Cambodian Red Cross (CRC). For communicable disease emergencies, the main responsibility lies with the Department of Communicable Disease Control of the Ministry of Health (CDC/MoH). The activities of both institutions are supported by a number of decrees and guidelines but as yet, no laws.

Indeed, it is clear that systems for disaster management and communicable disease control have largely been developed independently of one another, despite there being some important overlapping issues and the potential for both a disaster and communicable disease situation to occur at the same time. Consequently there is a clear need to establish good coordination mechanisms and communication links between government entities responsible for disaster management and communicable disease control, as well as other government departments, civil society organizations and the international community.

For both disaster and communicable disease control there are significant gaps in the coverage of key issues. In general, the legal and policy framework:

- Does not include a definition of a disaster or communicable disease emergency.
- Is targeted primarily towards specific situations such as flood and drought, or specific diseases such as HIV/AIDS.
- Focuses on government institutional arrangements with few references to civil society and international assistance.
- Emphasizes response, with limited reference to prevention, early warning/surveillance and preparedness.

As many of the regulatory provisions for disaster and communicable disease take the form of decrees, sub-decrees, declarations and circulars, they rarely include any enforceable duties or prohibitions and do not include measures for non-compliance. The lack of clarity in the roles and responsibilities of officials at central and sub-national levels also makes it difficult to apply usual disciplinary measures for administrative breaches by civil servants. Thus, current regulations lack sufficient enforceability.

Key findings on specific issues

Institutional arrangements

As indicated above, the institutional arrangements for disaster management and communicable diseases have developed independently and there is no overarching law describing the overall structure of the government bodies and the way they interact.

Early warning and disease surveillance

Early warning and disease surveillance systems are currently reliant on a variety of technical governmental bodies, including the Ministry of Water Resources and Meteorology (MoWRAM), the NCDM, the CRC and the Ministry of Health (MoH). Past experiences have revealed that a lack of clear procedures and the absence of a formalized legal framework can limit the effectiveness of the current system, in addition to general challenges due to a lack of resources and infrastructure.

Requests for and acceptance of international assistance

There is a general appreciation by the Cambodian Government of the need to facilitate international assistance in the case of large scale emergencies. Indeed, the NCDM is tasked to coordinate with United Nation (UN) agencies, international organizations, non-government organizations (NGOs) and the wider international community to appeal

for emergency response assistance. However, current laws and policies do not establish any criteria for determining when a disaster or communicable disease emergency exceeds local or national capacities, nor is there a single channel identified to coordinate and manage such assistance. Developing legal provisions which define the roles and responsibilities in this regard is an essential step forward to ensuring fast and efficient relief operations.

Legal status and facilities for foreign entities providing assistance

The legal status of foreign entities in Cambodia, and the facilities to which they are entitled, vary between the types of entities involved. Diplomatic missions, UN, IFRC and international organizations (IOs) are granted a wide range of privileges and immunities through Diplomatic Law and Legal Status Agreements which facilitate the arrival of personnel, goods and equipment and provide exemptions from taxes and duties. International NGOs (INGOs) must conclude a standard Memorandum of Understanding (MOU) with the government which provides details of specific activities as well as facilities such as visas for foreign staff and import permissions for specific items. For other entities and on other topics, such as vehicle registration, importing medication and the recognition of professional qualifications, there are a range of laws and regulations which detail the procedures required. In all cases however, there are no specific arrangements for emergency situations when usual procedures will need to be fast-tracked. Thus, existing processes have the potential to delay urgent relief consignments and relief personnel in the event of a large scale disaster or communicable disease emergency. The creation of a register of authorized entities eligible to automatically receive a number of specific legal facilities for the provision of disaster and communicable disease emergency relief activities is considered an efficient way to alleviate this constraint.

International relief during a communicable disease emergency

Existing quarantine regulations, health guidelines and decrees suggest there could be additional delays for international relief during a communicable disease emergency. While there are no overt contradictions with the IHRs on issues such as inspection and quarantine of infected conveyances or the surveillance, treatment and isolation of international travellers, there are a number of measures which are yet to be implemented, both within the legal framework and in practice. A key concern is the lack of priority given to the entry of humanitarian supplies and personnel, thus current public health measures are likely to have the effect of slowing down the entry of relief. The establishment of priority procedures for humanitarian assistance, which still maintains the necessary checks to ensure public health and safety, would avoid any unnecessary delays or ambiguities in the current system.

Rights and freedoms during disaster and communicable disease emergencies

General rights and freedoms for individuals – in particular for Khmer citizens – are guaranteed by the Cambodian Constitution. Generally, foreign humanitarian personnel in Cambodia felt they currently enjoyed adequate access, freedom of movement, safety and security; although it was acknowledged that there were few legal or regulatory safeguards in place. It was also clear that more detailed provisions would be needed to ensure the respect for rights and freedoms in the case of compulsory medical isolation, the treatment of confidential information and pre-disaster evacuations, and to avoid conflict with any Constitutional obligations.

Overarching recommendations

- The overarching recommendations of this report are to develop new laws on disaster management and communicable disease control respectively, to replace the existing instruments.
- They should be developed contemporaneously to ensure their compatibility, to allow the cross-referencing of certain key provisions and to clarify arrangements in situations when both a disaster and communicable disease emergency are present.
- The laws should provide a comprehensive overall framework and principles for the management of disasters and communicable disease, ensure that relevant ministries/agencies have the necessary legal authority to carry

out their mandates, and enable adequate resource allocation and establish enforcement mechanisms. Specific recommendations for this are included in this report.

- They should also address the legal arrangements for the facilitation and regulation of international assistance (when needed) in the event of a disaster or communicable disease emergency, including the establishment of a register of authorized entities eligible to receive legal facilities for the provision of disaster and communicable disease emergency relief activities. Specific recommendations for this are included in this report.
- The laws should be supplemented where necessary by a number of implementing Decrees/Sub-Decrees which provide further detail on specific aspects which may require more frequent amendment – however specific recommendations for these are not detailed in this report.



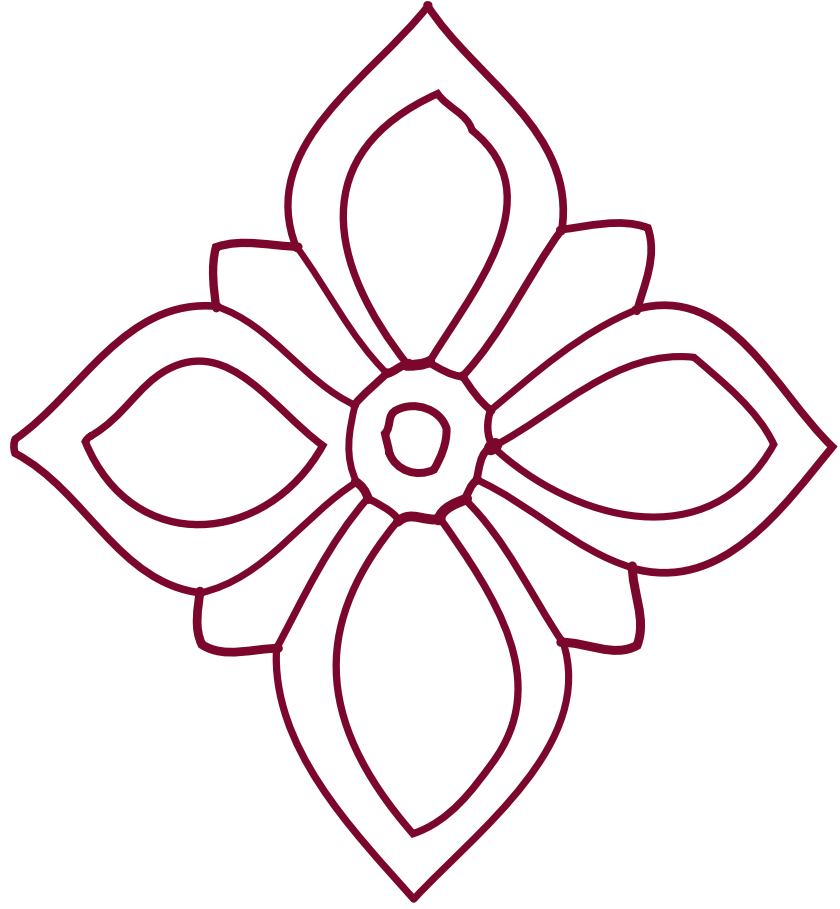
Acronyms and abbreviations

AADMER	ASEAN Agreement for Disaster Management and Emergency Response
ACMECS	Ayeyawady - Chao Phraya - Mekong Economic Cooperation
ADPC	Asian Disaster Preparedness Centre
AHA	ASEAN Coordinating Centre for Humanitarian Assistance
ADB	Asian Development Bank
APSED	Asia Pacific Strategy for Emerging Diseases
ASEAN	Association of Southeast Asian Nations
ASEAN SASOPs	ASEAN Standby Arrangements and Standard Operating Procedures
CCDM	Commune Committee for Disaster Management
CDC/MoH	Communicable Disease Control Department of the Ministry of Health
CMDG	Cambodia Millennium Development Goals
CRC	Cambodian Red Cross
DCDM	District Committee for Disaster Management
ECSPA	Economic Cooperation Strategy Plan of Action
ERAT	Emergency Rapid Assessment Teams
GMS	Greater Mekong Subregion
HFA	Hyogo Framework for Action
HSP2	Ministry of Health, Health Strategic Plan, Phase 2
IASC	Inter-Agency Standing Committee
ICRC	International Committee of the Red Cross
IDRL	International Disaster Response, Laws and Principles
IDRL Guidelines	Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance
IFRC	International Federation of Red Cross and Red Crescent Societies
IHRs	International Health Regulations
INGO	International Non-Governmental Organization
IO	International Organization

[Return to Table of Contents](#)

MBDS	Mekong Basin Disease Surveillance
MoFA	Ministry of Foreign Affairs and International Corporation
MoH	Ministry of Health
MoPWT	Ministry of Public Works and Transport
MoWRAM	Ministry of Water Resources and Meteorology
MOU	Memorandum of Understanding
MRC	Mekong River Commission
NCDM	National Committee for Disaster Management
NGO	Non-Governmental Organization
NPRS	National Poverty Reduction Strategy
PCDM	Provincial Committee for Disaster Management
SARS	Severe Acute Respiratory Syndrome
UN	United Nations
UNDAC	United National Disaster Assessment and Coordination
UNDMT	United Nations Disaster Management Team
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNISDR	United Nations International Strategy for Disaster Reduction
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
VAT	Value Added Tax
WFP	World Food Programme
WHO	World Health Organization

Chapter 1



Background to project and methodology

Chapter 1

Background to project and methodology

1.1 What is legal preparedness and why is it important?

Legal issues are often overlooked as part of preparedness planning for disasters and communicable diseases. This is particularly so for situations where cross-border or international assistance may be needed.

Recent research on large-scale disaster operations around the world, conducted by the IFRC's International Disaster Response Laws, Rules and Principles (IDRL) Programme, has demonstrated that vital international support can be hampered by issues such as: a lack of legal recognition for foreign relief providers; customs delays and tax requirements for medication, relief goods and equipment; complications with visas for relief personnel; and a lack of recognition of foreign professional qualifications in emergency situations. It has also been found that coordination and information-sharing between response agencies can also be lacking, as well as adherence to human rights, humanitarian principles and standards of quality and accountability.

Additionally, concerns about potential pandemics, such as SARS and pandemic influenza, have heightened the need to ensure that legal issues are anticipated and managed in advance of an outbreak situation, to enable a rapid response. The control of communicable disease brings with it additional legal issues relating to monitoring, alert procedures, quarantine and the restriction of the movement of people and goods as part of outbreak containment. In these situations it is especially important to have the necessary legal mechanisms in place to facilitate the flow of information, medical activities and humanitarian assistance without compromising public health and safety and while respecting human rights and dignity.

At the international level, a number of significant legal instruments and guidelines have been developed to address a number of these issues, such as:

- IDRL Guidelines (2007)
- IHRs (2005)
- HFA (2005)
- Convention on Civil Aviation (1944) 9th Edition 2006 (Chicago Convention)
- Inter-Agency Stating Committee (IASC) Operational Guidelines on Human Rights in Natural Disasters (2006)
- Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (1998) (Tampere Convention)

Additionally, there are a number of regional instruments applicable to Cambodia which also address some of these aspects such as agreements and declarations of regional bodies including:

- Association of Southeast Asian Nations (ASEAN)
- Ayeyawady - Chao Phraya - Mekong Economic Cooperation Strategy (ACMECS)
- Mekong Basin Disease Surveillance (MBDS)
- Mekong River Commission (MRC)
- Greater Mekong Subregion (GMS) Framework Agreements on Goods in Transit and Cross-border Transport

It is important to ensure that these and other relevant instruments are effectively implemented at the national level. National and provincial laws and policies must also be able to accommodate the needs of large-scale disaster and disease situations, involving a range of local, national and international partners.

Legal preparedness in Cambodia

Like all countries, Cambodia faces a number of different disaster and disease risks. Having a comprehensive legal framework in place will facilitate fast mobilization and response in the event of an emergency and will also contribute to good coordination and information exchange between humanitarian partners, whether local, national or international. Effective legal preparedness also facilitates accountability, transparency and good practice for disaster and disease management.

At the time of writing, Cambodia was in the process of developing new disaster management legislation and considering the development of new communicable disease control laws – thus, this project was considered very timely.

1.2 Project description, objectives and methodology

Project description

This project involved the commission of a research study on Legal Preparedness for Responding to Disasters and Communicable Disease Emergencies in Cambodia. It formed part of a series of studies to encourage greater legal preparedness in countries of the GMS in Cambodia, Laos and Vietnam. The project duration was June 2008 - April 2009.

Project partners

The study was managed by the IFRC with technical assistance from the World Health Organization (WHO), supported by the Asia Development Bank (ADB) funded Pooled Fund of the Greater Mekong Sub-Region Communicable Disease Control Project.

Objectives

Through legal research and consultations, this study aimed to:

- Identify areas of good practice in addressing legal issues and implementing the key regional and international instruments relevant to disaster and communicable disease emergencies in Cambodia.
- Recommend measures to minimize legal barriers and encourage effective national and international responses to disasters and communicable diseases in Cambodia.

Methodology

The methodology for this project included the following:

- Initial research and in-country consultations with project partners between March and April 2008.
- A legal research consultant from Cambodia appointed in July 2008, as well as a research assistant, based at the IFRC Cambodia Office.
- Establishment of a Project Taskforce to guide and support the study research, consisting of representatives from the MoH, NCDM, CRC, IFRC, WHO, ADB and other invited experts, which met several times during the project.
- Legal research took place between July 2008 – March 2009 and involved:
 - The collection of legal documents and comparison with key international and regional instruments.
 - A survey of key stakeholders (government and non-government).
 - Consultations during other workshops and meetings.
 - A High Level Workshop held in January 2009 to present the findings and recommendations of the study to the Government of Cambodia and other partners.

Major outputs

- A full collection of documents in Khmer (and English where available) with a searchable spreadsheet (available on CD-ROM).
- This Study Report containing the findings and recommendations.

1.3 Selection of topics covered in this report

It should be emphasized that this report is not intended to cover all legal and regulatory issues associated with disaster management and communicable disease control.

The primary focus of this report is on legal arrangements for the facilitation of international assistance, based on the provisions of the IDRL Guidelines, the IHRs and, to a lesser extent, other international and regional instruments.

During the course of this project, a number of other key issues were strongly emphasized by the Project Taskforce and through the consultation process, thus they are also addressed here. These issues include in particular early warning for disaster and institutional arrangements because it was widely felt that without such mechanisms in place, there would be limited opportunity to fully benefit from and facilitate international assistance.

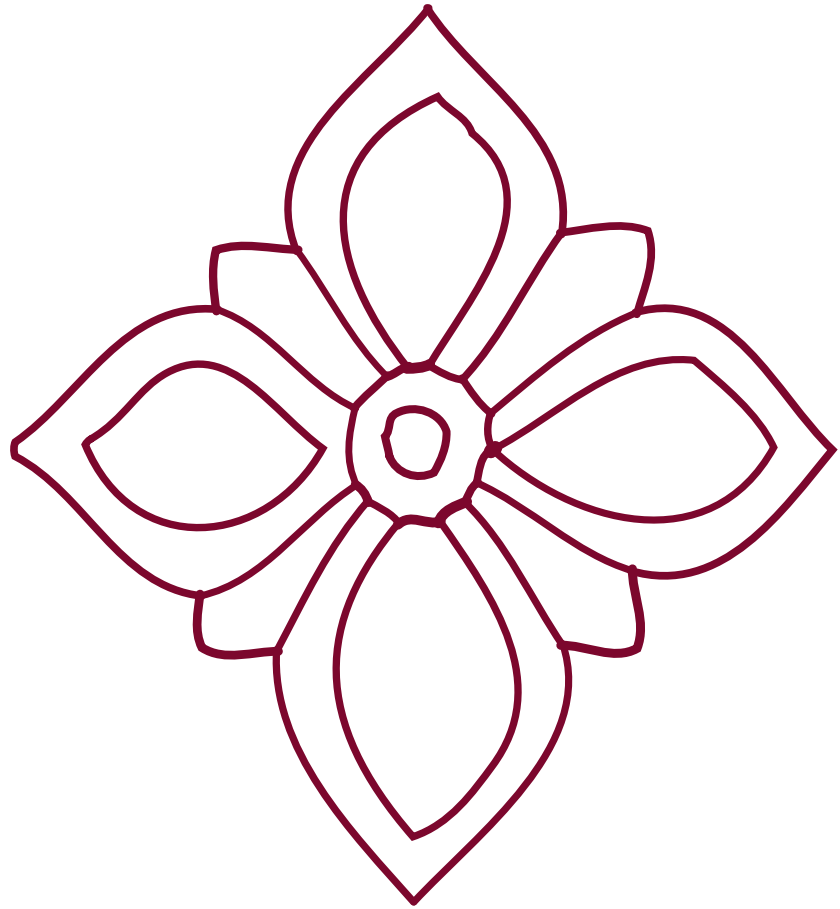
Some relevant issues are not included here, or are included in only a limited way. This reflects some of the challenges in accessing comprehensive, up to date legal materials. While great efforts have been made by the Project Taskforce, researchers and others to collect all relevant materials, there remain some gaps in the collection which will hopefully be improved over time as more documents come to light.



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[Return to Table of Contents](#)

Chapter 2



Overview of applicable international and regional standards and agreements

Chapter 2

Overview of applicable international and regional standards and agreements

2.1 International instruments

Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (2007)

The IDRL Guidelines were adopted by Resolution 4 of the 30th International Conference of the Red Cross and Red Crescent in November 2007.⁴ The IDRL Guidelines were developed through an extensive research and consultation process, led by the IFRC, to address a number of legal challenges frequently encountered during international disaster relief operations.

The IDRL Guidelines provide recommendations to governments for removing legal barriers and unnecessary red tape which can delay the entry and operation of international disaster relief teams, goods and equipment. At the same time, they encourage governments to appropriately regulate incoming assistance to ensure it meets minimum quality and accountability standards.

Some key provisions of the IDRL Guidelines are:

Domestic actors have the primary role

- The Guidelines recognize that it is first and foremost the responsibility of the government of the affected state to address the humanitarian needs caused by a disaster within its borders. National Red Cross or Red Crescent Societies and other domestic civil society actors in the affected state play a key supporting role.
- International disaster assistance should be designed and implemented so as to be complementary to the efforts of these domestic actors, rather than displace them.

International relief providers have responsibilities

- The IDRL Guidelines also insist that international assistance providers be held responsible for abiding by certain minimum humanitarian standards in their disaster assistance.
- These include the principles of humanity, neutrality, and impartiality as well as minimum standards of coordination and quality in their relief goods, personnel and programmes, as drawn from sources such as the Code of Conduct of the Red Cross and Red Crescent Movement and NGOs in Disaster Relief and the Sphere Humanitarian Charter and Minimum Standards in Disaster Relief.

International actors need legal facilities

- The IDRL Guidelines set out specific types of legal facilities or accommodations that governments should provide to assisting states and humanitarian organizations so that they can do an effective job of responding to humanitarian needs. For example, they call for:
 - Expedited visa processing and customs clearance for relief personnel, goods and equipment
 - Facilitation of relief transport
 - Exemptions from taxes, duties and fees on relief activities
 - Simplified means for humanitarian organizations to acquire temporary domestic legal personality in order to operate legally in the country
- A distinction is made in some of these provisions between “relief” and “initial recovery assistance,” because speed is much more critical for emergency relief.
- The IDRL Guidelines also encourage states to reduce legal barriers to disaster relief originating within or passing through their territories to another country affected by a disaster, in order to avoid delays.

Some legal facilities should be conditional

- In order to lend some weight to the responsibilities of assisting humanitarian organizations in particular, the IDRL Guidelines encourage governments (to the extent permissible under international law) to condition the granting of legal facilities to these organizations on their commitment to, and ongoing compliance with, the minimal standards described above.
- The IDRL Guidelines suggest that this could be implemented in various ways, for example, through a simple registration procedure, ideally available not only in the immediate aftermath of a disaster but also as a preparatory measure in advance. The granting state should then monitor the performance of registered organizations for ongoing compliance with the required standards.
- The IDRL Guidelines note that some states may wish to grant legal facilities to private companies providing charitable relief in a disaster setting. If they do so, they are encouraged to hold them to the same standards as humanitarian organizations. No similar conditionality is suggested for government-to-government aid due to the availability of alternative diplomatic means of redressing quality or coordination issues.

Although the IDRL Guidelines are non-binding, they have been used and referred to by a number of international and regional bodies and instruments including the United Nations General Assembly⁵ and the ASEAN Standing Arrangements and Standard Operating Procedures (SASOPS) which were developed to support the ASEAN Agreement on Disaster Management and Emergency Response (AADMER) (see further below).

International Health Regulations (2005)

The IHRs were revised and adopted by the World Health Assembly in 2005. The IHRs are legally binding, having entered into force in mid-2007, and now have 194 States Parties including Cambodia. They create a new international mechanism for issuing official warnings about disease outbreaks and require state parties to strengthen their domestic surveillance and control systems. States Parties have until 15 June 2012 to develop the minimum core public health capacities as outlined in the Regulations.⁶

Whereas the earlier versions of the IHRs only applied to a few diseases, as of 2005, the IHRs apply to any “public health emergency of international concern.” These include:

A disease or occurrence that creates a potential for disease, which:

1. constitutes a public health risk to other States through the spread of disease, and
2. requires a coordinated international response.

In other words, the obligations in the IHRs are not only for actual outbreaks of diseases such as yellow fever and SARS, but also potentially biological, chemical or radiological accidents or other vectors that could lead to disease, as well as animal diseases that might be transmitted to humans (i.e., zoonotic diseases).

Some other key provisions of the IHRs include:

Notification

- The IHRs oblige states to assess events to determine if they constitute a public health emergency of international concern, and gives guidelines on doing so.
- If a state decides that such a threat exists, it is obliged to notify the WHO within 24 hours and continue to give reports. A National IHR Focal Point must be established or designated; available at all times to communicate with a WHO Focal Point. Additionally, the WHO may consider reports from sources other than states.
- A system is also established whereby the WHO, under certain circumstances, may share information with potentially affected states regarding a public health emergency of international concern, even without the permission of the source state.

Capacity-building

- States must take measures to develop their surveillance and response capacities for health emergencies, in

particular at certain entry points which must be designated. The minimum capacities to be developed are set out in detail.

- States are also required to assist each other as far as possible in this regard through technical co-operation and support, as well as mobilization of financial resources.

Health measures

- The IHRs specify which health measures may be taken against travellers, goods, baggage and conveyances (e.g., requesting information, vaccinations, health examinations, etc.) and under which circumstances. In particular, the Regulations define when a traveller, vehicle, etc., may be considered affected by a disease, and what steps may then be taken. The charges which may be imposed for these measures are also regulated.
- The IHRs state that such measures should not unnecessarily impede international trade and travel and should not be unnecessarily invasive or intrusive to persons.
- States are also required to designate authorities responsible for a specified list of tasks related to health measures (e.g., ensuring that facilities used by travellers at points of entry are kept free of sources of infection).

Certification

- The IHRs regulate the types of health documents which may be required in respect of travellers, ships or aircraft entering a territory, as well as setting out some of their legal consequences. Model documents are also provided.

Confidentiality of data

- The Regulations contain provisions regulating the privacy of individually identifiable data when information is exchanged amongst states or to the WHO in terms of the Regulations.

Respect for human rights

- The IHRs stipulate that its provisions must be applied with full respect for human rights. This is of particular importance in safeguarding the rights of persons undergoing health measures such as medical examinations or quarantine, as well as protecting individual privacy.

No later than five years after the entry into force of the IHRs (i.e., by mid-2012), states must take measures to develop, strengthen and maintain their public health protection capacities consistent with their requirements. As of June 2009, states must assess their existing structures, and then develop plans of action to ensure that minimum capacities are present and functioning. After 2012, states may obtain a two-year extension in cases of justified need. In exceptional circumstances, they may receive an additional extension not exceeding two years.

Each State - at all levels and including all its sectors, ministries, officials and personnel - holds the responsibility for implementing the IHRs at national level.

Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations of 1998 (Tampere Convention)

The Tampere Convention is a treaty aimed at facilitating the use of telecommunication resources for disaster mitigation and relief. It establishes an international framework for states to cooperate among themselves and with non-state entities and intergovernmental organizations.

Among other aspects, the convention seeks to simplify and strengthen the procedures by which international disaster responders may bring telecommunications equipment across borders during and after an emergency and use them in their operations. It requires states to reduce or remove regulatory barriers and to confer the necessary privileges, immunities, and facilities for international relief providers. The convention also recognizes the sovereign interests of states parties, providing substantial flexibility as to how to carry out their obligations and ensuring that they maintain primary authority in relief coordination within their own borders.

In 1998, 60 states attending the Intergovernmental Conference on Emergency Telecommunications (ICET 98, Tampere, Finland, 16-18 June 1998) unanimously adopted the Tampere Convention. The Convention entered into force on 8 January 2005 and, as of January 2007, it had 35 States Parties. Although Cambodia has not signed or ratified this convention, it is relevant as a reflection of international consensus on reducing regulatory barriers in the use of telecommunications during a disaster response.⁷

Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters

The HFA is a set of non-binding guidelines adopted by states at the World Conference on Disaster Reduction, organized by the UN International Strategy for Disaster Reduction (UNISDR) in Hyogo in 2005.⁸ The HFA promotes a “strategic and systematic approach to reducing vulnerabilities and risk to hazards” by “building the resilience of nations and communities to disasters.”⁹ The HFA provides five priorities that states should consider, most notably:

Priority 1: Disaster risk reduction should be a national and local priority

- This priority includes recommendations for strengthening legislative and institutional frameworks, in particular:
 - Creating and strengthening of national integrated disaster risk reduction mechanisms, such as multi-sectoral national platforms, with designated responsibilities at the national through to the local levels to facilitate coordination across sectors.
 - Integrating risk reduction into development policies and planning at all levels of government, including in poverty reduction strategies and sectors and multi sector policies and plans.
 - Adopting, or modifying where necessary, legislation to support disaster risk reduction, including regulations and mechanisms that encourage compliance and that promote incentives for undertaking risk reduction and mitigation activities.

Priority 5: Strengthen disaster preparedness for effective response at all levels

- This priority includes recommendations to prepare for disaster response at national, regional and international levels including:
 - Strengthening policy, technical and institutional capacities in regional, national and local disaster management, including those related to technology, training, and human and material resources
 - Promoting and support dialogue, exchange of information and coordination among early warning, disaster risk reduction, disaster response, development and other relevant agencies and institutions at all levels, with the aim of fostering a holistic approach towards disaster risk reduction.
 - Strengthening and when necessary developing coordinated regional approaches, and create or upgrade regional policies, operational mechanisms, plans and communication systems to prepare for and ensure rapid and effective disaster response in situations that exceed national coping capacities.
 - Preparing or reviewing and periodically updating disaster preparedness and contingency plans and policies at all levels, with a particular focus on the most vulnerable areas and groups. Promoting regular disaster preparedness exercises, including evacuation drills, with a view to ensuring rapid and effective disaster response and access to essential food and non-food relief supplies, as appropriate, to local needs.
 - Promoting the establishment of emergency funds, where and as appropriate, to support response, recovery and preparedness measures.
 - Developing specific mechanisms to engage the active participation and ownership of relevant stakeholders, including communities, in disaster risk reduction, in particular building on the spirit of volunteerism.

In 2008, the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) and UNISDR published a Guidance and Indicator Package for Implementing Priority 5 of the HFA. This package provides further guidance to governments on strengthening systems on preparedness for response including a number of detailed recommendations

on institutional, legislative and policy frameworks.¹⁰

2.2 Regional instruments

ASEAN Agreement on Disaster Management and Emergency Response (2005)

The AADMER was signed by all ASEAN member countries in Vientiane on 26 July 2005 and as at the time of writing has been ratified by 8 of the 10 member countries including Cambodia.

The AADMER aims to facilitate cooperation between the 10 ASEAN member countries, as well as international partners, to improve regional capacities for disaster preparedness and response.

The general commitments of Parties under the AADMER are to:

- a. co-operate in developing and implementing measures to reduce disaster losses including identification of disaster risk, development of monitoring, assessment and early warning systems, standby arrangements for disaster relief and emergency response, exchange of information and technology, and the provision of mutual assistance;
- b. immediately respond to a disaster occurring within their territory. When the said disaster is likely to cause possible impacts on other Member States, respond promptly to a request for relevant information sought by a Member State or States that are or may be affected by such disasters, with a view to minimizing the consequences;
- c. promptly respond to a request for assistance from an affected Party; and
- d. take legislative, administrative and other measures as necessary to implement their obligations under this Agreement.¹¹

The AADMER also provides a number of facilities for international assistance providers including exemptions from taxes, duties and other charges for the import of goods and equipment (including telecommunications and vehicles), the facilitation of the entry, stay and departure of relief personnel, protection and “local facilities and services for the proper and effective administration of the assistance.” International relief providers are expected to conform to the national laws of the host country and ensure that relief goods and materials meet appropriate quality and validity standards.

The AADMER requires ratification by all 10 members states before it officially enters into force. Nevertheless, ASEAN Member States and the Secretariat have already been putting some aspects of the AADMER into practice, such as the establishment of the AHA Centre (ASEAN Coordinating Centre for Humanitarian Assistance) and development of the ASEAN SASOPS, which provide further details on the process for sending and receiving international assistance.

ASEAN declarations on health emergencies

In addition to commitments on disaster management, ASEAN has adopted a number of declarations relating to health emergencies, notably:

- Joint Declaration of the Special ASEAN Leaders Meeting on Severe Acute Respiratory Syndrome (SARS), Bangkok, 29 April 2003 – in which the member countries resolved to take a number of specific measures to address the spread of SARS relating to both national capacities and regional cooperation.
- Declaration of the 7th ASEAN Health Ministers Meeting, Penang, 22 April 2004 – which strengthened the commitment to the ASEAN + 3 Emerging Infectious Diseases Programme
- Declaration of the 8th ASEAN Health Ministers Meeting, Yangon, 21 June 2006 – which committed to ensuring that the ASEAN + 3 Emerging Infectious Disease Programme reflects the priorities of the IHRs, as the framework for global response to public health emergencies of international concern.¹²

World Health Organization Regional Committee Asia-Pacific Strategy for Emerging Diseases (APSED)

In September 2005, the Western Pacific Regional Committee of the WHO endorsed the APSED, which aimed to “provide a strategic framework to strengthen national and regional capacity for early detection, rapid response and preparedness for emerging diseases.”¹³ One of the rationales behind this strategy was the need for a regional strategic approach to support the implementation of the IHRs and national and regional level. The APSED itself is for 48 countries in the Asia and Pacific region, including Cambodia, and includes five objectives, with associated action plans and expected results, relating to the risk reduction, early detection, early response and preparedness for emerging disease as well as the development of sustainable technical collaboration within the region.

The APSED is intended to be used by countries and regional partners:

- As a strategic document to guide the development or strengthening of the national capacities required for health protection from emerging diseases.
- As a framework for the development of stronger collaboration with neighbouring countries, subregional, regional and global networks and other technical partners to build a regional safety net from emerging diseases.
- To meet the core capacity requirements for surveillance and response under the IHRs.
- As a document for national and regional advocacy for adequate, equitable and sustainable health financing arrangements (including resource mobilization and donor coordination), human resource development, and sustainable knowledge, skills and technology transfer.¹⁴

Objective 3 of the APSED, relating to the strengthening of early response to emerging diseases, refers to the importance of the legal framework and notes that authority for the direction of personnel and resources in response to an outbreak is often established by legislation.¹⁵ Thus, efforts to meet this objective must also include an examination of legislation to determine how these mechanisms could be strengthened.

Greater Mekong Subregion framework agreement on goods in transit and cross-border transport

The GMS Cross-Border Transport Agreement is a multilateral agreement for the facilitation of cross-border transport of goods and people signed by Lao PDR, Thailand, Cambodia, Vietnam, China, and Myanmar. Developed under an Asian Development Bank technical assistance initiative, the agreement aims to provide greater consistency in the arrangements for cross-border transport, taking into account existing regional and international agreements. Although the agreement does not specifically apply to international humanitarian relief, it nevertheless includes arrangements of benefit to emergency situations, including:

- Single-stop/single-window customs inspection
- Facilities for the cross-border movement of persons (i.e., visas for persons engaged in transport operations)
- Transit traffic regimes, including exemptions from physical customs inspection, bond deposits, escorts, and phytosanitary and veterinary inspection
- Requirements for road vehicles to be eligible for cross-border traffic
- Exchange of commercial traffic rights
- Infrastructure, including road and bridge design standards, road signs and signals.¹⁶

Ayeyawady- Chao Phraya - Mekong Economic Cooperation Strategy (ACMECS)

ACMECS is comprised of Lao PDR, Cambodia, Thailand, Vietnam and Myanmar and was established in 2003. In August 2003, the Foreign Ministers of each country agreed on an Economic Cooperation Strategy to increase trade and investment, enhance competitiveness and generate more employment and improved distribution of income and quality of life in the sub-region. In support of this strategy, the Economic Cooperation Strategy Plan of Action (ECSPA) was developed, consisting of a series of more detailed plans between each country. These plans include a number of areas relevant to international disaster assistance and communicable disease emergencies, including the facilitation of cross-border transit and simplified customs procedures and closer regional cooperation and prevent the spread of infectious diseases.¹⁷

Additionally, in 2005 ACMECS adopted a declaration on Partnership in Combating Avian Influenza and Other Infectious Diseases¹⁸, which contained commitments on “facilitating prompt and open exchange of information of infectious diseases among ACMECS countries and with concerned development partners and relevant international agencies” and “promoting increased collaboration between relevant institutions and agencies at all levels...through the establishment of joint investigation teams, exchange of experts and other measures, in conjunction with international bodies as appropriate”. The Declaration also called for the development and coordination of a “multi-agency contingency response plan for the eventuality of an outbreak of human-human avian influenza”. In 2006 ACMECS adopted an additional Immediate Action Plan for Preventing and Controlling Avian Influenza Pandemic.¹⁹

Mekong Basin Disease Surveillance

In 1999, Lao PDR, Cambodia, Vietnam, Myanmar, China and Thailand agreed to create the MBDS as a method of cooperation for disease surveillance. The MBDS works to “strengthen national and regional capabilities in disease surveillance and response to outbreaks of priority diseases, in order that they can be effectively controlled.”²⁰ The MBDS aims to:

- Strengthen sustainable national capacity in disease surveillance, outbreak investigation and responses
- Strengthen health manpower development in the field of epidemiology
- Establish a sub-regional surveillance network.

In 2007, the Health Ministries of the six countries concluded an extension of a previously existing Memorandum of Understanding (MOU) on Mekong Basin Disease Surveillance Cooperation, which specifically committed to strengthen national and sub-regional capabilities in disease surveillance and outbreak response to public health emergencies, as stated in the IHRs. This MOU is also supported by the MBDS Cooperation Action Plan 2008–2013, which provides further detail on specific measures to enhance capacities and information sharing and emphasizes the importance of consistency with the IHRs.²¹

2.3 Bilateral Instruments

Memorandum of Understanding on border health measures, Cambodia and Singapore (2007)

In April 2007 the Ministries of Health of the Governments of Cambodia and Singapore concluded an MOU on Border Health Measures which aims to “ensure effective border health quarantine, protection of public health and prevention of disease transmission between the two countries”. The agreement covers the application of health measures to be applied to aircraft (except military aircraft), ships and other vehicles at the border entry points of the two countries such as the use of quarantine declaration forms and other certifications, medical examinations, vaccination and prophylaxis and the examination and quarantine of vessels and baggage. The MOU also requires the regular exchange of information about these measures and about infectious diseases and ensures mutual recognition of quarantine certifications. The MOU also states that the implementation of these measures must be in accordance with the IHRs and the domestic laws and regulations of each state and encourages cooperation for the import and export of medicines and chemicals for border health quarantine”.

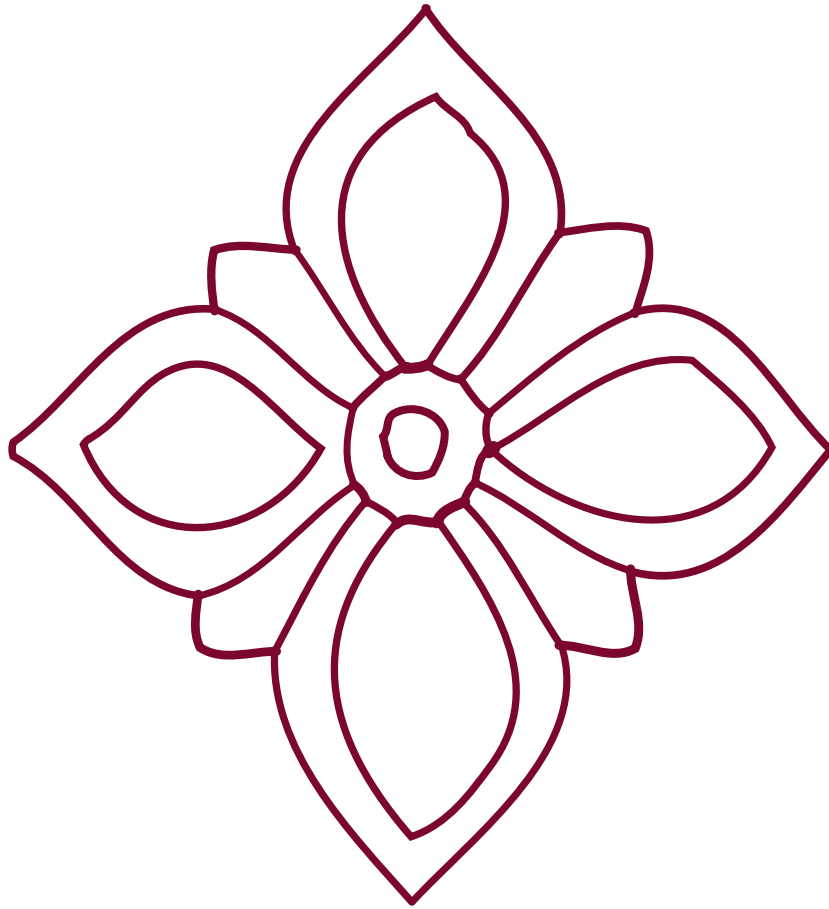
Memorandum of Understanding on health development cooperation, Cambodia and Laos (2006)

The Governments of Cambodia and Lao PDR have concluded two Memoranda of Understanding on Health Development Cooperation in June and October 2006. These agreements aim to “further strengthen and develop the friendship and cooperation in health for constant improvement of people’s health and health development of the two countries”. The earlier MOU promotes the exchange of information, research and knowledge on disease prevention and health policy, including legislative and health care systems. It also requires the strengthening of cooperation for disease prevention in common border areas, calls for joint supervision and control of communicable diseases such as malaria, TB, HIV/AIDS and cholera and commits the two parties to exchange timely information about outbreaks. The MOU also calls for the continuation of discussions about common quarantine activities based on the WHO Guidelines for quarantine services.

The second MOU includes many of the same provisions but extends the list of communicable diseases to include emerging infectious diseases such as SARS and avian influenza and refers to the IHRs as the basis for discussions on quarantine activities in common border areas. It also commits the parties to “provide diagnosis and treatment to the people of both sides in considering them as its own people, who pass the common border” and to hospitalize them at designated hospitals in the border areas.

Agreement on border health quarantine, Cambodia and Vietnam (2006)

In March 2006, the Governments of Cambodia and Vietnam concluded an agreement on border health quarantine to “ensure good border health quarantine, border exchange, people’s health and to prevent disease transmission between the Kingdom of Cambodia and Vietnam”. The agreement identifies the border health quarantine measures to be applied to air, water, road and rail traffic such as the checking of quarantine declaration forms, the observation of passengers and crew and the sanitary check of vessels to detect transmission vectors or diseases. Additionally each party may conduct health quarantine activities in border-area markets and trading points and should mutually respect the quarantine certifications of the other party unless signs of disease or transmission vectors are detected. If such signs are found, the quarantine service of each party may apply the necessary medical treatment and quarantine measures. The agreement also requires the exchange of information regarding such measures including relevant legal documents on a regular basis and requires notification about infectious diseases as required by the IHRs and encourages cooperation on the “importing and exporting of medicines and chemicals for border health quarantine”.



Country background: disaster risks and legal framework

[Return to Table of Contents](#)

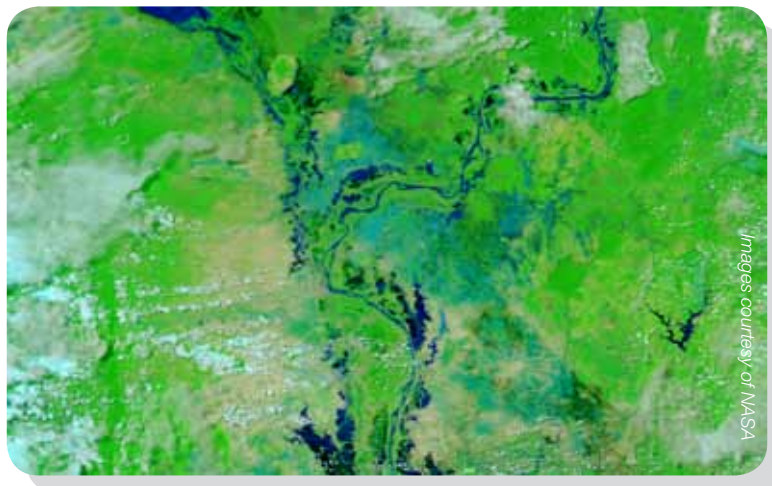
Chapter 3

Country background: disaster risks and legal framework

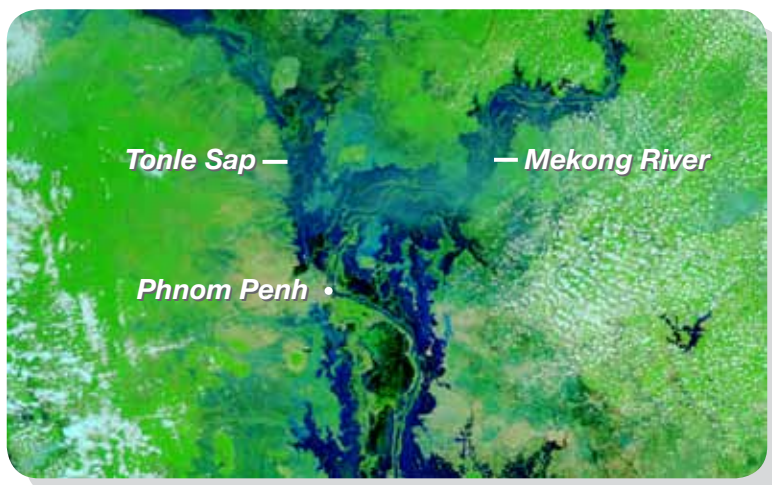
3.1 Disaster risks

Like many countries in Southeast Asia, Cambodia is vulnerable to a range of natural hazards. The most significant of these are floods, which occur particularly in and around the famous “rice bowl” region of the Mekong Basin on an annual basis, causing the highest number of fatalities and greatest financial loss over the past 20 years. Although less frequent, drought has the potential to affect a larger number of people given the lasting agricultural and economic impact, as well as the adverse effect on those dependent upon goods and services from drought-affected regions. Moreover, drought periods have been increasingly followed by destructive flooding - a combination which has resulted in a significant number of fatalities and considerable economic losses, particularly in the provinces of Prey Veng, Kandal, Kampong Cham, Svay Rieng and Banteay Meanchey.

Flooding along the Mekong River and the Tonle Sap in Cambodia



July 29, 2006



August 21, 2006

The recent UN Disaster Assessment and Coordination (UNDAC) Preparedness Mission to Cambodia also noted that “[c]hanging climatic conditions, exacerbated by deforestation, have been linked to the increased frequency of storms, flood and drought and may lead to new, emerging threats linked, for example, to sea-level rise, as well as increases in vector-borne diseases such as malaria and dengue fever.” It also noted that annual cycles of insect/pest infestation can also affect agricultural production.²²

The table below gives a summary of the natural disasters that have occurred in the country during the period 1987 to 2007.

Table 1. Summary of Natural Disasters in Cambodia, 1987-2007

	No. of Events	Killed	Injured	Homeless	Population Affected	Damage USD\$ (in 000's)
Flood	12	1,125	53	275,805	9,514,614	327,100
avg. per event		94	4	22,984	792,885	27,258
Drought	5	0	0	0	6,550,000	138,000
avg. per event		0	0	0	1,310,000	27,600
Epidemic	8	788	0	0	413,570	0
avg. per event		99	0	0	51,696	0
Wind Storm	1	0	0	0	0	10
avg. per event		0	0	0	0	10

Source: EM-DAT: The OFDA/CRED International Disaster Database, www.em-dat.net - Université Catholique de Louvain - Brussels - Belgium

3.2 Communicable disease risks

In recent years, Asia has grappled with some significant communicable disease emergencies, in particular SARS and the H5N1 strain of Highly Pathogenic Avian Influenza (HPAI), which has a fatality rate of between 50-80 per cent and the potential to mutate into a pandemic influenza virus.²³

Cambodia was one of the first countries in South East Asia to report the presence of HPAI with the Government of Cambodia reporting its first case of infected birds on 15 December 2003, identified in the Takmao Wildlife Rescue Centre (45km south of Phnom Penh).

Concern over H5N1 has risen considerably over recent years and the virus poses a serious threat to rural communities, particularly in the southern provinces of Cambodia. Eight confirmed cases of human infection have occurred, resulting in a total of seven fatalities between 2005 and 2008. Confirmed cases of the virus in both poultry and humans have also occurred in other countries in the region including Cambodia’s nearest neighbours Vietnam, Thailand and Myanmar, thus requiring Cambodia to be on high alert in order to prevent its further spread.²⁴

3.3 Government and legislative structure²⁵

Cambodia is a constitutional monarchy, with the King as the head of state, chosen by a Royal Throne Council from among all eligible males of royal descent. The current king is King Norodom Sihamoni (since 29 October 2004).

The Head of Government is the Prime Minister, who is a member of the majority party or majority coalition following legislative elections and is named by the Chairman of the National Assembly and appointed by the King. Currently this is Prime Minister Hun Sen (since 14 January 1985).

The legislative branch is bicameral, consisting of the National Assembly (123 seats; members elected by popular vote) and the Senate (61 seats; 2 members appointed by the monarch, 2 elected by the National Assembly, and 57 elected by parliamentarians and commune councils). All members are appointed for 5 year terms with selected representatives for the Council of Ministers named by the Prime Minister and appointed by the King. Elections for the National Assembly were last held on 27 July 2008 (next to be held in July 2013) and Senate elections were held on 22 January 2006 (next to be held in January 2011).

3.4 Legal system

The legal system is described as “primarily a civil law mixture of French-influenced codes from the United Nations Transitional Authority in Cambodia, royal decrees, and acts of the legislature, with influences of customary law and remnants of communist legal theory” with “an increasing influence of common law.”²⁶

In analyzing the legal framework for disaster and communicable disease in Cambodia it is important to also understand the hierarchy of law and legislation.

*The Constitution*²⁷: The Constitution, promulgated on 21 September 1993, is the supreme source of law in Cambodia. A revision or amendment of the Constitution must receive a two-thirds majority vote of the National Assembly.

*Laws (Chbab)*²⁸: A law is adopted by the National Assembly and the Senate, and promulgated by the King or the acting Head of State. All laws must be in strict conformity with the Constitution. It is signed by the King or, in his absence, by the acting Head of State and countersigned by the Prime Minister and the concerned Minister.

*Royal Decree (Reach Kret)*²⁹: A Royal Decree is used by the King in the exercise of his constitutional powers. A Royal Decree must be strictly in conformity with the Constitution.

Decree (Kret): A Decree is the highest norm that may be enacted by the Executive, within the framework of its regulatory power. Decrees are signed by the King or the acting Head of State and are generally countersigned by the Prime Minister and the concerned Minister.

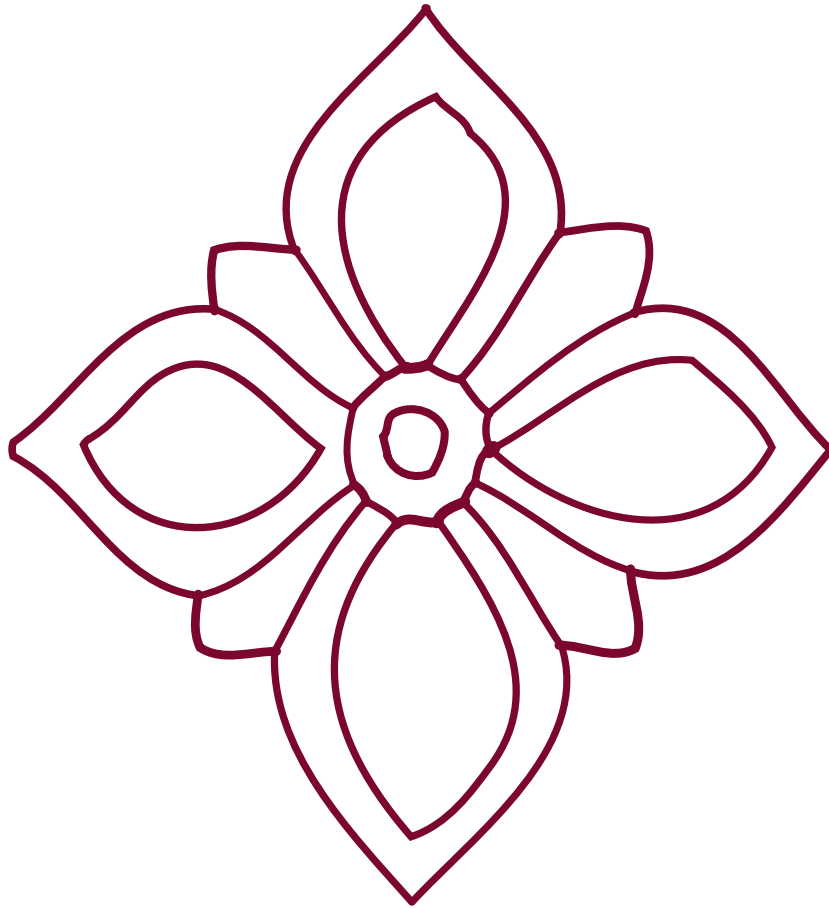
*Sub-Decrees (Anu-Kret)*³⁰: A sub-decree is adopted by the Council of Ministers and signed by the Prime Minister. Sub-decrees must conform to the constitution and the law to which it refers.

Regulations are adopted by the Prime Minister and countersigned by the concerned Minister.

*Proclamations (Prakas)*³¹: A proclamation is a ministerial or inter-ministerial decision signed by the relevant ministers(s). A proclamation must conform with the Constitution and to the law or sub-decrees to which it refers.

*Circulars (Sarachor)*³²: A circular is an instrument that a Ministry or higher authority uses to clarify a point of law or to provide instructions. A circular is only advisory and does not have the force of law.

*Decision (Sechkdey samrach)*³³: A decision is an official letter relating to a declaration made in public by the Prime Minister.



Overview of national laws and policies for disaster management and communicable disease control

[Return to Table of Contents](#)

Chapter 4

Overview of national laws and policies for disaster management and communicable disease control

4.1 Legal and policy framework for disaster management

The country's National Poverty Reduction Strategy (NPRS) explicitly identifies "natural disasters, particularly flood and drought, as critical factors that increase socio-economic vulnerabilities of the rural poor, including placing a disproportionate burden of coping with the effects of disasters on women."³⁴

The National Strategic Development Plan (NSDP) for 2006-2010, which synthesizes the goals and objectives of the NPRS and the Cambodia Millennium Development Goals (CMDG)³⁵, incorporates "disaster risk reduction into the areas of social welfare, water resource management, agriculture and rural development. Within these priority sectors, risk reduction activities include the protection of rural areas from natural hazards of flood and drought, enabling communities to undertake disaster preparedness and risk reduction, reducing the vulnerability of the poor to external shocks, and the initiation of measures to mitigate impact of natural disasters and calamities." In the area of social welfare, the plan notes that the government will provide interventions in the social welfare sector including assistance to people vulnerable to disaster through disaster risk reduction and response measures.³⁶

Coordination, direction and facilitation of disaster management in Cambodia are the responsibility of the NCDM, established by:

- Royal Decree No. NS/RKT/0202/040 on the Establishment of the National Committee for Disaster Management, Royal Government of Cambodia (2002)
- Royal Decree No. NS/RKT/0804/236 amending Royal Decree No. NS/RKT/0202/040 on the Establishment of the National Committee for Disaster Management, Royal Government of Cambodia (2002)

Some indicators for a comprehensive Disaster Management framework:

- *A clearly defined institutional architecture for disaster risk reduction including preparedness is in place and has the commitment of stakeholders at all levels.*
- *An approved legislative framework that accurately reflects institutional arrangements, and the relevant policies, protocols, procedures and funding mechanisms is in place.*
- *Mechanisms for compliance and enforcement of laws, regulations and codes, including penalties for noncompliance are in place.*
- *Information on the legislative framework is widely disseminated and the Government actively trains staff and other stakeholders on its content and application.*

ISDR/UNOCHA HFA Priority Five Guidance and Indicator Package (2008)

The specific functions of the NCDM are described in:

- Sub Decree No. 30 on the Organization and Functioning of the National Committee for Disaster Management, Royal Government of Cambodia (2002)

There are several additional government and ministerial instruments adopted for the implementation of disaster management:

- Circular No. 02 for 2001 on Reduced Preparedness and Disaster Management, Royal Government of Cambodia (2001)
- Circular No. 01 of 2002 on Disaster Preparedness and Response, Royal Government of Cambodia (2002)
- Sub Decree No. 61 on the Establishment of Commune/Sangkat Committees for Disaster Management in Kingdom of Cambodia, Royal Government of Cambodia (2006)
- Provincial Order on the Establishment of Disaster Management Commissions (2007)

Currently however, the government is in the process of drafting a new, comprehensive disaster management law which will replace the existing regulations.

4.2 Legal and policy framework for communicable disease emergencies

Communicable disease control is identified as a priority in both the NSDP and the CMDG. Cambodia is recognized as having made good progress towards its objectives in this area and is one of the few countries in the world that has achieved targets on HIV/AIDS. It is considered to be 'on track' for achieving all of the communicable disease goals in the CMDG.

The MoH has also developed a Health Strategic Plan, which is currently in its second phase (HSP2), spanning 2008-2015.³⁷ One of the three goals is to “reduce mortality and morbidity of communicable disease in Cambodia” including by reducing the occurrence of communicable diseases, whether they be vaccine preventable, emerging or re-emerging. Implementation of the IHR is also a strategic priority under HSP2.

During the preparation of HSP2, a number of key challenges were identified from the first phases of the strategy which helped to inform its new approach. These included:

- Continuing threats of the re-emergence of diseases, including those successfully eradicated in Cambodia, as well as the ongoing threat of viral mutations;
- Serious under-funding of key disease control areas;
- Threats of cross-border transmission both regionally and globally, including possibility of pandemic influenza;
- Volatility of external funding for disease specific interventions, as well as the lack of external support for measures to address serious risks in Cambodia; and
- A generally weak health system, especially with regards to human resources, pharmaceutical supply management and disease surveillance systems.³⁸

The Cambodian Government has adopted the Cambodia National Comprehensive Avian and Human Influenza Plan in 2007.³⁹ It combines plans for animal health, human health, communication and inter-ministerial cooperation into a single comprehensive framework for Avian and Human Influenza. This comprehensive framework is designed to assist the allocation of resources, including for preparedness, response and recovery planning.

The NCDM, in collaboration with MoH and WHO, is also implementing a Pandemic Response Planning Project in Cambodia through a sub-national pilot in Siem Reap Province. The project has involved multiple sectors from both government and non-government, simulating phases 3-5 of a WHO pandemic alert.⁴⁰ This is described in greater detail below.



There are a number of other relevant laws, ministerial declarations and guidelines in place which are applicable to communicable disease emergencies covering a range of issues such as:

- Establishment of the Ministry of Health
- Roles and responsibilities of the Ministry of Health⁴¹
- Roles and responsibilities of provincial level communicable disease commissions⁴²
- Management of medicine and medical professionals⁴³
- Border inspection and quarantine arrangements⁴⁴
- Prevention and control of HIV/AIDS⁴⁵

As yet, Cambodia does not have any comprehensive legislation on communicable disease control. Many of the regulations on critical issues such as border control lack binding legal authority (see discussion on this aspect further below).

Although there have, as yet, been no initiatives to develop a national communicable disease control law, efforts have been made to encourage greater awareness and understanding the IHRs including through:

- Dissemination to more than thirty governmental institutions
- Translation of the IHRs into Khmer and the production of a summary booklet
- Integration of IHR information into training for border officers and staff in related fields such as customs, tax, immigration and health
- Participation in regional planning activities on IHRs implementation⁴⁶

It is reported in the findings of the pre-assessment of the HSP2 that “Cambodia has strong communicable disease programs with a strong leadership and strategic vision, and the progress in controlling communicable diseases is a function of the strengths of these programs.”

4.3 Overall analysis and recommendations

Dispersed legal framework

It is clear that, although disasters and communicable diseases are given a reasonable degree of priority within national plans, the legal framework remains somewhat dispersed and fragmented. Different aspects of disaster management and communicable disease control are covered by instruments of varying legal weight and are not always cross-referenced or compatible with others. This is the case both within and between the two areas.

Indeed, it is clear that systems for disaster management and communicable disease control have largely been developed independently of one another, despite there being some important overlapping issues and the potential for both a disaster and communicable disease situations to occur at the same time.

Narrow coverage of issues

For both disaster and communicable disease control there are significant gaps in the coverage of key issues. In general, the legal and policy framework:

- Does not include a definition of a disaster or communicable disease emergency
- Is targeted primarily towards specific situations such as flood and drought, or specific diseases such as HIV/AIDS
- Focuses on government institutional arrangements with few references to civil society and international assistance
- Emphasizes response, with limited reference to prevention, early warning/surveillance and preparedness.

Lack of enforceability of existing instruments

Many of the regulatory provisions for disaster and communicable disease do not have the status of law, but rather take the form of Decrees, Sub-Decrees, Declarations and Circulars. Consequently, they rarely include any enforceable duties or prohibitions and do not include punishment for non-compliance. Therefore courts have little or no power to enforce them.

Some measure of enforceability can be applied to civil servants in the form of dismissal and withdrawal of pension entitlements for administrative breaches, as well as criminal punishment for serious offences committed during their official work.⁴⁷ However, the possibility to apply such measures to disaster management and communicable disease regulations depends on how clearly the roles and responsibilities of civil servants are defined. Currently the provisions appear too vague to make this possible.

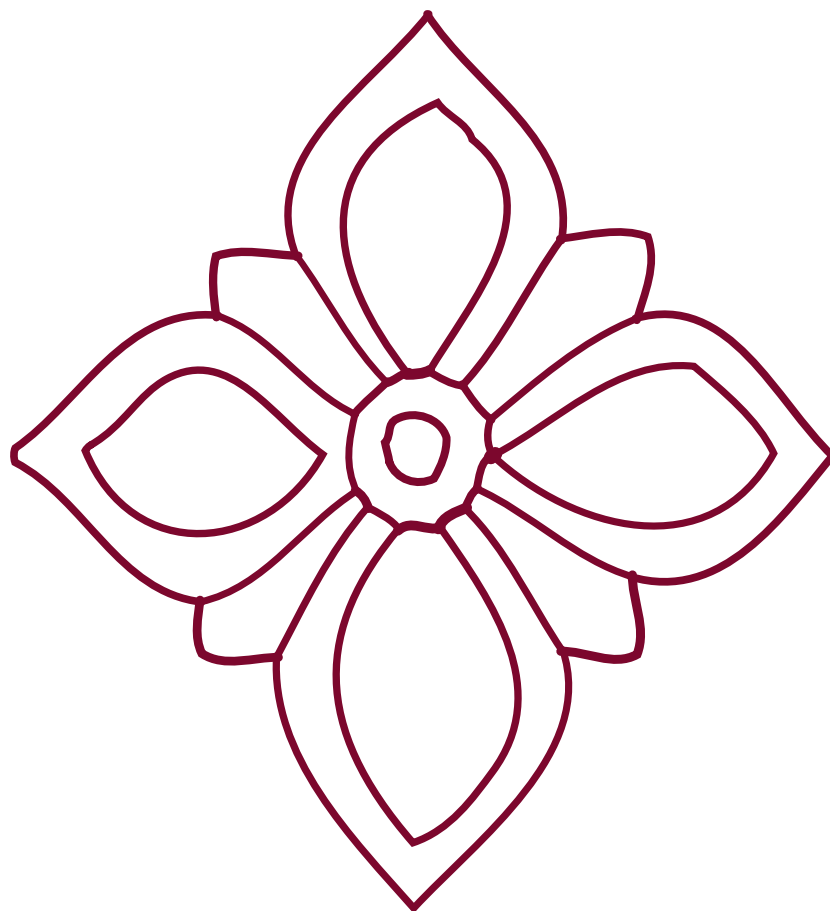
This issue was also identified in the context of sub-national authorities during a disaster or communicable disease emergency. At a recent pandemic planning workshop in Siem Reap province, it was noted that without clear, specific authority and accountability at the sub national level, the implementation of pandemic plans during an actual emergency

would not succeed as there is little scope to enforce compliance.⁴⁸

Overarching recommendations

- The overarching recommendations of this report are to develop new laws on disaster management and communicable disease control respectively, to replace the existing instruments.
- They should be developed contemporaneously to ensure their compatibility, to allow the cross-referencing of certain key provisions and to clarify arrangements in situations when both a disaster and communicable disease emergency are present.
- The laws should provide a comprehensive overall framework and principles for the management of disasters and communicable disease, ensure that relevant ministries/agencies have the necessary legal authority to carry out their mandates, enable adequate resource allocation and establish enforcement mechanisms. Specific recommendations for this are included in this report.
- They should also address the legal arrangements for the facilitation and regulation of international assistance (when needed) in the event of a disaster or communicable disease emergency, including the establishment of a register of authorized entities eligible to receive legal facilities for the provision of disaster and communicable disease emergency relief activities. Specific recommendations for this are included in this report.
- The laws should be supplemented where necessary by a number of implementing Decrees/Sub-Decrees which provide further detail on specific aspects which may require more frequent amendment – however specific recommendations for these are not detailed in this report.

Chapter 5



Early warning and declaration of a disaster or communicable disease emergency

Chapter 5

Early warning and declaration of a disaster or communicable disease emergency

5.1 Early warning for disaster

Early warning systems and dissemination about flood and weather forecasting are the responsibility of the MoWRAM, which communicates this information to relevant line ministries.⁴⁹

The NCDM is tasked to collaborate with MoWRAM and the Ministry of Information, to broadcast relevant information to allow time for communities to prepare for or mitigate a possible disaster.⁵⁰

The NCDM is also responsible for the development and use of information-communication technology as part of Strategy 3 of its National Strategic Action Plan and also has a responsibility to ensure the effective exchange of information between national and local level disaster management committees about disaster risks.⁵¹ Several sub-decrees and circulars on disaster management establish a process for the flow of information about the occurrence of hazards between different levels of government from the commune to provincial to national level.⁵² Following the receipt of this information, the NCDM recommends further action to be taken.

An MOU between the NCDM and the CRC also tasks the CRC to disseminate early warning information through its networks.⁵³ At local commune level there are a number of other community-based early warning initiatives run by NGOs and the CRC in cooperation with Commune Committees Disaster Management (CCDMs), however this occurs only in some selected areas.⁵⁴

At the regional level, according to a recent ASEAN/UNISDR Mission Report, “[t]he Mekong River Commission (MRC) Meteorological Office is involved in supporting early warning systems at both national and provincial level. Mekong River data collection stations are established along the river areas bordering Lao PDR and a Flood Management Board volunteer network collates the data from different areas. In the event of a potential emergency, data from the MRC is passed down to the local level, utilizing the existing phone network and loudspeaker systems. It has been noted that there is a general lack of resources to cover operational costs, staffing and training at local levels.”⁵⁵ Additionally, a Regional Flood Mitigation and Management Centre supports member countries of the Mekong Catchment area including Cambodia.⁵⁶

Experiences of early warning systems during past flood disasters have revealed a lack of preparedness and accuracy of information. In 2000, manual predictions of flood levels allowed only one day forewarning, which was not sufficient for communities to prepare themselves to cope with the consequences.⁵⁷ The UNDAC Preparedness Mission Report also notes that forecast and early warning information usually reach provincial level, but not commune levels “because of insufficient mechanisms and communication systems and equipment.”⁵⁸

5.2 Declaration of a disaster

Current Cambodian laws and policies do not contain a specific definition of ‘disaster’. Circular No. 01 of 2002 on Disaster Preparedness and Response provides some examples of ‘natural disasters’, namely “floods, droughts and storms”

Some indicators for early warning systems:

- *National legislation clearly indicates roles and responsibilities of all stakeholders including which agencies are responsible for generating and disseminating hazard warnings to the public.*

ISDR/UNOCHA HFA Priority Five Guidance and Indicator Package (2008), Indicator 2.3.

- *The Parties shall, as appropriate, establish, maintain and periodically review national disaster and early warning arrangements*
- *The Parties shall cooperate, as appropriate, to monitor hazards which have trans-boundary effects, to exchange information and to provide early warning information and to provide early warning information through appropriate arrangements.*

See ASEAN AADMER (2005), Articles 7(1)-(2)

and also mentions “man-made disasters such as fire”.⁵⁹ It could be assumed that these are the situations envisaged for the application of all disaster-related laws and policies.

There is also a lack of clarity surrounding the process of officially declaring a disaster situation. The Constitution contains a number of provisions on the declaration of a state of emergency, to be proclaimed by the King “when the nation faces



danger”. This may be done after agreement from the Prime Minister, the President of the National Assembly and the President of the Senate.⁶⁰ In such situations, article 86 of the Constitution provides that “the National Assembly shall meet every day continuously. The National Assembly has the right to terminate this state of emergency whenever the situation permits.” However, it is unclear whether a major disaster would be deemed a state of emergency. In legal circles, a state of emergency is generally considered to refer to political deadlock, war or terrorist attacks.

In disaster management-related instruments, one of the functions of the NCDM is to formulate recommendations to the Government for issuing “necessary principles, policy, declaration for disaster prevention and management as well as measures of emergency response, intervention, evacuation”; however, no further details are provided on this process.⁶¹

In practice, NCDM representatives report that, after receiving notification about a disaster from affected provincial or municipal authorities, the NCDM will call for a meeting with relevant government agencies as well as international organizations, UN agencies and NGOs to determine the most appropriate response. The discussions are mostly focused on the roles, responsibilities and financial resources that will be used to assist affected populations, but there is no specific decision or declaration about the scale of the disaster.⁶²

The CRC Guidelines for an Emergency Response (2007) is the only document found which makes the distinction between a “medium disaster” and a “serious catastrophe” (in the context of resource mobilization) however no criteria are given for determining when those levels are reached.⁶³

5.3 Surveillance and notification of communicable disease outbreaks

At the cross-border and regional level, the Cambodian Government, represented by the Ministry of Health has signed agreements or MOUs with countries in the region such as China, Singapore, Vietnam, Laos and Thailand in order to ensure better communication, prevention, and response to communicable disease and disease emergency at the border (see above).

Within Cambodia, the provincial and municipal commissions established by the MoH, described above, play a key role in monitoring and reporting communicable disease outbreaks at sub national levels.⁶⁴ The primary mechanism used for capturing disease-related information is through so called “Zero Reporting”. This is a reporting system, developed by the MoH, involves a standard form which must be completed weekly by medical staff to record the numbers of cases of different diseases. Every box on the form must be completed and in the event there are no cases, the box must be filled with a zero.⁶⁵

The sub-national commissions have a responsibility to regularly follow up on Zero Reporting compliance and to immediately send information about suspect cases to the higher level commission. According to hospital directors in Siem Reap, the Zero Reporting form is completed on a daily basis and any notable events are conveyed to referral or district hospitals to enable better monitoring of the types of diseases in the area, affected locations and any growing trends. When needed, a communicable disease team from the district goes to the scene to collect further evidence and reports any irregularities to the provincial health department for direction and technical assistance. The provincial health department is then responsible for sharing that information with the CDC/MoH.

Another channel for the surveillance and notification of communicable diseases is through the Quarantine Group located at airports and major border crossings, established by the Ministry of Health in 1980.⁶⁶ According to their operational guidelines adopted in 2006, their duties include monitoring for infectious sources in goods, identifying infected persons, issuing identification cards to infected travellers and transporting them to hospital, as well as responsibilities for dead body management.⁶⁷ Further information on this process is described in the section on Inspection and Quarantine below.

A system of 24 hour notification of suspected cases of avian influenza and H5NI is also open to the public through a telephone hotline service.⁶⁸

Once information regarding suspect cases is received by the CDC/MoH, the WHO country office is notified by telephone or email communication. Indeed it is reported that the CDC/MoH works closely with WHO and other agencies to follow the surveillance and notification procedures described in the IHRs.

One limitation of this system however, is that it is not supported by binding legislation. Some people interviewed for this study also felt the need to introduce penalties for non-compliance. Additionally, interviews have revealed some delays in the reporting chain and a lack of awareness, particularly in rural communities, about the need for the early treatment of symptoms, with some patients presenting at the hospital too late to effectively control further transmission.



5.4 Recommendations

Disaster management law should:

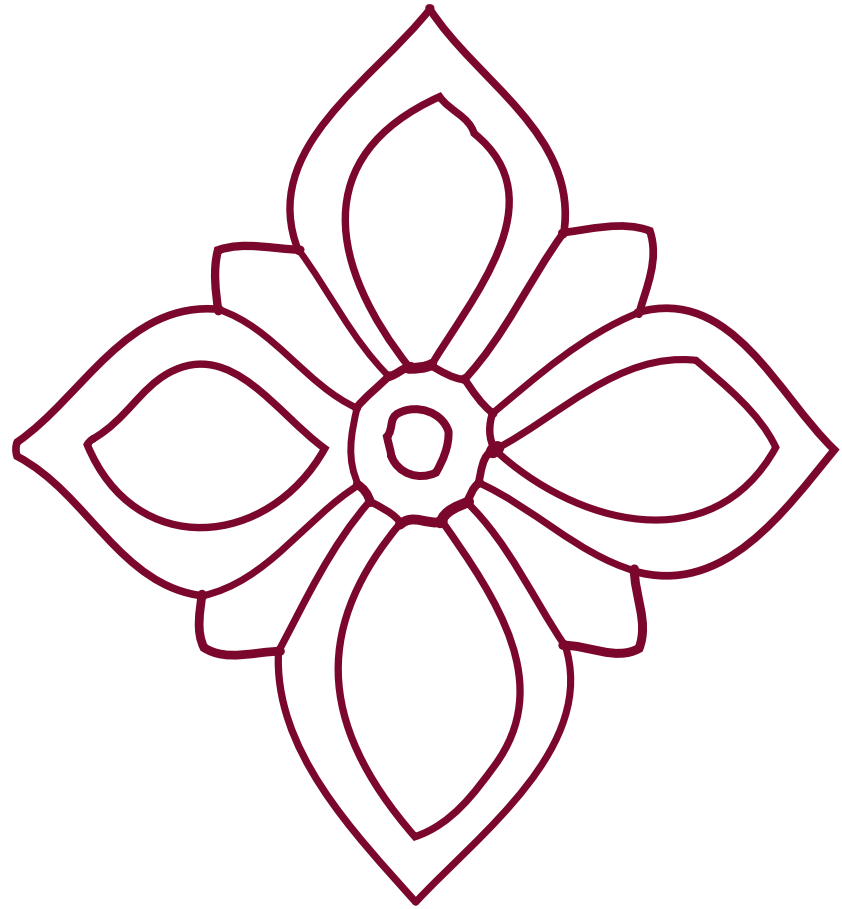
- Identify clear institutional responsibilities and communication channels for early warning systems, including the role of civil society organizations and communities. This should include better linkages between CCDMs and CRC volunteers to improve capacity for early warning dissemination.⁶⁹
- Include, where possible, time indicators for communicating early warning information to ensure that it reaches communities, national and local authorities and other organizations to allow maximum time to prepare and respond.
- Include a definition of disaster - see for example the definition contained in the IDRL Guidelines art. 2(1).
- Establish criteria and an expeditious process for the public declaration of different levels of disaster to trigger the appropriate level of response (provincial, national, international). This should be distinguished from a 'state of emergency' provided under the Constitution.

Communicable disease control law should:

- Identify clear institutional responsibilities and communication channels for surveillance and notification of communicable diseases, which include the role of civil society organizations and communities.
- Include, where possible, time indicators for communicating information to ensure that it reaches communities, national and local authorities and other organizations to allow maximum time to respond.
- Establish criteria and an expeditious process for the public declaration of different levels of communicable disease emergencies, to trigger the appropriate level of response (provincial, national, international). This should be distinguished from a 'state of emergency' provided under the Constitution.
- Include official channels for communication with the WHO in accordance with the provisions of the IHR.

[Return to Table of Contents](#)

Chapter 6



Institutional arrangements for disaster management

Chapter 6

Institutional arrangements

6.1 Institutional arrangements for disaster management

Government structures

The Government of Cambodia has established the NCDM as the institution to lead disaster management work in the country.⁷⁰ It is headed by the Prime Minister and its membership comprises 16 Ministers and high ranking officials, representatives from the Cambodian Armed Forces, Civil Aviation and CRC.⁷¹

NDCM is given the responsibility to:

- coordinate with government ministries and institutions, the international community (including IOs, the UN and NGOs) and local donors for emergency response and rehabilitation;
- formulate recommendations for principles, policies and preparedness and emergency measures; and
- disseminate and strengthen disaster management practices, human resources and training from national to district levels.⁷²

Primary responsibility of States

Affected States have the primary responsibility to ensure disaster risk reduction, relief and recovery assistance in their territory.

Affected States have the sovereign right to coordinate, regulate and monitor disaster relief and recovery assistance provided by assisting actors on their territory, consistent with international law.

IDRL Guidelines (2007) arts. 3(1) and (3)

To carry out these tasks, the NCDM is required to meet at least once every six months. Its Executive Committee, comprising the President, First Vice-President and Secretary-General of the NCDM, must meet on a monthly basis.

The decrees also establish a Cabinet and a General Secretariat led by a Secretary General and a number of Under-Secretaries General and assistants.⁷³ The General Secretariat consists of five departments, each with specific roles elaborated in the Sub-Decree on the Organization and Functioning of the National Committee for Disaster Management.⁷⁴ The five departments are:

- Administration and Finance
- Information and Relations
- Emergency Response and Rehabilitation
- Preparedness and Training
- Search and Rescue

Specific ministries also have responsibilities for a number of disaster management-related activities:

- General disaster rescue: Armed Forces, Police Commissariat and Gendamerie
- Air search and rescue: Civil Aviation Authority
- Natural resources management: Ministry of Environment (although its specific disaster management role is not elaborated)
- Post-disaster recovery and rehabilitation: MoWRAM, Ministry of Public Works and Transport (MoPWT), Ministry of Rural Development⁷⁵
- The Department for Information is also responsible for communicating information on weather and water levels and broadcasting early warning information, including to international organizations.⁷⁶

Currently however, national laws and policies do not direct government ministries and departments to undertake specific activities to restore livelihoods and lifeline utilities after disaster such as airport and port facilities, gas and petroleum production and distribution, electricity supplies, water and sanitation, telecommunications or rail, road and waterways infrastructure.⁷⁷

At the sub-national level, structures similar to the NCDM are also established at provincial, district and commune levels consisting of the Provincial Committee for Disaster Management (PCDM), District Committee for Disaster Management (DCDM) and CCDMs. The members of these committees are detailed under Sub Decrees 30 and 61.⁷⁸

At the provincial level, the PCDM is composed of the Provincial/Municipal Governor as the President, Vice Governor as Vice President, directors of relevant government offices and the director of CRC provincial branch.⁷⁹ Its secretariat is led by the Chief of the Provincial/Municipal offices as permanent secretary, assisted by a number of assistants as necessary.⁸⁰

Institutional arrangements in national legislation

Disaster legislation should:

- *Specify the role of key ministries*
- *Specify the role of national and international organisations*
- *Specify the role of civil society actors*
- *Clearly establish decentralized mechanisms*
- *Encourage community participation.*

See ISDR/UNOCHA HFA Priority Five Guidance and Indicator Package (2008), Indicator 1.2

PCDM responsibilities include: the implementation of national disaster management policies; making recommendations on activities including assistance from national and international organizations working in the field of disaster management; carrying out community level training programmes; and in the event of a disaster, report on damage and make a proposal covering budget, equipment, materials, transport and assistance required.⁸¹

DCDM membership comprises the District/Precinct Chief as President, the Deputy Chief as Vice-President, and general members including other relevant Chiefs of Offices and the head of District/Precinct Branch of the CRC.⁸² Among the responsibilities of DCDMs are the selection of officials for disaster management training courses and the dissemination of disaster

information to the public. During a disaster, they are to report on damage and needs as well as “lead operations... including relief assistance, evacuation, shelter and medical supplies”.⁸³

CCDMs involve a wider range of civil society. The Chair and Vice-Chair of the Committee are the Chiefs and Vice-Chiefs of the Commune, but members include heads of primary schools and health centres, animal health workers, village chiefs, elders and CRC volunteers. They must hold monthly meetings and divide into three groups responsible for search and rescue, health and sanitation and emergency response and information. CCDMs have the responsibility to report on all hazards and disasters to DCDMs and PCDMs, to provide assistance to disaster-affected persons and can also make recommendations on the activities of UN, IOs and NGOs.⁸⁴ They are invited to submit budget, equipment and transport requirements to carry out activities “through each stage of the disaster management cycle”, however as discussed further below, this aspect continues to pose a challenge.

The UNDAC Preparedness Mission highlighted a number of shortcomings in current institutional arrangements, which have the potential to be addressed through the development of new disaster management law. These include:

- Potential delays due to centralized decision-making and authority resting in the Chairperson of the respective committees with no clear delegation of responsibilities;
- A lack of clarity in the division of responsibilities between NDCM and line ministries, and between NCDM and Governors at all levels;
- Lack of clarity on collaboration with NGOs and non-state actors; and
- No institutional arrangements to embrace the private sector in support of disaster preparedness and response.⁸⁵

Resources and funding mechanisms

The NCDM is a governmental committee rather than a Ministry, consequently its primary source of funding is derived from within the budget of the Council of Ministers, rather than directly under national budget law.⁸⁶ This would suggest that the NCDM’s staff and operating costs for disaster mitigation and preparedness activities would be covered within the Council of Ministers budget, with additional funds available for response operations. In reality however, the annual budget allocated to the NCDM only covers basic administrative costs at national level and does not include any funds for mitigation or preparedness activities or for staff at the sub-national level.⁸⁷

At the provincial, district and commune levels, the PCDMs, DCDMs and CCDMs do not receive any budget for

implementing their activities. Governor's offices have taken responsibility to generate resources to respond to small scale disasters and often have some emergency funds set aside for this purpose.⁸⁸ However, these funds can only be used for response and not for any preparedness or risk reduction activities. In special circumstances, funds for these other activities can be reallocated from other budget lines, but this leads to funding shortages elsewhere.⁸⁹

In the case of a major disaster, additional funding can also be secured from the Ministry of Economy and Finance.⁹⁰ Thus, the provincial, district and commune authorities can request funding assistance through this channel.⁹¹

These funding issues were identified by interviewees at all levels as major challenges for implementing effective disaster preparedness and response activities. The UNDAC Preparedness Mission found that "processes for requesting resources are cumbersome and time-consuming, and there is often delay in providing resources, if at all".⁹² Consequently, in practical terms, national and sub-national mitigation and preparedness activities rely heavily on human and financial resources from UN agencies, INGOs and the CRC resulting in great variations in disaster management capacities and preparedness from region to region.⁹³

Role of Cambodian Red Cross

CRC is a humanitarian organization originally established in 1955. It was officially recognized by the International Committee of the Red Cross (ICRC) on 7 October 1960 and became a member of IFRC on 9 October 1960. Following the suspension of its activities during two decades of civil war, CRC resumed activities again in the early 1980s. Its status was re-established by the elected government in 2002 under the Royal Decree on the Recognition of the Cambodian Red Cross.⁹⁴ This Decree officially recognized CRC as a volunteer organization, functioning as an auxiliary to the Cambodian authorities in the humanitarian sector. The CRC is recognized as a neutral, impartial organization, able to undertake its activities independently from government and, as a member of the International Red Cross and Red Crescent Movement, can cooperate with and facilitate activities of the ICRC and IFRC.⁹⁵

National Red Cross and Red Crescent Societies, as auxiliaries to the public authorities in the humanitarian field play a key supporting role at the domestic level.

Legal, policy and institutional frameworks and planning for disaster prevention, mitigation, preparedness, relief and recovery should take full account of the auxiliary role of their National Red Cross or Red Crescent Society.

IDRL Guidelines (2007), Articles 3(1) and 8(1)

CRC has its headquarters in Phnom Penh with 24 branches covering all provinces and municipalities in Cambodia. At the grass roots level, CRC members are composed of village level volunteers who undertake a wide range of humanitarian work, although activities and capacities vary from region to region.

Disaster management is one of four core areas of CRCs Strategy 2003-2010. Its Disaster Management Strategic Plan 2008-2012 includes five strategic areas: Building Alliances; Disaster Response Capacity; Resilience; Advocacy; and Branch Development.⁹⁶ This strategic plan was based on a local to global approach, which aims to support and strengthen capacities at local, community and national levels. Additionally, in 2007 CRC developed Guidelines for Emergency Response.⁹⁷ The CRC's Department of Disaster Management is responsible for oversight and delivery of the disaster management strategic objectives.

CRC is the only non-government national institution officially represented in the government disaster management structure as a member of NCDM, PCDMs and DCDMs.⁹⁸ At Commune level, CRC volunteers are also listed as members of CCDMs.⁹⁹

In 2007 CRC concluded an MOU with the NCDM which identifies a number of broad areas of mutual interest in disaster management for which the parties agree to cooperate by exchanging information and conducting joint activities. These areas include



[Return to Table of Contents](#)

the collection and sharing of disaster information, damage and needs assessments, response and recovery, mitigation and contingency planning, building community capacities and resource mobilization. Additionally, CRC is given a responsibility to disseminate early warning and disaster information through its networks.¹⁰⁰

CRCs financial resources are generated from membership fees, donations from the public and businesses, inheritance and income from property¹⁰¹ as well as contributions from international partners for specific programmes. Additionally, CRC internal policy on disaster preparedness provides that CRC can use national emergency relief funds provided through government channels. At the sub-national level, provincial CRC branches have the responsibility to generate their own resources for responding to small scale disasters.¹⁰²

Although the relationship between CRC and local NGOs has been described as limited, CRC works closely with IFRC, ICRC, other supporting National Societies and international partners.

Role of other civil society organizations

Cambodia has a large number of national and international NGOs and grass roots organizations, many of which are active in various aspects of disaster management. The decrees and sub-decrees establishing the NCDM require communication and coordination with local NGOs in funding and resource-raising in response to disasters but do not prescribe them any specific roles and responsibilities. Additionally, as described above, some civil society representatives are included in the membership of CCDMs.

The two year plan of action for NCDM development emphasizes roles of NGOs and IOs in some areas such as program and project partnerships, funding support (specifically from international organizations) and community-based awareness raising activities.¹⁰³ In the case of INGOs, their presence and scope of activities are established on a case-by-case basis through the conclusion of an MOU with the Government of Cambodia (see further below).

The Strategy for Community Based Disaster Risk Reduction 2007-2012, developed by the MoWRAM and NCDM in collaboration with the Asian Disaster Preparedness Centre and ADB, also aims to enhance community participation in disaster risk reduction. This includes the formalization of community based activities which are already taking place, however the strategy is limited to flood and drought.

Coordination and information sharing

The Department of International Organizations under the Ministry of Foreign Affairs (MoFA) has the responsibility to coordinate with the UN and INGOs implementing activities in Cambodia.¹⁰⁴ Within this department there are five separate offices:

Coordination of international assistance

National legal, policy and institutional frameworks should:

- Allow for effective coordination of international assistance
- Take into account the role of the UN Emergency Relief Coordinator
- Clearly designate domestic government entities with responsibility and authority (for coordination)
- Consider establishing a national focal point to liaise between international and government actors at all levels.

IDRL Guidelines (2007), Article 8(2).

- Office of the United Nations
- Office of the International Organizations
- Office of the International Human Rights Organizations
- Office of the International Non Governmental Organizations
- Office of the Greater Mekong Sub Regional Organizations

The tasks of these offices are to facilitate and assist with all requests from the relevant organizations under their various jurisdictions.¹⁰⁶

However, with respect to all development and capacity building activities, the Cambodian Development Council is designated as the only focal point for communicating with all international donors and local NGOs on behalf of the Government of Cambodia. The Council is also the only entry point for coordinating between all government institutions in order to facilitate and manage that support.¹⁰⁷

During potential disaster events, the NCDM is responsible for coordination and communication with international and regional organizations, as well as with national NGOs and private donors.¹⁰⁸ In fulfilling its role on communication, NCDM is in the early stage of implementing the National Strategic Action Plan objective to develop a disaster management information system, which includes the creation of a website and the collection, analysis and dissemination of key data.¹⁰⁹

There is little information available about how the NCDM proposes to fulfill its coordination role vis à vis the activities of international relief providers, or about any responsibilities for monitoring and facilitating the arrival and delivery of donated goods and services. In practice, the NCDM has tended not to track all incoming international relief in the event of a disaster and consequently, such as following the 2000 floods, there were no comprehensive records held by the Government as to “who did what, where”.¹¹⁰

The UN Disaster Management Team (UNDMT), chaired by the World Food Program (WFP), has taken a proactive approach to its own coordination for disaster through the development of a National Disaster Preparedness and Response Plan, updated on an annual basis.¹¹¹ The plan describes existing UN resources for disaster management and includes disaster risk context analysis, a description of disaster response scenarios and management and coordination arrangements for each UN agency present in Cambodia. The plan also describes the UN’s liaison role with the NDMC.

The recent UNDAC Preparedness Mission to Cambodia found that effective coordination and information sharing mechanisms are lacking, particularly with respect to large scale disaster situations.¹¹² Indeed interviewees for this study revealed that information is largely shared through informal structures such as meetings and personal networks. While some government officials feel that they are able to access relevant information, many international and local organizations reported great difficulties finding reliable information and base line data relating to disasters.

There is felt to be a need to improve both human and financial resources to enable the NCDM to fulfill its coordination role effectively.¹¹³ The UNDAC mission also recommended strengthening the authority and mandate of the NCDM in its relations with line ministries and the international community.¹¹⁴

6.2 Institutional arrangements for communicable disease emergencies

Government structures

The MoH is the government agency responsible for preparing plans for prevention and response to all diseases in the country. Within the MoH a number of departments are responsible for carrying out different aspects of communicable disease control, but the main responsibility lies with the CDC/MoH.

Following the adoption of the IHRs in 2005, the Director of the CDC/MoH has been appointed as the focal point for implementation of IHRs.¹¹⁵

The CDC/MoH has three key roles: 1) Preparation and implementation of policies and guidelines for the implementation of disease prevention; 2) Follow up and evaluation of all disease-related activities and research; and 3) Preparation and implementation of national policies for combating communicable diseases.¹¹⁶

In addition to the CDC/MoH, the General Department of Technical Health is responsible for communication and facilitation of international support and the Department of Health Protection is responsible for health and hygiene education and the functioning of the Quarantine Group.

At least on paper, Quarantine Groups have been in place since 1980

Responsible authorities for health

- *Each State Party shall designate or establish a National IHR Focal Point and the authorities responsible within its respective jurisdiction for the implementation of health measures under these Regulations*
- *National IHR Focal Points shall be accessible at all times for communications with the WHO IHR Contact Points.*

See International Health Regulations (2005)
Articles 4 (1) – (2)

responsible for monitoring five areas: Phnom Penh Airport, Phnom Penh Port, Sihanoukville Port, Siem Reap Airport and the quarantine at other borders.¹¹⁷ However, as is described later in this report, these teams have not been fully functional and do not include representatives from the MoH.¹¹⁸

At the sub national level, the MoH has established provincial and municipal commissions for combating communicable diseases. The commissions are presided over by the directors and vice-directors of major hospitals, with heads of district and referral hospitals as members.¹¹⁹ Among the roles of the commissions are to ensure technical quality of communicable disease control activities in cooperation with the MoH, as well as report to and request assistance from the MoH when needed.¹²⁰

From the above, it is clear that current institutional arrangements for communicable disease control are focused on prevention and surveillance, but are lacking in comprehensive measures for response. Additionally, these systems do not include the roles and responsibilities of non-government actors or communities and are disconnected from existing disaster management systems.

In response to some of these concerns, a Pandemic Response Planning Project involving collaboration between the NCDM, the MoH and WHO, is currently underway and has commenced a sub-national pilot in Siem Reap Province. The project includes multi-sector participation from government and non-government agencies, and simulates responses to phases 3-5 of a WHO pandemic alert.¹²¹ This process has revealed a number of other institutional weaknesses in the current system, including:

- The lack of defined communication structures between the national and sub-national authorities, as well as between sub-national authorities and with communities.
- A lack of mandatory requirements and greater incentives for government staff to participate in pandemic response, to reduce the possibility of absenteeism during an emergency.

Role of Cambodian Red Cross

Community health care is another of the four core areas of the CRC Strategy 2003-2010. The CRC Health Strategic Plan for 2008-2012 has among its objectives to “reduce the number of deaths, illness by increasing community capacity to prevent and respond to disease outbreaks”.

The Health Department of CRC is responsible for implementing this plan and has undertaken various activities, including avian influenza prevention programmes, at the community level in conjunction with other partners. These activities are generally undertaken by volunteers who work with local authorities to raise awareness about disease prevention, offer



[Return to Table of Contents](#)

first aid training and assist individuals with access to health services from hospitals and clinics. During a communicable disease emergency these volunteers also play a vital role in information dissemination at community level.¹²²

Despite working closely with the CDC/MoH at the provincial and district levels, the CRC is not described in any of the reviewed health legislation and policies.

Role of civil society organizations

The national pandemic planning process underway in Cambodia emphasizes the important roles of the private sector and NGOs, as well as community leaders such as head monks from the many temples in Cambodia. It also encourages the participation of private health clinics, transport companies, and hotels to provide available resources in times of emergency.¹²³

The UN Joint Programme for Addressing Avian Influenza and Pandemic Planning 2005 also aims to “ensure that NGOs are fully informed at all stages of planning and operation, so that they can play their full part” and in the coordination structure of the document, NGOs are included in partnership meetings.¹²⁴

Indeed, during the recent pandemic simulation exercise in Siem Reap in December 2008, participation included a number of NGOs and monks. The workshop report recognized their valuable role in disseminating information in the event of an outbreak and the need for regular meetings with the NGO community to ensure consistent messages are delivered.¹²⁵



Coordination and information sharing

The Pandemic Response Planning Project is also a key forum for establishing appropriate coordination and information sharing channels in the event of a communicable disease emergency. It is described as follows: “a series of planning workshops and simulation exercises involving government officers from eight sectors (Health, Public Information, Food Security, Economics & Finance Transport, Water Systems and Energy, Border Control and Security and Private Partners). Outputs from the process will include a ‘model’ provincial pandemic response plan, including standard operating procedures for each sector, the identification of policy gaps to be communicated to national-level and objectively documented lessons-learned.”¹²⁶

This multi-sector planning process has created an opportunity for provincial government departments and entities to jointly plan their response to an outbreak and the process has assisted Government staff from each sector to develop a greater understanding of their roles and responsibilities.¹²⁷

One of the overall challenges in this area, however, remains the lack of binding legislation and even clear policies on coordination and information sharing beyond some procedures for national and sub-national government institutions.

Information sharing

State Parties should have capacity at national level: “to provide, by the most efficient means of communication available, links with hospitals, clinics, airports, ports, ground crossings, laboratories and other key operational areas for the dissemination of information and recommendations received from WHO regarding events in the State Party’s own territory and in the territories of other States Parties”

IHRs (2005) Annex 1 art.6(f)

[Return to Table of Contents](#)

6.3 Recommendations

Disaster management law should:

- Establish NCDM as “a permanent operational entity with national coverage providing an institutional umbrella for coordination of all existing national emergency services, as well as the technical and operation levels of relevant ministries”.¹²⁸ This should include its role as:
 - the permanent coordinating and policy making body, responsible establishing national strategies, common policies and practices for all levels;
 - a forum to discuss regular development planning activities which have a bearing on disaster risk reduction; and
 - an authority for day-to-day management and operation including the procurement of emergency supplies and equipment as necessary.¹²⁹
- Ensure the adequate allocation of funding from the national budget, commensurate with the roles and responsibilities of the various institutions from national to community level. Consideration should be given to allocating a minimum percentage of the annual national budget for this purpose.
- Clearly allocate specific roles and responsibilities to relevant ministries and departments to prepare and respond for the restoration of livelihoods and lifeline utilities and require that they systematically collaborate and share information about these activities.¹³⁰
- Establish an Incident Management System, which could be further elaborated in an additional decree or sub-decree, to clarify command and control arrangements for emergencies and strengthen the coordination functions of the NCDM as well as standardize information sharing and reporting formats.¹³¹
- Include communication and consultation with non-state actors including CRC, NGOs and communities in all disaster management activities at all levels.
- Establish clear roles and responsibilities of the NCDM (and where relevant to the MoFA and the Cambodian Development Council) for the coordination of non-government assistance for disaster response, including international assistance.

New communicable disease control law should:

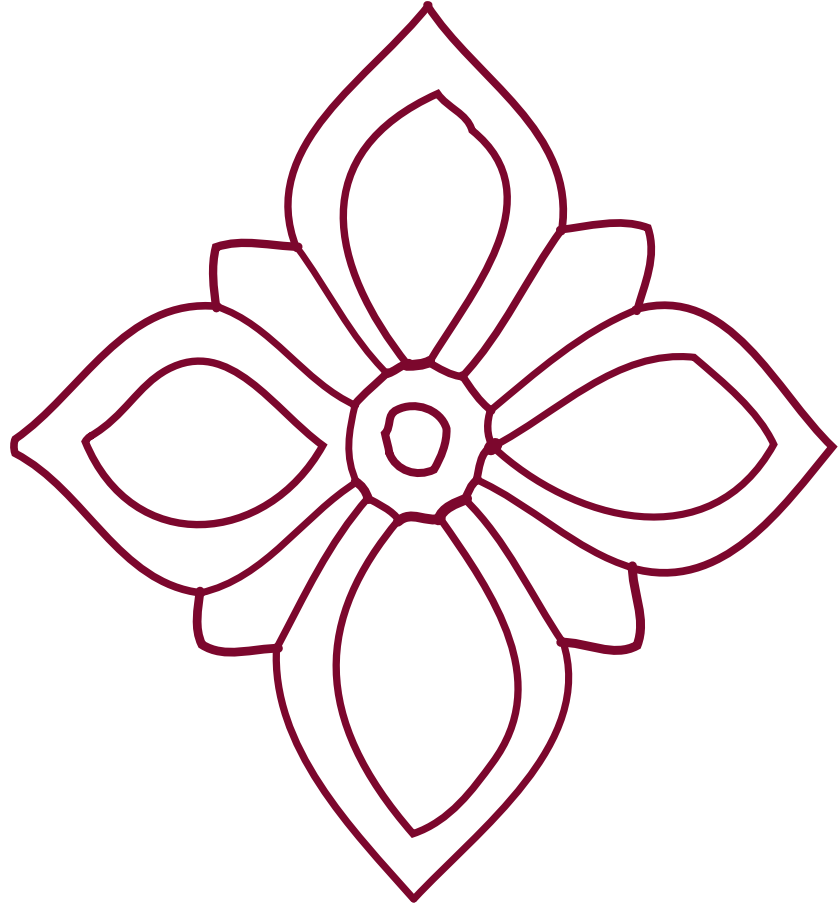
- Clearly reflect the responsibilities of government ministries and departments with respect to communicable disease control activities, taking a multi-sector / multi-agency approach and includes the role of key non-government organizations such as CRC as well as civil society.
- Establish clear communication channels from community to national level to enable to timely and accurate flow of information about communicable disease outbreaks.
- Establish enforcement measures and incentives to ensure that key officials and key government services continue to operate during a communicable disease emergency. Some proposed measures have included offering compensation for families in the case of a government worker’s death, greater technical guidance on pandemic response to ensure that official are clear about their responsibilities, and increased authority for governors and medical doctors to order staff to support the maintenance of public health systems.
- Ensure communicable disease activities include adequate response mechanisms to manage different levels of disease outbreaks, whether they originate within or outside of Cambodian territory.
- Ensure a ‘joined up’ approach to preparedness and response with respect to disaster management legislation

and planning.

- Ensure the adequate allocation of funding from the national budget, commensurate with the roles and responsibilities of the various institutions from national to community level. Consideration should be given to allocating a minimum percentage of the annual national budget for this purpose.



Chapter 7



Requests for international assistance

Chapter 7

Requests for international assistance

7.1 Requests for international disaster relief and initial recovery assistance

Currently there are no specific criteria to determine when a disaster or a communicable disease emergency has exceeded local or national capacities requiring international assistance. However, in the case of disaster, current policies do envisage a process of conducting needs assessments, which are used as the basis for making this determination. Specifically, NDMC Damage and Needs Assessment Teams are tasked to determine the nature and extent of disaster, the needs of the population and any secondary threats as well as the availability of resources and local response capacities and any need for international assistance.¹³² These teams may also include personnel from member ministries as well as international organizations, UN agencies and NGOs.¹³³

In making an official request for international assistance, the NCDM is tasked to “coordinate with the Ministries of the Royal Government, UN agencies, IOs, NGOs, International Communities, National Associations and Local Donors in order to appeal for aid for Emergency Response and Rehabilitation”.¹³⁴ However, there is no clear process for making such an appeal; rather requests are made through a number of different channels.

In the past, the NCDM has requested assistance from international organizations, foreign governments and INGOs already present in Cambodia, which in turn, make an appeal to their headquarters as necessary. For other organizations outside of Cambodia, there is no clear indication as to how their assistance may be requested. In practice, such as during the flooding in 2000, they spontaneously provided assistance by affiliating themselves with organizations that already had legal status in Cambodia.

As a member of the IFRC, CRC is also authorized to request assistance from the IFRC, which appeals on its behalf to other IFRC members and the international community. According to CRC guidelines, in the event of a “serious catastrophe” an appeal is made through the IFRC Country Delegation and the IFRC Regional Delegation based in Bangkok. Such appeals are made in consultation with the NCDM.¹³⁵

In future, it is the intention of the NCDM to synchronize its response mechanism with that of ASEAN and UN systems. With regard to the latter, the UNDMT’s Cambodia Disaster Preparedness Response Plan envisages a close partnership with the NDMC to assess the disaster situation and mobilize resources to assist in the event of a disaster. Following an official request for international assistance by the Royal Government of Cambodia, the UN can launch an Inter-Agency Appeal.¹³⁶

Within the ASEAN structure, the NCDM intends to develop its contribution to Emergency Rapid Assessment Teams (ERAT) and hasten its implementation of the ASEAN SASOPs. In addition it intends to improve general coordination by establishing points of contact through the ASEAN Committee for Disaster Management with ASEAN Member States and the AHA Centre, and has already been involved in ASEAN Regional Disaster Exercises.¹³⁷

- *If an affected State determines that a disaster situation exceeds national coping capacities, it should seek international and/or regional assistance to address the needs of affected persons.*
- *The affected State should decide in a timely manner whether or not to request disaster relief or initial recovery assistance and communicate its decision promptly. In order to make this decision, the affected State should promptly assess needs.*

See IDRL Guidelines (2007), Article 10(1)

ASEAN arrangements

- *If a Party needs assistance in the event of a disaster emergency, it may request it from any other Party, though the AHA Centre or from other entities.*
- *The requesting Party shall specify the scope and type of assistance required by an Assisting Entity, or if not possible, jointly assess and decide on assistance required.*
- *In the event that the Party requires assistance to cope with a disaster situation, it may seek assistance from the AHA Centre to facilitate such requests.*

See AADMER (2005), Articles 11 and 20(2)

7.2 Requests for international assistance for a communicable disease emergency

Current laws and policies do not indicate how a request for international assistance would be made in the event of a communicable disease emergency.

Cooperation with WHO during a communicable disease emergency

- *At the request of a State Party, WHO shall collaborate in the response to public health risks...including the mobilisation of international teams of experts when necessary.*
- *WHO may offer further collaboration including:*
 - *Assessment of the severity of the risk and adequacy of control measures*
 - *Mobilisation of international assistance in conducting assessments*

See IHR (2005), Article 13

Given that the MoH is responsible for notifying the WHO of disease outbreaks and suspect cases on a regular basis and given the close cooperation between the two, it is highly likely that a request for international assistance would be made through the communication channels established between the MoH and the WHO country office.

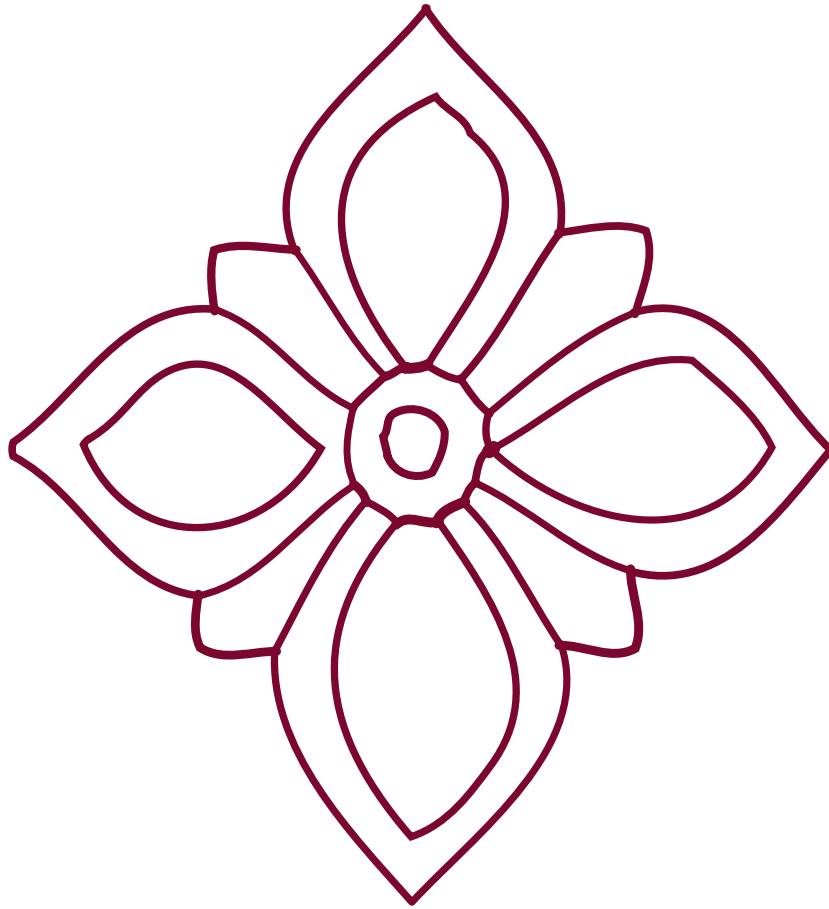
During the Consultation Workshop on Legal Preparedness for International Disaster and Communicable Disease Emergencies in Cambodia in January 2009, participants felt that the NCDM should be the only body able to declare a disaster and request international assistance.

In the case of communicable disease emergencies requiring international assistance, it was felt that the MoH should contact the NCDM to make a request to the international community through its usual channels.¹³⁸

7.3 Recommendations

Disaster management and communicable disease law should:

- Identify specific criteria for determining when a disaster/communicable disease emergency has exceeded local and national capacities based on initial and/or ongoing needs and capacity assessments, involving the UN or other organizations where necessary.
- Require that an official request for international assistance is made when national capacities are exceeded.
- Establish the function/institution(s) responsible for deciding and making the request for international assistance,
- Ensure that a decision will be made and communicated to the public and international community in a timely manner - in the case of sudden onset emergencies, within 24 hours of the disaster, or in the case of slow onset emergencies, immediately from the time it is determined that national capacities have been exceeded
- Identify the focal point through which offers for international assistance may be made and ensure that replies are given within the shortest possible time (ideally within 24 hours)
- Include any specific arrangements for offers and requests from particular organizations such as the UN, the Red Cross and ASEAN to ensure compliance with international rules for their engagement.
- Require that requests for international assistance be as specific as possible as to the types of goods and services needed and, where necessary to avoid duplication and wasted resources, indicate the goods and services which are not required.
- Ensure harmonization between the two laws to prevent the duplication of systems for responding to offers/requests for international assistance and consider the recommendation that the NCDM is only body responsible for making such requests.¹³⁹



Legal status of foreign entities providing assistance

[Return to Table of Contents](#)

Chapter 8

Legal status of foreign entities providing assistance

The process for obtaining legal status for foreign entities depends on the nature of the entity itself. These different processes are explained below.

8.1 Diplomatic missions

Diplomatic Missions of foreign governments are governed by diplomatic immunity laws. Cambodia ratified the Vienna Convention on Diplomatic Relations in 1965.¹⁴⁰

Some of the key privileges and immunities accorded to diplomatic agents are:

- They shall be inviolable, not liable to any form of arrest or detention
- They shall be treated with respect
- Their private residence shall enjoy inviolability and protection
- They shall enjoy exemptions from all custom duties
- Shall enjoy immunity from criminal, civil and administrative actions¹⁴¹

Diplomatic privileges and immunities are also expressly mentioned in the Land Traffic Law (which requires any incidents involving diplomatic personnel to be reported to the MoFA for follow up)¹⁴² and Law on Criminal Procedure allowing certain exemptions for diplomatic agents.¹⁴³

It is recommended that affected States grant legal facilities to assisting States with respect to their disaster relief or initial recovery assistance.

See IDRL Guidelines (2007), Article 13

There is no clear indication of the legal status that would be granted to foreign government relief teams, goods or equipment in the event of a disaster or communicable disease emergency. In fact, in ratifying the Vienna Convention, Cambodia made specific

reservations to article 37(2) and does not recognize members of administrative and technical staff as diplomatic agents.¹⁴⁴ This could potentially restrict the application of these privileges and immunities to government relief personnel.

8.2 UN, IFRC and international organizations

UN agencies present in Cambodia have concluded individual legal status agreements with the Government of Cambodia based on the Conventions on Privileges and Immunities of the United Nations.¹⁴⁵ Two such examples are the Agreement between the Royal Government of Cambodia and the WHO (1994) and the Agreement between the Royal Government of Cambodia and the United Nations Development Programme (1994).

Some of the key privileges and immunities granted include:

- Inviolability and immunity of premises, property and assets from search, requisition and confiscation
- Assets, income and other property for official use are exempt from all direct tax, customs duties, prohibition or restrictions of import or export
- Freedom of communication not less than for diplomatic missions
- Immunity of personnel from arrest or detention and from seizure of their property

The above privileges and immunities are granted to officials in the interest of the UN and not for personal benefit. They apply to advisors and staff, and in the case of the United Nations Development Programme (UNDP) agreement, also to UN subsidiary organs acting as UNDP Executing Agencies.

The IFRC also enjoys the same or similar legal status as UN agencies and intergovernmental organizations, which are set out in the Agreement between the Government of the Kingdom of Cambodia and the International Federation of Red

Cross and Red Crescent Societies (1994). The Agreement provides that “in order to exercise its functions and to fulfill its purposes, the Federation shall possess, on the territory of Cambodia, legal personality with the full capacity to contract, to acquire and dispose of immovable and movable property and to institute legal proceedings.” It also grants the same privileges and immunities as UN agencies and provides that the Government will facilitate the humanitarian activities of International Federation, including exemptions for customs duties and import restrictions for relief materials and will allow registration of vehicles “as vehicles of diplomatic missions”.

Interviews with UN personnel confirm that the Cambodian Government generally respects the privileges, immunities and facilities accorded by these legal status agreements, but some concern exists regarding length of time to process exemptions and the imposition of additional fees and inconsistencies in procedures. Some of these are discussed further below, in particular relating to customs and tax exemptions.

8.3 International NGOs

In 1999 the Council of Ministers adopted a standard MOU between the Government of Cambodia and International Non Governmental Organizations which outlines the process by which INGOs may operate in Cambodia.¹⁴⁶

Organizations wishing to work in Cambodia must submit a number of documents to the MoFA as follows:

- Letter of Registration of the organization recognized by the authority where the organization will implement its activities
- Plan of project budget approved by the board of directors of the organization
- Banking statement in Cambodia
- List of foreign staff
- List of local staff
- Address of the office in Cambodia (and lease agreement)
- Supporting letter from one or more relevant Ministries

Once this has been completed satisfactorily, the organization signs the standard MOU which provides the following:

- Permits the organization to implement its activities in locations outside the capital with the agreement of local authorities, with technical expertise and funding to be supplied by the organization
- Issues ID Cards to all the official representatives of the organization, staff, technical officers, advisors and project contractors that have been selected to implement project activities
- Issues visas free of charge to personnel and their family
- Allows the organization to cooperate directly with relevant ministries
- Permits the organization to lease, rent or construct office buildings
- Allows the import of materials, equipment and machinery as defined in the approved project proposal according to the rules and regulations of Cambodia. Import Taxes are paid by the government of Cambodia.

The MOU also includes a number of obligations for organizations, which are described in the section on quality and accountability below.

INGOs reported that the process of concluding an MOU is lengthy and could take from three months to one year depending on the fulfillment of requirements, and always involves the payment of fees.

It is not clear whether organizations entering Cambodia for the first time to provide emergency disaster relief would be

Eligibility for legal facilities

- *It is recommended that States establish criteria for assisting humanitarian organizations seeking eligibility for legal facilities.*
- *These criteria should include a showing by the organization of its willingness and capacity to act in accordance with the responsibilities described in paragraph 4 of the IDRL Guidelines.*

Temporary legal status

- *Affected States should grant relevant entities of assisting States and eligible assisting humanitarian organisations, upon entry or as soon as possible thereafter, at least a temporary authorisation to legally operate on their territory.*

See IDRL Guidelines (2007), Articles 14(1)-(2) and 20(1)

required to enter into one of these MOUs and whether the process would be expedited. A representative from the MoFA commented that the requirements for incoming organizations during a disaster additionally require certification from the NCDM that the organization concerned is authorized to conduct relief activities in a particular field.

Nor is it clear whether the facilities included in the MOU would apply in an emergency situation when an organization may need to undertake activities outside of its mandate and project budget. In practice, some organizations undertaking disaster relief activities following the flooding in 2000 did so either through their existing offices in Cambodia, or affiliated themselves with other organizations based in Cambodia. In these cases the provisions of the MOU were applied for this work and activities were not reported to have been hampered.

8.4 Private companies and organizations

Existing disaster regulations and policies do not specifically mention foreign assistance from private sector and individuals. However, during the flooding in 2000, NCDM, MoFA and CRC reported receiving contributions from international companies or individuals after the government made an appeal, but it was reported that it was difficult to determine the extent of these contributions and how the funds were spent.

During interviews for this study the MoFA recognized that there is a need for a special registration process organizations such as private foundations, associations and other groups of individuals who wish to assist during disaster, however this required further discussions with other relevant ministries on eligibility criteria for those organizations.

8.5 Recommendations

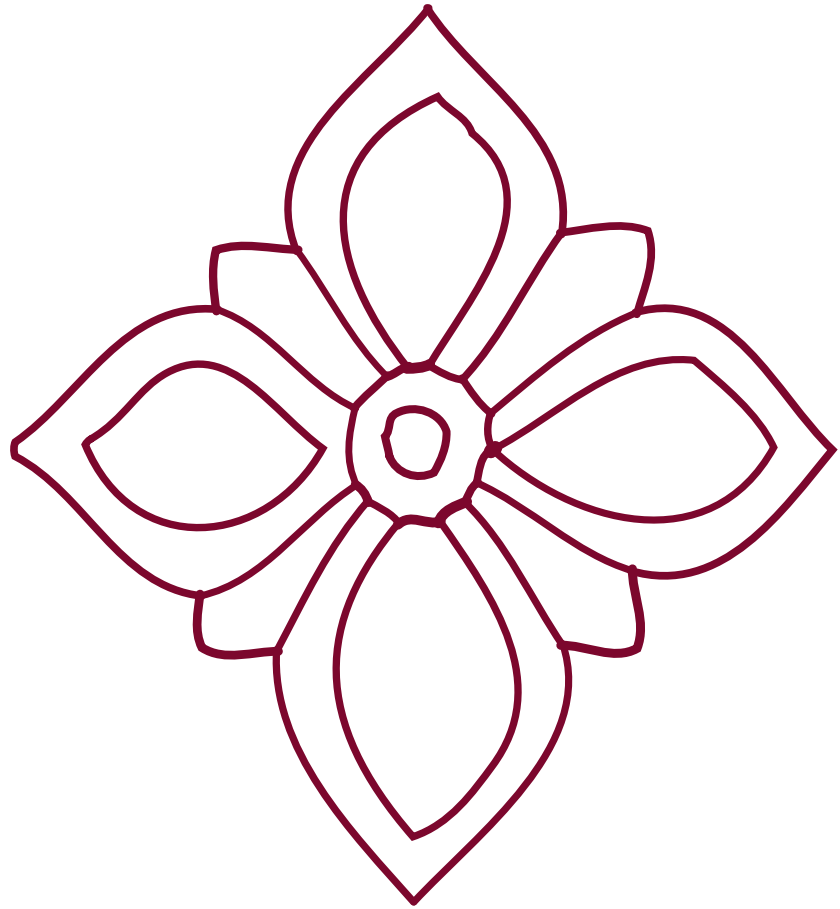
Disaster and communicable disease control laws should include the following:

- Establish a register of foreign entities considered eligible to provide relief and initial recovery assistance in Cambodia to be managed and maintained by a designated focal ministry, department or agency.
- Eligibility should be dependent upon an entity's ability to comply with the responsibilities described in arts. 4(1) and (2) of the IDRL Guidelines and a commitment to adhere to the responsibilities of art. 4(3) to the greatest extent practicable. This should ideally be determined by the submission of documentation on the mandate, experience, capacity and key policies of the entity. All submissions should be treated equally and fairly and registration should not be unreasonably withheld.
- All foreign entities which consider themselves likely to offer international assistance to Cambodia should apply for registration, regardless of whether they have existing legal status in Cambodia. Registration will not affect any existing legal status or activities of an organization already present in Cambodia.
- Additionally, the Government of Cambodia should actively identify and request entities to register if they are considered likely to offer or be requested to provide international assistance.
- The effect of registration should be that, when a registered entity is requested or accepted to provide international relief or initial recovery assistance, it will:
 - Retain its existing legal status within Cambodia, or where there is no pre-existing legal status, will be granted immediate temporary legal status on arrival for the duration of its operations.
 - Will receive, as a minimum, the legal facilities described in Part V of the IDRL Guidelines (see further specific recommendations on this throughout this report). Such measures would be in addition to any facilities, privileges and immunities which are already required under domestic and international law.
- In the case of a communicable disease emergency, must also demonstrate sufficient measures are in place to

prevent or limit the spread of that particular disease (see further specific recommendations on this throughout this report).

- Once relief and initial recovery operations have commenced, the relevant authority should actively monitor ongoing compliance with eligibility requirements (see recommendations on this in the section below on quality and accountability).
- Entities which have not been pre-registered prior to an emergency and wish to offer international assistance should send a request to the relevant authority and provide the necessary documentation to be included on the register prior to their arrival and commencement of activities. Such requests should be assessed and decisions communicated promptly without undue delay.

Chapter 9



International humanitarian transport arrangements

Chapter 9

International humanitarian transport arrangements

9.1 Aircraft

All Cambodian airports implement standard regulations regarding Airway Bills, to ensure that information about flights, cargo and types of goods being transported is received prior to the flight's arrival; however, there is felt to be a general lack of formal procedures for unscheduled humanitarian aircraft to request for permission for landing. Nonetheless, airport officials have shared some practical experiences in this regard:

- For the arrival of unscheduled foreign aircraft to repatriate international personnel during an emergency, special permission had to be obtained from Cambodian Civil Aviation through the MoFA.
- For aircraft of foreign governments bringing in relief goods on a bilateral basis, permission must be requested from the MoFA who is expected to check on the status of the donation before airport authorities may approve landing.

All aircraft landing within the Kingdom of Cambodia are generally charged for landing and parking fees, however, exemptions may be made for aircraft with the following status:

- Foreign Military Aircraft that have been approved by the government of Cambodia
- VIP aircraft of the Kingdom of Cambodia or other approved foreign state VIP
- Aircraft used for International Red Cross Services
- Forced Return (this is aircraft forced to land because of weather or other conditions)¹⁴⁷

These provisions take the form of a policy only and are generally non-enforceable.

International airports in Cambodia, such as Siem Reap, have an International Airport Emergency Plan which details how the airport administration and other bodies such as NCDM and services such as post and telecommunications, customs, immigration, medical teams, police, armed forces, and search and rescue teams, will respond to different kinds of emergencies.¹⁴⁸ The types of incidents covered include aircraft accidents, dangerous goods, fire and natural disaster (communicable disease is not mentioned) however the plans are focused on incidents occurring at the airport, rather than a response to national or international disaster.

In the event that Phnom Penh and Siem Reap International Airports are required to receive incoming international relief, it has been noted that both airports have limited capacity to store goods and do not have facilities such as refrigeration, insulation or security to hold for special items. Additionally, it is not clear whether the government would cover the costs associated with such additional facilities or the provision of security guards.

International transport arrangements for disaster response

- *Originating, transit and affected States should grant, without undue delay, permission for the speedy passage of land, marine and air vehicles operated by an assisting State or eligible assisting humanitarian organization, or on its behalf, for the purpose of transporting disaster relief or initial recovery assistance and, ideally, waive applicable fees.*
- *In particular, permission should be granted for overflight, landing and departure of aircraft. Such aircraft should also be authorized to operate within the territory of the affected State as required for the delivery of assistance.*

See IDRL Guidelines (2007) art.19



[Return to Table of Contents](#)

9.2 Land vehicles

Cambodia's traffic law¹⁴⁹ contains a number of provisions related to the entry of foreign vehicles, registration and recognition of foreign driver's licences as follows:

Driving licences and registration

- Affected States should establish expedited procedures for temporary recognition of driving licences that are:
 - necessary for the performance of disaster relief or initial recovery functions; and
 - that have been certified as genuine by the concerned entity.
- Affected States should grant temporary recognition to foreign registration and plates for imported vehicles by or on behalf of eligible assisting entities.

See IDRL Guidelines (2007) art.16(1)(c)

- All international road transport shall be carried out according to the international agreements to which Cambodia is a signatory (art 49.6)
- Vehicles weighing more than 750 kg must register and receive licence plates from the MoPWT (art 47.1)
- MoPWT is responsible for issuing driving licences to both national and international citizens who drive on the road in Cambodia (art. 40)
- Unless there is mutual bilateral agreement on recognition of both countries' driving licences, all foreigners who wish to drive on roads in Cambodia must have a Cambodian driving licence by following the exam process or apply for a driver's licence exchange from an international to local driver's licence. (art. 45)

International personnel interviewed for this study reported that, for the exchange of driving licenses, they are requested to apply and pay

necessary fees personally, though in some cases their organization facilitates the process.

Embassies, UN and IOs may apply for special IO, UN or CD license plates for their vehicles from the MoPWT after approval from MoFA. Interviews with international personnel report that the process involves taking supporting documents to the MoPWT and paying service fees of up to US\$55. The process takes from two weeks to one month to complete.



Other organizations must comply with standard motor vehicle registration policies applicable to international citizens who live in Cambodia and no special exemptions are included for emergency situations.

With regard to the use of other means of transport during a disaster, Government Circular No. 02 (2001) on Risk Reduction and Disaster Management requires the NCDM to list the means of transport a, both public and private, in municipalities, provinces, districts and communes which may be required for transport and evacuation during a flood, in cooperation with the Royal Armed Forces and

National Police.¹⁵⁰ Potentially the NCDM could authorize this transport for use by assisting organizations if needed.

9.3 Inspection of transport and quarantine measures

One of the key strategies for managing cross-border communicable disease outbreaks is through the inspection and quarantine of transport and goods entering and leaving the country as a first line of defence. As described previously, the government has had border health quarantine policies in place since 1980.¹⁵¹ Since this time a number of other regulations have been developed:

- Order No. 22 on the Withdrawal and Establishment of Border Control Offices, Royal Government of Cambodia (1997)
- Ministry of Health Declaration No. 193 on the Roles and Responsibilities of Quarantine Officers at Border Check Points, Royal Government of Cambodia (1999)
- Sub Decree No. 64 on the Termination and Management of International Border Check Points, Royal

[Return to Table of Contents](#)

- Government of Cambodia (2001)
- Guideline No. 286/06 on the Regulation of Health Quarantine Process in Border in Cambodia, Royal Government of Cambodia (2006)
- Ministry of Health Guideline No. 280 on the Implementation of Duties by Health Quarantine Officers at Border Check Points, Royal Government of Cambodia (2006)
- Sub Decree No. 06 on the Establishment of New Border Check Points, Royal Government of Cambodia (2006)
- Sub Decree No. 21 on the Facilitation of Commercial Importation, Royal Government of Cambodia (2001)

Ministry of Health Guideline No. 280 is the primary instrument used by quarantine agents to monitor public health risks and communicable diseases at borders, sea ports and international airports. Some of the key principles and requirements are as follows:

- Health quarantine agents must examine health quarantine declarations of all transportation means for both entry and exit. They can request owners or drivers to provide additional necessary information if needed.
- A health quarantine certificate is issued for goods which meet food hygiene and safety requirements and where neither host nor vector of a quarantine disease is found. In the cases where this criterion is not met, a certificate may be issued after adequate treatment is carried out.
- In cases where the subject does not meet these standards, particularly in cases where the means of transportation has come from an infected area, quarantine officers can instruct the owners to take the transport to an assigned area and enter to examine it in person and if necessary instruct that treatment be carried out.
- At airports, quarantine officers are responsible for collecting information related to timing of landing, itinerary of flights and the health of passengers and crew. Officers are also able enter aircraft to monitor hygiene in luggage compartments, food and beverages and the passenger cabin to investigate sources or vectors of contaminated viruses.
- For sea vessels in transit, quarantine officers must additionally receive an itinerary from the port authorities.

In spite of the range of instruments available, they are low-ranking in the legal hierarchy and contain no provisions to ensure their compliance, thus, the reality at the border is somewhat different. Between 1993 and 2003, the health quarantine teams were virtually non-existent. At the time of this study, the quarantine teams designated for the airports of Phnom Penh and Siem Reap Airport are yet to be established. At land and sea ports, quarantine teams do exist but to varying degrees of functionality. Some teams do not have proper offices and most lack the capacity, equipment and training to address international communicable diseases situations.¹⁵²

Additionally, current quarantine teams do not include representatives from the MoH. Consequently, the government plans to issue a new sub-decree¹⁵³ on the membership of inspection teams at international border checkpoints to ensure sufficient quarantine officers from the MoH are able to report any suspect cases.¹⁵⁴ Once in place, the CDC/MoH will need to recruit more than 200 quarantine officers and establish medical treatment and isolation rooms for all border check points, which has created concern about the resources available for these new measures.¹⁵⁵

Arrangements for affected conveyances

- *If a public health risk, including a source of infection or contamination are found on board a conveyance, the competent authority may:*
 - *Disinfect, decontaminate or treat the conveyance, as appropriate*
 - *Implement additional health measures, including isolation of the conveyances, as necessary to prevent the spread of disease.*

IHRs (2005) art. 27(1)

Certification of transport

- *States Parties shall ensure that Ship Sanitation Control Exemption Certificates and Ship Sanitation Control Certificates are issued...*
- *A State Party may require, on arrival or departure, inspection of baggage, cargo, containers, conveyances, goods postal parcels and human remains.*
- *States Parties shall take all practical measures to ensure that conveyance operators permanently keep their conveyances free from sources of infection or contamination, including vectors or reservoirs. The application of measures to control sources of infection or contamination may be required if evidence is found.*

See IHRs (2005) arts. 20, 23 and 24

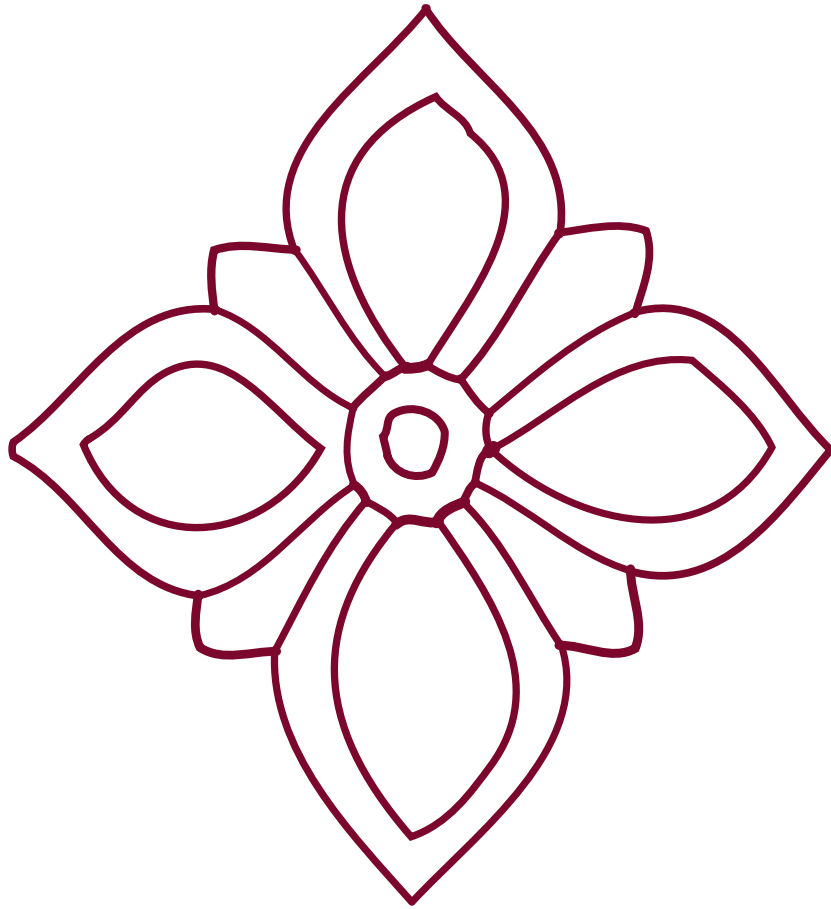
Review of existing laws and policies did not reveal any special procedures for humanitarian transport. Other health measures identified in the IHR relating to conveyance operators have not yet been addressed including the technical requirements relating conveyance operators to ensure that ships or boats are permanently free from sources of infection and contamination (see Annex 4 of the IHR), and the specific measures for vector-borne diseases (see Annex 5 of the IHR).

Further, policies and laws are yet to integrate provisions regarding sea vessels such as the requirement of ships masters to ascertain the state of health on board the vessel and supply this information to the competent authorities and use of Ship Sanitation Control Certificates. Currently in Cambodia, health quarantine measures need not be carried out for transit ships or boats, however if information comes to light that the boat could carry infectious disease it is envisaged that a similar process for exit of the ships or boats will be applied.

9.4 Recommendations

Both disaster management and communicable disease laws should:

- As part of the facilities provided to registered entities (see previous recommendation), include the following:
 - Immediate permission for the speedy passage of their land and marine vehicles and the waiver any associated fees.
 - Immediate permission for overflight, landing and departure of aircraft and authorization for the aircraft to operate within Cambodian territory.
 - Immediate, temporary recognition of foreign driving licences and foreign vehicle registration and plates.
- Include specific additional provisions applicable to communicable disease emergencies as follows:
 - Apply the model ship sanitation control certificate and aircraft general declaration (see annexes 3 and 9 of the IHRs), with the modification of including a section to indicate whether any cargo on board is intended for emergency humanitarian relief.
 - Where the means of transport has come from an infected area and/or could reasonably be considered a potential risk to public health, ensure that the inspection of transport containing humanitarian cargo is treated with the utmost urgency and priority.
 - All humanitarian cargo should be examined as a first priority over other cargo to determine if any or all of it may be immediately cleared and transported by a different vehicle.
 - In the event that humanitarian transport and/or cargo must be quarantined, every effort must be made to treat/decontaminate and release it as a matter of priority.
 - In all cases, consideration should be given to the humanitarian necessity of the goods involved and prioritized accordingly to ensure they are not unnecessarily delayed.
- Include a requirement that all focal points and procedures relating to incoming and outgoing humanitarian transport be publicly accessible prior to an emergency and provided directly to registered entities from which assistance will be received in the event of an emergency.



Customs and tax arrangements for international humanitarian relief

[Return to Table of Contents](#)

Chapter 10

Chapter 10

Customs and tax arrangements for international humanitarian relief

10.1 Customs, duties and import/export tax exemptions

In general, provisions relating to exemptions from tax and customs are included in the various instruments granting legal status to particular organizations, whether it be law for Diplomatic Missions, legal status agreements for UN,

Goods and equipment

With regard to disaster relief and initial recovery goods and equipment exported or imported by, or on behalf of, assisting States and eligible assisting humanitarian organizations, originating, transit and affected States should:

- Exempt them from all customs duties, taxes, tariffs and governmental fees
- Exempt them from all export, transit, and import restrictions;
- Simplify and minimize documentation requirements for export, transit and import;
- Permit re-exportation of any equipment or unused goods which the assisting State or assisting humanitarian organization owns and wishes to retain.

See IDRL Guidelines (2007) art.17(1)

IFRC and IOs or the standard MOU for INGOs, as described in the previous chapter on Legal Status. It's clear from these agreements that the intention is to provide tax and other exemptions to these organizations, provided it's for official purposes, and, in the case of INGOs, part of pre-agreed project proposals. The government of Cambodia has also agreed to cover customs duties incurred by CRC.¹⁵⁶

In addition to these agreements, there are a number of other laws and regulations providing customs and import tax exemptions for goods and equipment to be used for official or humanitarian purposes described below.

The Law on the Management of Quality and Safety of Products allows importation of products and goods which are of humanitarian status or for non-commercial purposes. These imports can be made provided there is special prior authorization from the Ministry of Commerce subsequent to the approval of the Royal Government and provided they are in conformity with international trade fair practices and internationally recognized norms.¹⁵⁷

Regarding the import of equipment for humanitarian purposes, organizations must make a request to the Ministry of Economy and Finance or to the Cambodian Development Council. After receiving a decision, the organization must send a copy to the MoFA for final approval. Organizations wishing to request import tax exemptions for this equipment must additionally receive permission from the Cambodian Development Council for review and decision.¹⁵⁸

Organizations requesting import tax exemptions for other humanitarian goods must submit the following documents to the MoFA:

- A request letter
- Bill of Lading
- Invoice from the company
- List of staff members of the organization
- Inventory list

Under existing legislation, import tax exemptions for diplomatic missions and international organizations are granted, subject to the following conditions:

- Exemptions are only allowed subject to the certification by the chief of mission to the Tax Department that the goods are being imported for use for official purposes.
- Goods for personal use by official personnel are non-taxable only if they are included on a list determined by Prakas of the Ministry of Economy and Finance.

[Return to Table of Contents](#)

- Based on the principle of reciprocity between governments concerned.¹⁵⁹

Regarding the sale or disposal of imported products entitled to full or partial tax and VAT exemptions, a letter of request must be sent to the Customs Administration to sell, transfer, dispose of or change the purpose/use of these items. In the case of transfer of ownership, the new owner must first pay the tax and VAT according to the existing procedures unless they themselves are entitled to receive tax and VAT exemptions. In the case of disposal/destruction of goods, the Customs Administration must oversee the process.¹⁶⁰

Interviews with international organizations reveal a wide range of experiences in importing goods and equipment. UN and IOs were generally satisfied with the process of obtaining customs and tax exemptions for normal, non-emergency purposes, although these processes are not always applied consistently. INGOs reported more difficulties and felt that customs clearance time, the application of tax exemptions and the supporting documents required, varied depending on interpersonal relations with the authorities, with some organizations reporting that the clearance process could take up to six months.

Indeed, it should be noted that current customs and tax regulations do not include any expedited procedures for emergency settings or for clearance outside of business hours. Senior level officials interviewed for this study expressed confidence in the flexibility of customs officers in cases of emergency despite the lack of expedited procedures. However, some INGOs expressed concern that the flexibility shown by customs officials was not sufficiently transparent and that cases of urgency would not always be fast-tracked.

Communications equipment

Currently there are no specific provisions on importation of communications equipment by humanitarian organizations, nor are there clear standards as to what is accepted or prohibited.

Interviews with relevant officials indicated that foreign organizations should submit the list of proposed equipment first to the MoFA for certification of its humanitarian purpose and then to the Ministry for Post and Telecommunications which will review the technical specifications. If the equipment meets standard telecommunications regulations or if it poses no risk, import permission will be granted. If the organization also wishes to receive tax exemptions, they must apply to the Cambodian Council for Development to receive a tax exempt certificate.

Regarding use and licensing of such equipment, the Ministry of Postal and Telecommunications is the competent institution responsible for issuing both telephone and radio frequencies. Among its responsibilities include:

- Establishing the location of telephone networks at National and Sub National level
- Representing the government in international meetings for determining the price for bilateral, multilateral and international telecommunications
- Facilitating bilateral agreements on telecommunication¹⁶¹

At the time of this study, the preparation of telecommunications arrangements for emergency services and disaster emergencies was included in the Ministry's recent inter-ministerial meeting agenda. The Director General reported that Cambodia Telecommunications had provided several emergency lines for hospitals, police, and fire departments. The Ministry is also considering the implementation of a number of recommendations from the International

Use of telecommunications equipment for disaster relief and recovery

Affected States should:

- *Waive or expedite the granting of any applicable licences and reduce any other barriers to the use, import or export of telecommunications and information technology equipment*
- *Grant access to bandwidth, frequencies and satellite use for telecommunications and data transfer associated with disaster relief operations.*

See IDRL Guidelines (2007) art.18(2)

Telecommunications Union. Currently, all plans for the creation of new emergency numbers must be submitted to the Ministry for review and approval. The Ministry is also able to install a special number for social interest purposes and can exempt incoming call fees.¹⁶²

Under current regulations, humanitarian organizations and INGOs with existing government agreements and tax exemption status will receive 70% discount of the normal price of total annual license for use of airwaves.¹⁶³ UN legal status agreements also provide that the government will cover the expenditure of post and telecommunications for official purposes.¹⁶⁴

Food

Importing food for disaster relief

Originating, transit and affected States should consider whether normal requirements regarding fumigation and prohibitions and restrictions on food imports and exports can be modified or reduced.

IDRL Guidelines (2007) art.18(4)

General laws and regulations on the import of goods for humanitarian purposes (described above) do not make any specific reference to food; however, the Law on the Management of Quality and Safety of Products and Services prohibits all activity involving counterfeit, expired and poor quality food.¹⁶⁵

Vehicles

Regarding the import of vehicles, Guideline No. 005 on the Management of Tax and VAT Exemptions and Other Government Duties lists the number and types of vehicles which may be imported tax free and registered by different organizations, depending on their legal status and number of staff employed. For example, Diplomatic Missions and International Organizations with more than 10 people on staff are entitled to:

- 1 x 24 seat vehicle
- 1 x 12 seat vehicle
- 6 x small cars
- 4 x motorcycles under 125cc

INGOs are generally entitled to the same or similar vehicles but in lesser quantities. There are no specific regulations about the number or process for importing vehicles for emergency relief activities.

Medication

To import medications into Cambodia, the Ministry of Health requires the following documents:

- Completed registration form in the given format
- Certification of efficacy of the product, country of production, compliance with WHO standards
- Permission certificate for import or export
- Summary of the characteristics of the medicine
- Sample of 10 units of the medicine
- Receipt of registration fee of US\$100¹⁶⁶

The Ministry of Health has the right to reject the registration proposal for import without returning the registration fee.¹⁶⁷ The declaration does not specify whether this process is applied for humanitarian purposes or whether humanitarian organizations will be required to pay the registration fee.

Those who sell or illegally import or stock medicine will be subject to a large fine and are subject to imprisonment for five to ten years according to severity of the offences.¹⁶⁸

Interviews with some officials suggest that, provided there is a declaration of emergency from a government minister or if there is a request from a relevant government ministry, there will be cooperation to process the goods quickly. However, experience of medical staff involved during the SARS outbreak suggests that there are some challenges with this. Due to the lack of special emergency procedures, medical and customs officers were required to clear international medical supplies without fulfilling all the documentation requirements under the declaration, which caused some concerns about public safety if this becomes standard practice.¹⁶⁹

Biological products

Ministry of Health Guideline No. 280 also includes special provisions for the entry and exit of corpses, body-ash and bones. On arrival and exit, a quarantine declaration and a death certificate must be provided. Both the container and the contents will be examined for infection and if found, treatment must be administered before a health quarantine certificate is issued. If the death of a corpse was caused by infectious disease, the coffin containing the corpse must be properly sealed and transported to a cemetery or crematorium for burial or cremation. No corpses may exit Cambodia if an infectious disease was the cause of death.

Additionally, the Guideline 280 also covers other biological products such as blood and its products, tissues, body organs and bacteria and viruses that are used for prevention, diagnosis and medical research. Quarantine officers must receive a health quarantine declaration, an import/export declaration and a license issued by the relevant department of the Ministry of Health. An examination of the packaging method, storage conditions, volume and type of product is also required prior to the issue of a health quarantine certificate.¹⁷⁰

10.2 Other taxes, charges and currency exchange

VAT and other tax exemptions

Value-Added Tax (VAT) and other tax exemptions are provided for within existing legal status arrangements for different types of organizations (see above) and are also granted under Tax Law for diplomatic missions, international organizations and other government technical cooperation agencies for goods for official use by the organization or its personnel.¹⁷¹ Such exemptions are also available for goods which are under the responsibility of the Government of Cambodia.¹⁷²

The IFRC legal status agreement also makes specific reference to the remission or return of excise duties and VAT for the procurement of relief supplies.¹⁷³ The government has also agreed to cover taxes and other official charges for CRC including VAT, customs duties and tax levied on any generated by the CRC, such as through property assets or donations.¹⁷⁴ Donations to CRC are also tax deductible.¹⁷⁵

Importing medication for disaster relief

- *Originating, transit and affected States should reduce legal and administrative barriers to the exportation, transit, importation and re-exportation of medications and medical equipment to the extent consistent with public safety and international law.*
- *Assisting States and eligible assisting humanitarian organizations should take all reasonable steps to ensure the quality, appropriateness and safety of any such medications and equipment*

IDRL Guidelines (2007) art.18(3)

Tax exemptions for disaster relief

Affected States should provide exemptions to assisting States and eligible assisting humanitarian organizations from value-added and other taxes or duties directly associated with disaster relief and initial recovery assistance.

IDRL Guidelines (2007) art.21

Currency exchange

Bringing in currency for disaster relief

Assisting States and organizations should be granted the right to freely bring the necessary funds and currencies in or out of the country through legal means and to obtain legal exchange rates in connection with their disaster relief or initial recovery assistance.

IDRL Guidelines (2007) art. 20(2)

The Convention on Privileges and Immunities of the United Nations, to which Cambodia is a party, states that UN agencies have the right to possess property, funds and assets without being restricted by financial control regulations or moratoria of any kind, may hold funds, gold and currency of any kind and may operate accounts in any currency.¹⁷⁶

The IFRC legal status agreement also provides that the delegation may hold any funds or currency of any kind and operate accounts in any currency. IFRC is also free to transfer currency within Cambodia or from one country to another, and to convert any currency held by it into any other currency.¹⁷⁷

The standard MOU for international NGOs requires them to open a bank account in any bank recognized by the National Bank of Cambodia and ensure that the administrative costs of the organization do not exceed 25% of the total budget, but does not specify the type of currency used by the organization in the country.¹⁷⁸

In practice, the US dollar is the working currency for both national and international humanitarian organizations. There is no standard official rate of exchange and each organization receives different rates from different sources.

Charges for health protection measures

Charges for health measures

No charges shall be made by a State Party for the following measures for the protection of public health:

- *Medical examinations to ascertain the health status of the traveller*
- *Vaccinations or prophylaxis that is an unpublished or new (less than 10 days) requirement.*
- *Isolation or quarantine requirements*
- *Certificate specifying the date and health measures applied*
- *Health measures applied to accompanying baggage.*

Exceptions:

- *Travellers seeking temporary or permanent residence.*
- *Other health measures not included above.*

See IHRs (2005) art. 40(1) and (2)

Ministry of Health Regulation No. 280 lists the responsibilities of state agents in providing monitoring services, health measures, issuing health quarantine certificates, and isolation and treatment of patients. However these guidelines do not include specific provisions for the charging of expenses for the hospitalization and treatment of suspect or confirmed cases of infection among international travellers. Although most officials believe that all such expenses should be borne by the government, during the SARS outbreak Cambodia relied greatly on WHO technical and financial support in the control of the disease.

10.3 Recommendations

Both disaster management and communicable disease laws should:

- As part of the facilities provided to registered entities (see previous recommendation), include special measures for the import, export and transit of international humanitarian relief goods and equipment as follows:

[Return to Table of Contents](#)

General import/export arrangements:

- Priority customs clearance, including outside of regular locations and business hours during the emergency period.
- Exemptions from all export, transit and import restrictions, including for food and telecommunications equipment, or where this is not possible for reasons of security or public health, publish and circulate in advance the nature of any exceptions/restrictions likely to impact on such goods and equipment.
- Automatic exemption from all customs duties, taxes, tariffs and governmental fees without any additional approvals required from line ministries, including for vehicles.
- Minimal documentation requirements for import clearance and tax exemptions, ideally limited to the provision of the name of the registered entity, a detailed manifest including any expiry dates, Bill of Lading and external markings on the packaging and containers indicating it is for urgent humanitarian relief.
- Automatic permission to re-export any equipment or unused goods which the entity wishes to retain without any additional approvals required from line ministries.
- Automatic permission to sell or dispose of imported goods and equipment, with the only requirement that a notice of the sale or disposal, containing the details of any new owners, be provided to the Customs Administration to follow up on any tax or VAT implications with the new owner.

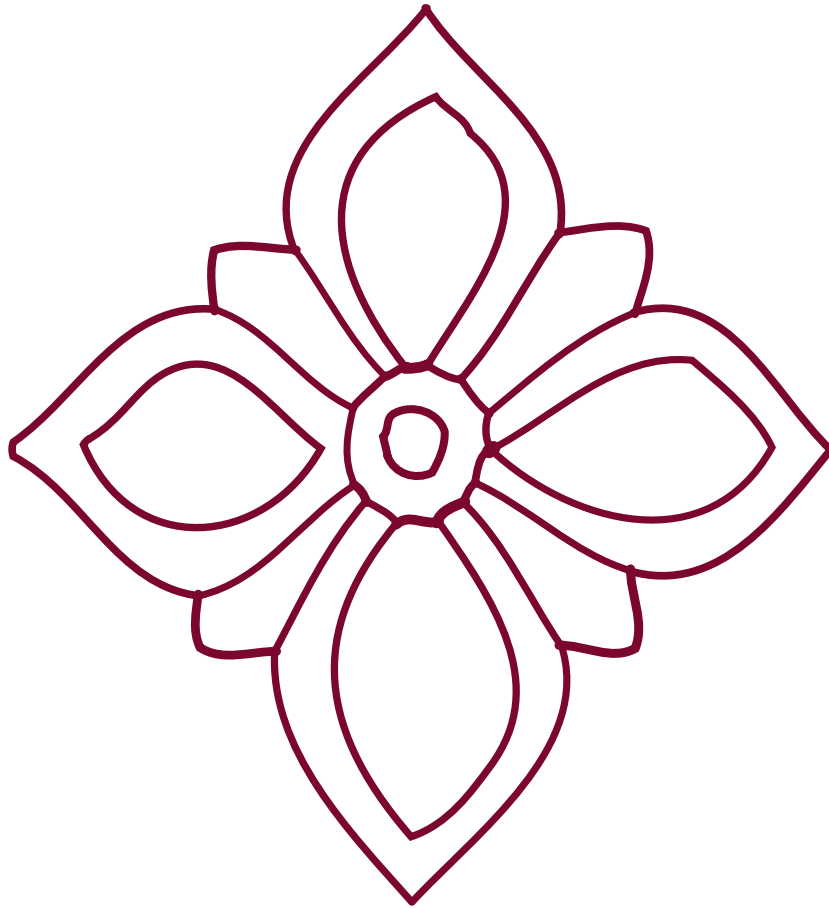
Additional provisions regarding medication and biological products:

- Exemptions from the requirement to pay a registration fee and to provide samples.
 - Establish pre-clearance procedures for medicines most likely to be needed to facilitate immediate clearance upon arrival during an emergency.
 - Ensure the priority clearance of any biological substances required for prevention, diagnosis and other research relating to a communicable disease emergency.
- Include specific additional provisions applicable to communicable disease emergencies as follows:
 - Where humanitarian goods and equipment have come from an infected area and/or could reasonably be considered a potential risk to public health, ensure that any inspections are conducted with the utmost urgency and priority.
 - In the event that humanitarian cargo must be quarantined, every effort must be made to treat/decontaminate and release it as a matter of priority.
 - In all cases, consideration should be given to the humanitarian necessity of the goods involved and prioritized accordingly to ensure they are not unnecessarily delayed.
 - As part of the facilities provided to registered entities (see previous recommendation), include special measures for taxes, other charges, currency and bank accounts as follows:
 - Exemptions or priority processing and return of any VAT or other tax for the procurement of relief

supplies and equipment in-country.

- Specify the charging arrangements for health protection measures which reflect the requirements of arts. 40(1) and (2) of the IHRs.
- Permission to freely bring or transfer the necessary funds and currencies in, out or within the country through legal means and to open bank accounts in any currency.
- Include a requirement that all focal points and procedures relating to the above be made publicly accessible and, in the event of an emergency, are provided directly to registered entities from which assistance will be received.





International relief personnel

[Return to Table of Contents](#)

Chapter 11

Chapter 11

International relief personnel

11.1 Entry permits and visas

Visas for organizations with existing legal status

Entry and visa arrangements available for foreign staff are generally determined the legal status of their organization.

For UN personnel, the standard agreements between the Cambodian Government and UN agencies specify that the government will provide facilities for the execution of UN assistance, including the prompt issue of necessary visas, licenses or permits for experts and other persons performing services on behalf of the UN, without cost.¹⁷⁹

For international relief personnel, affected States should:

- Grant visas and any necessary work permits, ideally without cost, renewable within their territory, for the time necessary to carry out disaster relief or initial recovery activities;
- In disaster relief operations, waive or significantly expedite the provision of such visas and work permits;
- Facilitate freedom of access to and freedom of movement in and from the disaster affected area, bearing in mind the safety of disaster relief and initial recovery personnel.

IDRL Guidelines (2007) art.16 (1)

restrictions and alien registration”.¹⁸⁰ The agreement also commits the government to apply to the IFRC “as far as possible” the *Measures to Expedite International Relief* adopted by the International Conference of the Red Cross and Red Crescent¹⁸¹ and the UN.¹⁸² These measures recommend that governments “waive requirements for transit, entry and exit for relief personnel acting in their official capacity as representatives of internationally-recognized relief agencies”.¹⁸³

However, the MoFA also requires the organization to apply for an Attestation of Visa prior to the arrival of the employee.¹⁸⁴

The standard MOU for INGOs includes a provision that the government will issue visas free of charge to personnel and their family members (husband/wife, children and parents) for an initial period of one month, extendable upon request for up to three months. If a longer period is required, personnel are required to comply with the standard laws and regulations of Cambodia (see further below).¹⁸⁵ The Ministry of Labour is also responsible for issuing identity cards to foreign personnel.¹⁸⁶

INGOs generally felt that visa processing was easier for UN and IO personnel; however, there were some conflicting experiences among them. Some well known INGOs tended to receive visas more readily than those which are smaller and relatively unknown. The general turnaround time for visa applications was five to fifteen days.



[Return to Table of Contents](#)

General immigration law

In addition to the provisions of legal status agreements and diplomatic law, there are a number of immigration laws and regulations applicable to foreign humanitarian workers. These would also determine the visa entitlements of personnel from organizations without pre-existing legal status in Cambodia.

Cambodia's Law on Immigration classifies foreigners into three categories: immigrant aliens, non-immigrant aliens and business immigrants.¹⁸⁷ International relief personnel are generally classified as non-immigrant aliens. Under the law, non immigrant aliens include:

- Agents, and their families and/or staff members, who are working in foreign consulates, Embassies or Foreign Mission representative bodies
- Experts, military members, officers, civil servants, foreign agents, students, and the families of these individuals who enter the Kingdom of Cambodia with the permission of the Royal Government of Cambodia.
- Tourists who have return tickets.¹⁸⁸

Several types of visa can be issued depending on the situation. These include:

- Diplomatic Visa (Type A), Official Visa (Type B) and which are multiple entry, valid for three months and can be extended multiple times for up to 12 months each.
- Courtesy Visa (Type C), single entry, valid for five days, which can be extended once for up to 12 months.
- Tourist Visa (Type T), single entry, valid for one month, renewable once for an additional 30 days.
- Normal Visa (Type E), single entry, valid for one month, non-renewable.

The MoFA is responsible for issuing and extending diplomatic, official and courtesy visas, while the Ministry of Interior is responsible for issuing and extending tourist and normal entry visas. For many nationalities applying for some types of visa such as tourist visas and transit visas these can be obtained on arrival.¹⁸⁹

These non-immigrant visa applications involve the completion of an application form, a passport with at least three months validity, three passport photos and the payment of a non-refundable fee, though the latter would depend on any pre-existing agreements with the relevant organization regarding visa fee waivers. Applications for an Attestation for Visa from the MoFA may also be required for some organizations, as discussed above.

Non-immigrant status is also accorded to people in transit including:

- Travellers who are only in transit or who are awaiting means of transport before continuing towards their final destinations. In such cases their stay must not be more than one week, except in cases of *force majeure*.
- Captains, crew and passengers in transit at sea-ports and airports for re-supply.¹⁹⁰

Under this status, persons will be granted visas for transit on arrival, when they disembark.¹⁹¹ They must have valid passports and are required to pay applicable visa fees as well as airport and water port fees.

The above visa processes are clearly not designed with emergency situations in mind. Discussions on this issue with

[Return to Table of Contents](#)



the MoFA revealed a clear preference for emergency assistance to be provided by foreign personnel from organizations already present in Cambodia to enable rapid facilitation. For other organizations, it was felt that expedited procedures should be included in the new disaster management law but this would require further discussion with other ministries.

Special measures for communicable disease control

As for the arrival of transport and goods, the procedures for controlling communicable diseases with respect to the entry and exit of international travellers are determined by Ministry of Health Guideline No. 280 on the Implementation of Duties by Health Quarantine Officers at Border Check Points.¹⁹²

These guidelines require that all persons arriving from infected areas must be inspected by health quarantine officers at the border entry points.¹⁹³ Quarantine officers

Compulsory health measures relating to the entry of travellers

States Parties are not precluded from requiring medical examination, vaccination or other prophylaxis or proof of vaccination or other prophylaxis (subject to conditions).

If a traveller fails to consent to any such measure, or refuses to provide the required information or documents the State Party concerned may deny entry to that traveller (subject to conditions).

If there is evidence of an imminent public health risk, the State Party may, in accordance with its national law and to the extent necessary to control such a risk, compel the traveller to undergo or advise the traveller to undergo:

- *the least invasive and intrusive medical examination that would achieve the public health objective;*
- *vaccination or other prophylaxis; or*
- *additional established health measures that prevent or control the spread of disease, including isolation, quarantine or placing the traveller under public health observation. (subject to conditions)*

See IHRs (2005) art. 31

must be present at all arrivals and departures to monitor and collect preliminary information on the health situation of passengers and transport crew. This can include the examination of international vaccination certificates, the completion of health declaration forms and general observations on passenger health.

Persons suspected of infection are to be taken to an isolation room for further examination by a clinical doctor. If they are found to be carrying a quarantined disease, the quarantine officer must inform their superior on duty, who should undertake the following:

- Take the patients in a specialized car to an isolation clinic for the purpose of further monitoring and treatment.
- Collect the details of all passengers and crew members on the same flight including full information of name, age, nationality, itinerary, destination and telephone number and request these passengers and crew members to follow regulations for medical observation and supervision at their present location.
- Send all information to the CDC/MoH quarantine office.¹⁹⁴

If an infected person was departing Cambodia, they will not be able to leave until the necessary treatment and prevention measures are administered and health clearance given. If the infected person had just arrived, the transport carrier of the vessel in which the suspect was found is required to carry out disinfection and decontamination measures before re-commissioning the vessel.¹⁹⁵

In practice, there are very few resources and facilities for communicable disease control at entry and exit points in Cambodia. As described previously regarding inspection and quarantine measures, quarantine teams are only present in a few locations and are significantly under resourced. Many points of entry do not have isolation rooms. Thermo scanners for detecting cases of high temperature in travellers are only available at Phnom Penh and Siem Reap International Airports.¹⁹⁶

Moreover, as will be discussed further below, current regulations do not specifically cover issues of consent, respect for human rights and fundamental freedoms or measures to minimize discomfort or distress. Nor are there special provisions for the treatment of emergency workers and humanitarian personnel.

11.2 Recognition of professional qualifications and licenses

No specific provisions were found in Cambodian laws and policies on the recognition of qualifications for foreign humanitarian personnel. Technical experts are selected by the organization concerned, with a requirement to inform the government of their name¹⁹⁷ and, in the case of international NGOs, with a copy of the employment contract and information about any change in location.¹⁹⁸

In practice, it has been reported that many development sector partners work closely with relevant ministries in the hiring process of new technical experts. Specific arrangements for foreign experts during emergencies have not yet been defined.¹⁹⁹

Affected States should establish expedited procedures for temporary recognition of professional qualifications of foreign medical personnel, architects, and engineers and other types of license or certificate necessary for disaster assistance.

The humanitarian organization must certify that such licences are genuine.

IDRL Guidelines (2007) art.21

Income tax exemptions

Income tax exemptions are granted to foreign staff from diplomatic missions, UN agencies and the IFRC in accordance with their respective legal status (see above).

In accordance with the MOU for international NGOs, both local and expatriate staff are subjected to income tax regulations of the Kingdom of Cambodia. However current Tax Law provides income tax exemptions for any organizations that are organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes and where no part of their assets or earnings are used for any private interest.²⁰⁰

11.3 Recommendations

Immigration law should:

- Establish a new category of ‘humanitarian visa’ for international relief personnel of registered entities (see previous recommendation) for use during emergencies when the entity has been requested or accepted to provide international assistance.
- The ‘humanitarian visa’ should be multiple entry, valid for a minimum period of 3 months and extendable in-country multiple times for up to 12 months each time free of charge, as needed for the provision of relief and initial recovery assistance.

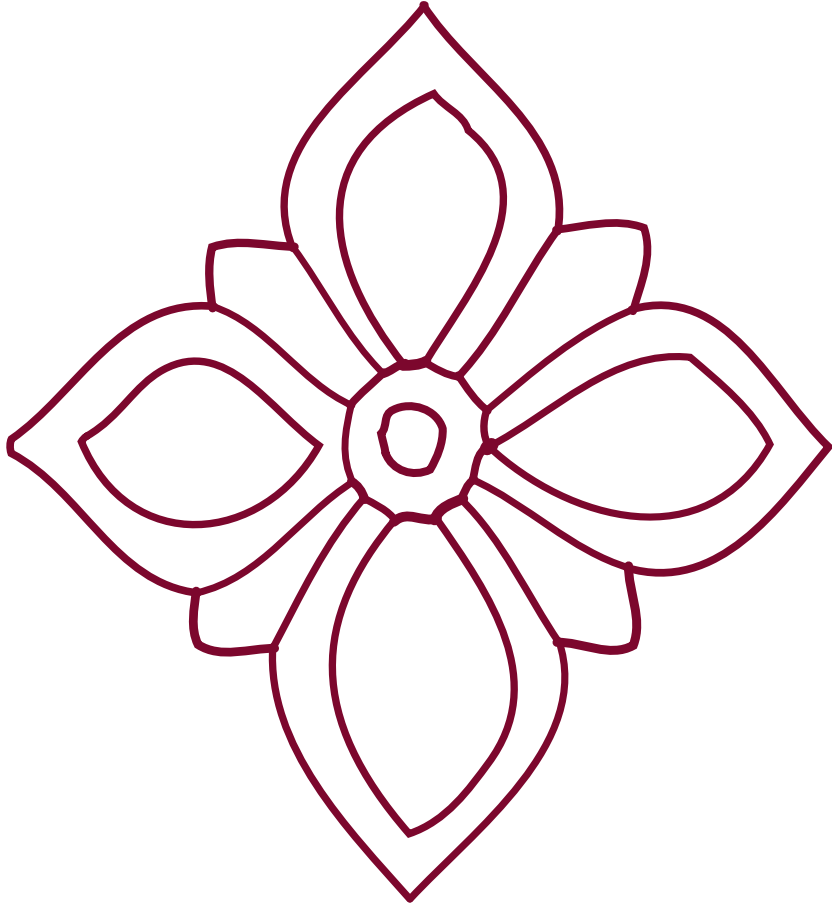
Both disaster management and communicable disease laws should:

- As part of the facilities provided to registered entities (see previous recommendation), include special measures for the arrival of international humanitarian personnel as follows:
 - Upon presentation of a valid passport and letter of authorization from the registered entity stating their qualifications/professional licences, humanitarian purpose and duration of the mission, immediately grant a ‘humanitarian visa’ upon arrival or through Cambodian consulates or embassies prior to departure.
 - In the case that personnel of certain nationalities require additional approval for reasons of national security, a list of these nationalities should be provided to registered entities in advance and approvals of such personnel should receive priority treatment and processed without undue delay.
 - Exempt holders of a ‘humanitarian visa’ from income and other personal tax requirements.

- Grant holders of a 'humanitarian visa' temporary recognition of professional qualifications, driving licences and other types of licence and certificate that have been described by the registered entity in the visa application letter.
- Include specific additional provisions applicable to communicable disease emergencies as follows:
 - Request the additional provision of an international certificate of vaccination or prophylaxis (as provided in Annex 6 of the IHRs) when necessary.
 - Where personnel of a registered entity have come from an infected area and/or could reasonably be considered a potential risk to public health, any required health measures (which must be conducted in accordance with the provisions of the IHRs) must be carried out with the utmost urgency and priority for both entry and exit.
- Include a requirement that all focal points and procedures relating to incoming and outgoing humanitarian personnel be publicly accessible prior to an emergency and provided directly to registered entities from which assistance will be received in the event of an emergency

Communicable disease law should additionally:

- Replace the existing guidelines on health quarantine.
- Include provisions relating to the role and functions of Health Quarantine Officers at border entry points.
- Identify the measures necessary for screening travellers at entry points including use of the model aircraft general declaration and the model maritime declaration of health (see annexes 8 and 9 of the IHRs).
- Identify and determine the conditions under which health measures will be applied to travellers, in accordance with Chapter II of the IHRs on Special Provisions for Travellers.



Rights and freedoms

[Return to Table of Contents](#)

Chapter 12

Chapter 12

Rights and freedoms

12.1 General rights and freedoms

The Cambodian Constitution²⁰¹ recognizes a number of rights and freedoms of individuals. These include the following:

Article 31-

- The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of human Rights, the covenants and conventions related to human rights, women's and children's rights.
- Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, colour, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status.
- The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with law.

Article 32-

- Every Khmer citizen shall have the right to life, personal freedom and security.

Article 35-

- Khmer citizens of either sex shall be given the right to participate actively in the political, economic, social and cultural life of the nation.
- Any suggestions from the people shall be given full consideration by the organs of the State.

Article 38-

- The law guarantees there shall be no physical abuse against any individual.
- The law shall protect the life, honour and dignity of the citizens.

Article 40-

- Citizens' freedom to travel, far and near, and legal settlement shall be respected.
- Khmer citizens shall have the right to travel and settle abroad and return to the country.
- The right to privacy of residence and to the secrecy of correspondence by mail, telegram, fax, telex, and telephone shall be guaranteed.
- Any search of the house, material and body shall be in accordance with the law.

Article 72-

- The health of the people shall be guaranteed. The State shall give full consideration to disease prevention and medical treatment. Poor citizens shall receive free medical consultation in public hospitals, infirmaries and maternities [sic].

Movement of foreign relief organizations

The IFRC legal status agreement gives the organization freedom to “carry out, on the entire territory of Cambodia, such activities as may be necessary for the exercise of its humanitarian mission” and allows members of the delegation freedom of movement and travel.²⁰¹ It may also seek consent to open sub-delegations in other part of the country outside of the capital.²⁰³

The standard MOU for international NGOs, allows the implementation of activities at all locations or at the provincial level through agreement with local authorities.²⁰⁴ However, as described previously, it is unclear whether this provision would apply if an organization was providing disaster relief outside of the scope of the activities covered by the MOU.

[Return to Table of Contents](#)

Generally, foreign personnel in Cambodia interviewed for this study felt they enjoyed freedom of movement and access to many places in Cambodia; however, it was noted there are no express safeguards in existing laws and policies to ensure access to vulnerable or marginalized groups, such as illegal immigrants or undocumented workers.²⁰⁵

Evacuations

The NCDM is tasked to make recommendations to the government about evacuations in the event of an impending or actual disaster.²⁰⁶ The NCDM is also required to identify the means of transport available to evacuate people from affected areas “with the necessity of cooperation from the Royal Armed Forces and National Police in preparing the intervention on time”.²⁰⁷ The Ministry of Land Management, Urbanization and Construction is tasked to collaborate with NCDM and local authorities to identify state-owned land for safe areas²⁰⁸ and identify safe havens such as schools and pagodas.²⁰⁹ In undertaking evacuations, the NCDM must coordinate with relevant ministries, local authorities, UN, international organizations and international NGOs to “evacuate vulnerable people to havens and provide them with security public education, emergency response and other programmes”.²¹⁰

Evacuations should be carried out in a manner that fully respects the rights to life, dignity, liberty and security of those affected. Measures should be taken to safeguard homes and common assets left behind. Evacuated persons should be registered and their evacuation monitored.

See IASC Operational Guidelines on Human Rights and Natural Disasters (2006) art.A1

No further details were found on the conditions under which evacuations should take place – in particular whether they will be undertaken in full consultation with communities, whether they are compulsory and whether they would involve the use force in the event of non-compliance.

Medical isolation, treatment and vaccination

As described above, current border quarantine regulations require that international travellers suspected of carrying a quarantine disease must be initially examined by a clinical doctor in an isolation room, and if the presence of the disease is confirmed, be taken to a medical facility for treatment and/or vaccination.²¹¹ There is currently no detail in existing policies clearly establishing the conditions under which suspect cases will be identified, whether consent is required for isolation and treatment, the duration of confinement and any consequences for non-compliance.

The Constitution states that the “detention of any person shall not be done except in accordance with law”. In this regard, the Law on Criminal Procedure allows ‘judiciary police’ (which include quarantine officers) to detain a suspect for up to 48 hours. In the case where detention is needed beyond 48 hours, the police must request an approval from the prosecutor.²¹²

Additionally, the Code of Conduct for Medical Professionals requires all medical professionals must respect life, body and dignity of every individual.²¹³

Currently, if a quarantine officer or other government official were to force a traveller to comply with these arrangements against their will and confine them in isolation, it would appear to be in conflict with existing law on freedom of movement and unlawful detention. Conversely, if isolation, treatment and vaccinations are not compulsory, it may pose a serious threat to the public at large.

This issue has been raised during several workshops as one of the most

Treatment of travellers

In implementing health measures, States Parties shall treat travellers with respect for their dignity, human rights and fundamental freedoms and minimize any discomfort or distress associated with such measures including by:

- *Treating all travellers with courtesy and respect*
- *Taking into consideration the gender, sociocultural, ethnic or religious concerns of travellers*
- *Providing or arranging for:*
 - *Adequate food and water*
 - *Appropriate accommodation and clothing*
 - *Protection for baggage and other possessions, appropriate medical treatment*
 - *Means of necessary communication if possible in a language they can understand*
 - *Other appropriate assistance for travellers who are quarantined, isolated or subject to medical examinations or other procedures for public health purposes.*

See IHRs (2005) art. 32

important for managing communicable disease emergencies.²¹⁴ Of additional concern is the lack of laws and policies for communicable disease control at the sub-national level, particularly regarding the role of provincial government and health authorities to enforce travel restrictions, isolation and treatment when required.²¹⁵ Without such authority, it is felt officers will be held responsible for rights abuses or the spread of disease.

The SARS outbreak in 2003 did not sufficiently test national systems in this regard, as only a few suspect cases were identified and technical assistance was provided from WHO to encourage appropriate procedures to be followed, however it was felt that quarantine officers were generally aware of the issue of respecting patient's rights.²¹⁶

12.2 Confidential information

Treatment of Personal Data

- *Health information collected or received by a State Party pursuant to these Regulations shall be kept confidential and processed anonymously as required by national law.*
- *States Parties may disclose and process personal data where essential for the purposes of assessing and managing a public health risk.*
- *State Parties, in accordance with national law, and WHO must ensure that the personal data are:*
 - *Processed fairly and lawfully, and not further processed in a way incompatible with that purpose;*
 - *Adequate, relevant and not excessive in relation to that purpose;*
 - *Accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete are erased or rectified; and*
 - *Not kept longer than necessary.*

See IHRs (2005) arts. 45 (1)-(2)

The health quarantine regulation provides that, in event of a suspected case of infection of international travellers, quarantine officers must collect the details of all passengers and crew members on the same flight including full information of name, age, nationality, itinerary, destination and telephone number and convey this information along with any health data of suspect cases to the CDC/MoH.²¹⁷

According to quarantine officers working during the SARS emergency, there were no issues of a breach of confidentiality, however current policies and guidelines do not make any specific provisions as to how such information should be managed.

12.3 Safety and security

The property, assets and personnel of the UN, diplomatic missions and international organizations such as the IFRC, are entitled to personal inviolability and are free from legal process.²¹⁸ Additionally, the government must take all

Affected States should take appropriate measures to address the safety and security of assisting personnel and of the premises, facilities, means of transport, equipment and goods used in connection with their disaster assistance.

See IDRL Guidelines (2007) art. 22

appropriate steps to protect their premises against any intrusion or damage and to prevent any disturbance of the peace of the organization or impairment of its dignity.²¹⁹ The standard MOU for international NGOs does not contain these measures but requires these organizations receive consent from local authorities to conduct activities at provincial level.²²⁰

In general, provincial and municipal administrations are under the jurisdiction of the Ministry of Interior and act as the representatives of the national government at local level to guarantee public order and security, as well as to protect civil rights and improve the living conditions of the people.²²¹ During disasters or other emergencies, it is generally considered that maintaining public security would be the responsibility of the National Police. However, disaster regulations and other relevant policies do not mention the role of the national government in providing security and safety to organizations

engaging in emergency assistance.

Most interviewees for this study felt that security for foreign personnel was not a critical issue in Cambodia. However, concerns were raised that the National Police might not be aware of their role in providing security, particularly for unfamiliar organizations arriving in the wake of a disaster.

Additionally, there were concerns about the threat posed by landmines across the country - particularly for organizations arriving in Cambodia for the first time during a disaster which may be unfamiliar with the location of affected areas.²²² Flooding and soil erosion may also cause a shift in the location of landmines. According to one circular on Disaster Preparedness and Response, the Ministry of Land Management, Urbanization and Construction should collaborate with the NCDM and local authorities in reserving land for safe areas, and where there is doubt about the presence of unexploded ordinance and mines they must collaborate with mine clearance authorities to detect and clear them.²²³ However, there appears to be no special provisions for alerting incoming organizations of the danger areas.

12.4 Recommendations

Disaster management and communicable disease control laws should:

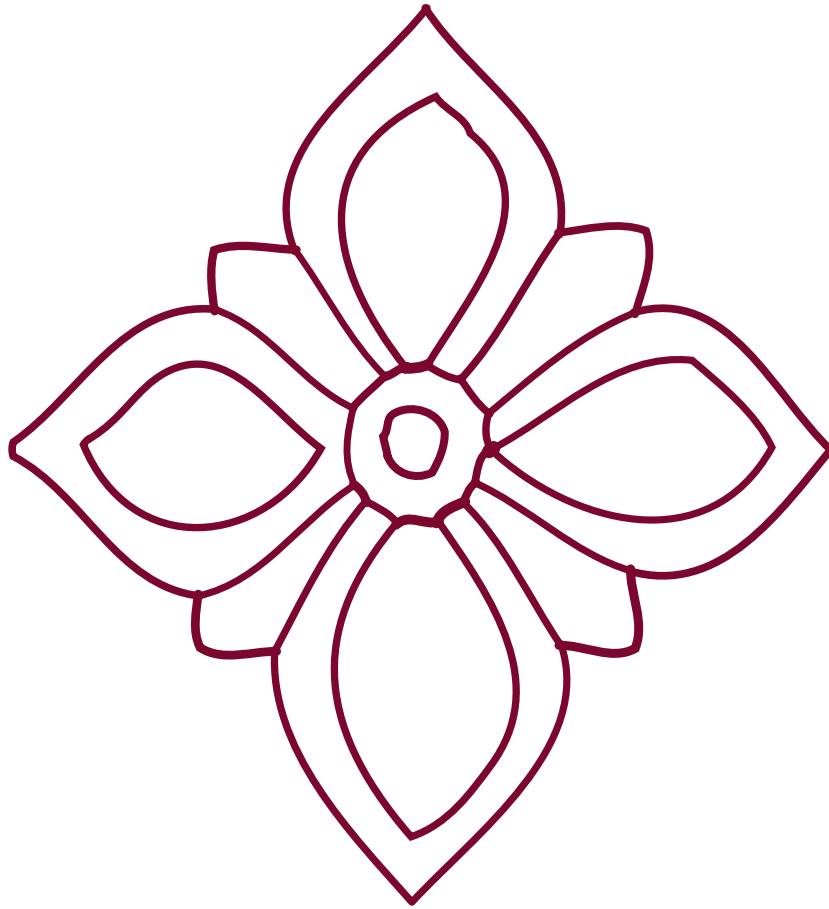
- As part of the facilities provided to registered entities (see previous recommendation) for the purposes of providing relief and initial recovery assistance, include the following:
 - Ensure their freedom of movement and unrestricted access to, from and within affected areas, subject to being made aware of any hazards or health risks.
 - In particular, measures should be taken to clearly indicate all areas affected by communicable disease, landmines or other hazards and to provide information to assisting entities of the nature and location of the risk.
 - Ensure unrestricted access to all affected persons, in particular to vulnerable groups, and people in isolation and quarantine, on the basis of need, regardless of legal status or other criteria
 - Ensure all appropriate measures are taken, including the identification and training of the responsible national department or agency, to address their security, including their personnel, premises, facilities, means of transport, equipment and goods. Special protective measures such as the provision of security guards or armed escorts should only be provided with the consent of the assisting entity.
- Ensure that all personal data collected in the course of disaster management or communicable disease control activities are:
 - Kept confidential and processed anonymously, except where essential for the purposes of managing a public health risk or disaster
 - Processed fairly and lawfully
 - Adequate, relevant and not excessive to the purpose
 - Accurate and where necessary kept up to date, taking all reasonable steps to erase or rectify inaccurate or incomplete data
 - Not kept longer than necessary.

Disaster management laws should additionally:

- Describe how the rights and freedoms of individuals as prescribed in the Constitution will be respected and protected in the context of disaster management activities, in particular in the case of evacuations and displacement of populations, following the recommendations of the IASC Operational Guidelines on Human Rights and Natural Disasters.

Communicable disease control law should:

- Describe how the rights and freedoms of individuals provided in the Constitution and other human rights instruments will be respected and protected in the context of communicable disease control activities, in particular in the case of medical isolation, treatment and vaccination, as described in Chapter III of the IHRs on special provisions for travellers.
- Clarify the authorities responsible for making decisions to ‘compel’ travellers to undergo the health measures described in IHRs art 31(2) and the circumstances under which this will occur. Describe the availability of safeguards such as independent reviews and remedies for wrongful treatment.



Quality, accountability and transparency

[Return to Table of Contents](#)

Chapter 13

Chapter 13

Quality, accountability and transparency

13.1 Accountability and transparency of the government

Government accountability for funding and activities rests with different ministries and departments depending on the context.

Diversion and use of resources

- *States and assisting organizations should cooperate to prevent unlawful diversion, misappropriation, or fraud concerning disaster relief or initial recovery goods, equipment or resources and initiate proceedings as appropriate.*
- *Affected States should use funds and relief goods donated to them, and which they have accepted in relation to a disaster, in a manner consistent with the expressed intent with which they were given.*

IDRL Guidelines (2007) art.6

For general loans and grants made directly to the Government of Cambodia, the Cambodian Audit Authority has the responsibility to conduct audits on financial and other reports that are requested by the donor, in accordance with the terms and conditions of the project agreement.²²⁴

For development aid received from international organizations, NGOs and other governments, the Cambodian Development Council is the single entry point for communication, coordination and accountability.²²⁵ However, in the event of a disaster or communicable disease, the NCDM and CDC/MoH respectively are the institutions with responsibility to facilitate communication between line ministries, the public and the international community regarding donations for emergency response and rehabilitation.²²⁶ Within the NCDM, its organizational chart refers to an Audit Unit; however, there are no further details of its functions.²²⁷

As a consequence, information sharing about sources and amounts of aid remain fairly dispersed. Some departments claim that they have kept records of donations received and details about their use but each institution interviewed was hesitant about being the single entity for accountability for disaster and/or disease emergencies.²²⁸

13.2 Quality and accountability of international relief

In the event of a disaster, NCDM is responsible to ‘coordinate with’ government, national and international institutions, and to propose ways of managing reserves, funds and human resources for emergency response. This role, however, seems to stop short of “being responsible for” these activities and indeed, as described above, the NCDM does not have a strong legal basis for its activities.

At present, each organization contributing international relief—other than through direct donations to the government—manages its funds and activities independently and there are no clear common standards for the conduct of international relief operations.

Thus, one of the few ways the government of Cambodia ensures the quality and accountability of international assistance is through the legal status agreements for international organizations and international NGOs, which could be deemed Cambodia’s “eligibility” criteria.

The standard MOU for international NGOs includes a list of requirements of international NGOs in order to benefit from the facilities of the MOU. These include the obligations to:

- Respect all laws and regulations of the Kingdom of Cambodia, and not engage in any activities that might disturb peace, stability and public order, unity, and culture of Cambodian society

- Carry out activities and implement assistance programmes within the limitations of personnel, resources as described in the project description (annexed to the MOU)
- Refrain from engaging in any profit making activities and any political activities inconsistent with its declared humanitarian objective and social development.
- Provide to the MoFA quarterly detailed activity reports.
- Open a bank account in any bank recognized by the National Bank of Cambodia, and ensure that the administrative costs of the organization do not exceed 25% of the total budget.
- Submit annual financial reports to MoFA and Ministry of Economy and Finance at latest 90 days after closing its account or fiscal year of the Kingdom of Cambodia.
- Employ, wherever possible, a greater number of Cambodian Staff with due respect to their labour rights and reduce to a minimum number of expatriates in line with clearly stated policies to maximize the transfer of skills and expertise to Cambodian staff.
- Refrain from recruiting tourists or illegal immigrants to work in any capacity.
- Agree that local and expatriate staffs are subjected to income tax regulations of the Kingdom of Cambodia.²²⁹

Auditing of organizations is not required but can be requested by the organizations themselves. The MoFA is designated as the competent authority to monitor activities and financial reports of international NGOs which have concluded an MOU. However it is not clear whether the NCDM would take over this responsibility during a disaster situation.

For international organizations such as the UN and the IFRC, eligibility requirements are determined by the nature and principle of the organization itself. For example, the legal status agreement of the IFRC requires the organization to act “in conformity with its own Constitution and with the Fundamental Principles of the Red Cross and Red Crescent Movement.”²³⁰ It also requires all representatives, officials and members of the delegation to act in conformity with the laws of the Kingdom of Cambodia.²³¹

The CRC, by virtue of its unique legal status, is also able receive or refuse any donation from any individual, public and private sectors without condition and may act as agent or as manager of funds and in kind donations.²³² The CRC has also developed its own Guidelines for Emergency Response which include a reference to minimum standards and requirements for relief.²³³

Apart from standards of quality and accountability with respect to customs requirements for certain goods such as food and medication as described previously, it is unclear which standards would apply to organizations arriving in Cambodia to provide emergency assistance.

13.3 Recommendations

Disaster management and communicable disease control laws should:

- Identify the authority responsible for ensuring the transparency and accountability of funds and donations received directly by the government from external sources in the wake of a disaster or communicable disease

Accountability of international assistance

- *Assisting actors and their personnel should abide by the laws of the affected State and applicable international law, coordinate with domestic authorities, and respect the human dignity of disaster-affected persons at all times.*
- *Assisting actors should ensure that their disaster relief and initial recovery assistance is provided in accordance with the principles of humanity, neutrality and impartiality, and in particular:*
 - *Aid priorities are calculated on the basis of need alone;*
 - *Provided without any adverse distinction (such as in regards to nationality, race, ethnicity, religious beliefs, class, gender, disability, age and political opinions) to disaster-affected persons;*
 - *Provided without seeking to further a particular political or religious standpoint, intervene in the internal affairs of the affected State, or obtain commercial gain from charitable assistance;*
 - *Not used as a means to gather sensitive information of a political, economic or military nature that is irrelevant to disaster relief or initial recovery assistance.*

See IDRL Guidelines (2007) art. 4(1)-(2)

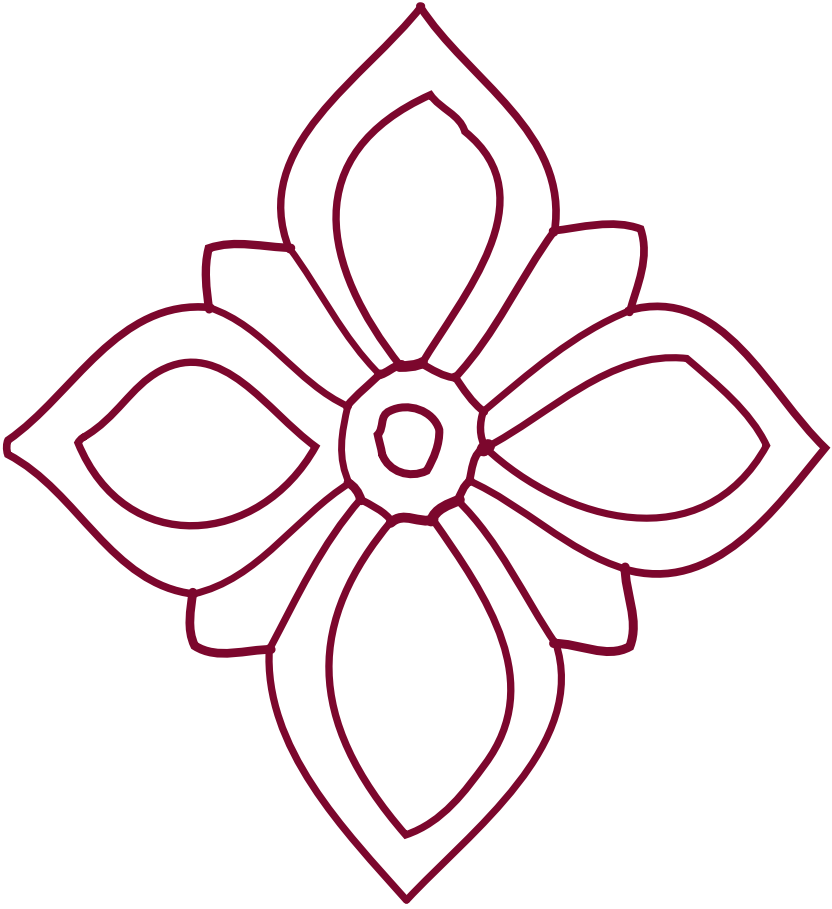
emergency.

- Expressly refer to existing national laws, regulations and guidelines which provide standards of quality and accountability for key disaster and communicable disease control activities, including:
 - Financial accountability and audit requirements for public and international donations
 - Anti-corruption, misappropriation, fraud, diversion of resource and other criminal activity
 - Human rights and protection
 - Public health & safety, hygiene and medical standards
 - Planning and construction
 - Water and sanitation
 - Transport
- With respect to registered entities, ensure that their initial and continued registration is linked directly to their ability to comply with the Responsibilities of Assisting Actors under art 4 of the IDRL Guidelines.
- Identify the authority responsible and the process involved for ensuring the compliance and monitoring of registered entities, while making sure this does not otherwise interfere with the provision of essential humanitarian assistance.

Other laws, regulations or guidelines:

- Where there are no existing national laws, regulations or guidelines for key disaster management or communicable disease control activities, steps should be taken to develop them in collaboration with relevant national, international and civil society bodies.





[Return to Table of Contents](#)

Summary of recommendations

Summary of recommendations

Overarching recommendations

- The overarching recommendations of this report are to develop new laws on disaster management and communicable disease control respectively, to replace the existing instruments.
- They should be developed contemporaneously to ensure their compatibility, to allow the cross-referencing of certain key provisions and to clarify arrangements in situations when both a disaster and communicable disease emergency are present.
- The laws should provide a comprehensive overall framework and principles for the management of disasters and communicable disease, ensure that relevant ministries/agencies have the necessary legal authority to carry out their mandates, enable adequate resource allocation and establish enforcement mechanisms. Specific recommendations for this are included below.
- They should also address the legal arrangements for the facilitation and regulation of international assistance (when needed) in the event of a disaster or communicable disease emergency, including the establishment of a register of authorized entities eligible to receive legal facilities for the provision of disaster and communicable disease emergency relief activities. Specific recommendations for this are included below.

The laws should be supplemented where necessary by a number of implementing Decrees/Sub-Decrees which provide further detail on specific aspects which may require more frequent amendment – however specific recommendations for these are not detailed in this report.

Recommendations on early warning and declaration of a disaster or communicable disease emergency

Disaster management law should:

- Identify clear institutional responsibilities and communication channels for early warning systems, including the role of civil society organizations and communities. This should include better linkages between CCDMs and CRC volunteers to improve capacity for early warning dissemination.²³⁴
- Include, where possible, time indicators for communicating early warning information to ensure that it reaches communities, national and local authorities and other organizations to allow maximum time to prepare and respond.
- Include a definition of disaster - see for example the definition contained in the IDRL Guidelines art. 2(1).
- Establish criteria and an expeditious process for the public declaration of different levels of disaster to trigger the appropriate level of response (provincial, national, international). This should be distinguished from a 'state of emergency' provided under the Constitution.

Communicable disease control law should:

- Identify clear institutional responsibilities and communication channels for surveillance and notification of communicable diseases, which include the role of civil society organizations and communities.

- Include, where possible, time indicators for communicating information to ensure that it reaches communities, national and local authorities and other organizations to allow maximum time to respond.
- Establish criteria and an expeditious process for the public declaration of different levels of communicable disease emergencies, to trigger the appropriate level of response (provincial, national, international). This should be distinguished from a ‘state of emergency’ provided under the Constitution.
- Include official channels for communication with the WHO in accordance with the provisions of the IHR.

Recommendations on institutional arrangements

Disaster management law should:

- Establish NCDM as “a permanent operational entity with national coverage providing an institutional umbrella for coordination of all existing national emergency services, as well as the technical and operation levels of relevant ministries”.²³⁵ This should include its role as:
 - the permanent coordinating and policy making body, responsible establishing national strategies, common policies and practices for all levels;
 - a forum to discuss regular development planning activities which have a bearing on disaster risk reduction; and
 - an authority for day-to-day management and operation including the procurement of emergency supplies and equipment as necessary.²³⁶
- Ensure the adequate allocation of funding from the national budget, commensurate with the roles and responsibilities of the various institutions from national to community level. Consideration should be given to allocating a minimum percentage of the annual national budget for this purpose.
- Clearly allocate specific roles and responsibilities to relevant ministries and departments to prepare and respond for the restoration of livelihoods and lifeline utilities and require that they systematically collaborate and share information about these activities.²³⁷
- Establish an Incident Management System, which could be further elaborated in an additional decree or sub-decree, to clarify command and control arrangements for emergencies and strengthen the coordination functions of the NCDM as well as standardize information sharing and reporting formats.²³⁸
- Include communication and consultation with non-state actors including CRC, NGOs and communities in all disaster management activities at all levels.
- Establish clear roles and responsibilities of the NCDM (and where relevant to MoFA and the Cambodian Development Council) for the coordination of non-government assistance for disaster response, including international assistance.

Communicable disease control law should:

- Clearly reflect the responsibilities of government ministries and departments with respect to communicable disease control activities, taking a multi-sector / multi-agency approach and includes the role of key non-government organizations such as CRC as well as civil society.
- Establish clear communication channels from community to national level to enable to timely and accurate flow of information about communicable disease outbreaks.
- Establish enforcement measures and incentives to ensure that key officials and key government services

[Return to Table of Contents](#)

continue to operate during a communicable disease emergency. Some proposed measures have included offering compensation for families in the case of a government worker's death, greater technical guidance on pandemic response to ensure that officials are clear about their responsibilities, and increased authority for governors and medical doctors to order staff to support the maintenance of public health systems.

- Ensure communicable disease activities include adequate response mechanisms for to manage different levels of disease outbreaks, whether they originate within or outside of Cambodian territory.
- Ensure a 'joined up' approach to preparedness and response with respect to disaster management legislation and planning.
- Ensure the adequate allocation of funding from the national budget, commensurate with the roles and responsibilities of the various institutions from national to community level. Consideration should be given to allocating a minimum percentage of the annual national budget for this purpose.

Recommendations for external assistance

Disaster management and communicable disease law should:

- Identify specific criteria for determining when a disaster/communicable disease emergency has exceeded local and national capacities based on initial and/or ongoing needs and capacity assessments, involving the UN or other organizations where necessary.
- Require that an official request for international assistance is made when national capacities are exceeded.
- Establish the function/institution(s) responsible for deciding and making the request for international assistance.
- Ensure that a decision will be made and communicated to the public and international community in a timely manner - in the case of sudden onset emergencies, within 24 hours of the disaster, or in the case of slow onset emergencies, immediately from the time it is determined that national capacities have been exceeded.
- Identify the focal point through which offers for international assistance may be made and ensure that replies are given within the shortest possible time (ideally within 24 hours)
- Include any specific arrangements for offers and requests from particular organizations such as the UN, the Red Cross and ASEAN to ensure compliance with international rules for their engagement.
- Require that requests for international assistance be as specific as possible as to the types of goods and services needed and, where necessary to avoid duplication and wasted resources, indicate the goods and services which are not required.
- Ensure harmonization between the two laws to prevent the duplication of systems for responding to offers/requests for international assistance and consider the recommendation that the NCDM is only body responsible for making such requests.²³⁹

Recommendations on the legal status of foreign entities providing assistance

Disaster and communicable disease control laws should include the following:

- Establish a register of foreign entities considered eligible to provide relief and initial recovery assistance in Cambodia to be managed and maintained by a designated focal ministry, department or agency.
- Eligibility should be dependent upon an entity's ability to comply with the responsibilities described in arts. 4(1) and (2) of the IDRL Guidelines and a commitment to adhere to the responsibilities of art. 4(3) to the greatest extent practicable. This should ideally be determined by the submission of documentation on the mandate, experience, capacity and key policies of the entity. All submissions should be treated equally and fairly and registration should not be unreasonably withheld.
- All foreign entities which consider themselves likely to offer international assistance to Cambodia should apply for registration, regardless of whether they have existing legal status in Cambodia. Registration will not affect any existing legal status or activities of an organization already present in Cambodia.
- Additionally, the Government of Cambodia should actively identify and request entities to register if they are considered likely to offer or be requested to provide international assistance.
- The effect of registration should be that, when a registered entity is requested or accepted to provide international relief or initial recovery assistance, it will:
 - Retain its existing legal status within Cambodia, or where there is no pre-existing legal status, will be granted immediate temporary legal status on arrival for the duration of its operations.
 - Will receive, as a minimum, the legal facilities described in Part V of the IDRL Guidelines (see further specific recommendations on this throughout this report). Such measures would be in addition to any facilities, privileges and immunities which are already required under domestic and international law.
- In the case of a communicable disease emergency, must also demonstrate sufficient measures are in place to prevent or limit the spread of that particular disease (see further specific recommendations on this throughout this report).
- Once relief and initial recovery operations have commenced, the relevant authority should actively monitor ongoing compliance with eligibility requirements (see recommendations on this in the section below on quality and accountability).
- Entities which have not been pre-registered prior to an emergency and wish to offer international assistance should send a request to the relevant authority and provide the necessary documentation to be included on the register prior to their arrival and commencement of activities. Such requests should be assessed and decisions communicated promptly without undue delay.

Recommendations on international humanitarian transport arrangements

Both disaster management and communicable disease laws should:

- As part of the facilities provided to registered entities (see previous recommendation), include the following:
 - Immediate permission for the speedy passage of their land and marine vehicles and the waiver any associated fees.
 - Immediate permission for overflight, landing and departure of aircraft and authorization for the aircraft to operate within Cambodian territory.

[Return to Table of Contents](#)

- Immediate, temporary recognition of foreign driving licences and foreign vehicle registration and plates.
- Include specific additional provisions applicable to communicable disease emergencies as follows:
 - Apply the model ship sanitation control certificate and aircraft general declaration (see annexes 3 and 9 of the IHRs), with the modification of including a section to indicate whether any cargo on board is intended for emergency humanitarian relief.
 - Where the means of transport has come from an infected area and/or could reasonably be considered a potential risk to public health, ensure that the inspection of transport containing humanitarian cargo is treated with the utmost urgency and priority.
 - All humanitarian cargo should be examined as a first priority over other cargo to determine if any or all of it may be immediately cleared and transported by a different vehicle.
 - In the event that humanitarian transport and/or cargo must be quarantined, every effort must be made to treat/decontaminate and release it as a matter of priority.
 - In all cases, consideration should be given to the humanitarian necessity of the goods involved and prioritized accordingly to ensure they are not unnecessarily delayed.
- Include a requirement that all focal points and procedures relating to incoming and outgoing humanitarian transport be publicly accessible prior to an emergency and provided directly to registered entities from which assistance will be received in the event of an emergency.

Recommendations on customs and tax arrangements for international humanitarian relief

Both disaster management and communicable disease laws should:

- As part of the facilities provided to registered entities (see previous recommendation), include special measures for the import, export and transit of international humanitarian relief goods and equipment as follows:
 - General import/export arrangements:
 - Priority customs clearance, including outside of regular locations and business hours during the emergency period.
 - Exemptions from all export, transit and import restrictions, including for food and telecommunications equipment, or where this is not possible for reasons of security or public health, publish and circulate in advance the nature of any exceptions/restrictions likely to impact on such goods and equipment.
 - Automatic exemption from all customs duties, taxes, tariffs and governmental fees without any additional approvals required from line ministries, including for vehicles.
 - Minimal documentation requirements for import clearance and tax exemptions, ideally limited to the provision of the name of the registered entity, a detailed manifest including any expiry dates, Bill of Lading and external markings on the packaging and containers indicating it is for urgent humanitarian relief.
 - Automatic permission to re-export any equipment or unused goods which the entity wishes to retain without any additional approvals required from line ministries.

- Automatic permission to sell or dispose of imported goods and equipment, with the only requirement that a notice of the sale or disposal, containing the details of any new owners, be provided to the Customs Administration to follow up on any tax or VAT implications with the new owner.

Additional provisions regarding medication and biological products:

- Exemptions from the requirement to pay a registration fee and to provide samples.
 - Establish pre-clearance procedures for medicines most likely to be needed to facilitate immediate clearance upon arrival during an emergency.
 - Ensure the priority clearance of any biological substances required for prevention, diagnosis and other research relating to a communicable disease emergency.
- Include specific additional provisions applicable to communicable disease emergencies as follows:
 - Where humanitarian goods and equipment have come from an infected area and/or could reasonably be considered a potential risk to public health, ensure that any inspections are conducted with the utmost urgency and priority.
 - In the event that humanitarian cargo must be quarantined, every effort must be made to treat/decontaminate and release it as a matter of priority.
 - In all cases, consideration should be given to the humanitarian necessity of the goods involved and prioritized accordingly to ensure they are not unnecessarily delayed.
 - As part of the facilities provided to registered entities (see previous recommendation), include special measures for taxes, other charges, currency and bank accounts as follows:
 - Exemptions or priority processing and return of any VAT or other tax for the procurement of relief supplies and equipment in-country.
 - Specify the charging arrangements for health protection measures which reflect the requirements of arts. 40(1) and (2) of the IHRs.
 - Permission to freely bring or transfer the necessary funds and currencies in, out or within the country through legal means and to open bank accounts in any currency.
 - Include a requirement that all focal points and procedures relating to the above be made publicly accessible and, in the event of an emergency, are provided directly to registered entities from which assistance will be received.

Recommendations on international relief personnel

Immigration law should:

- Establish a new category of ‘humanitarian visa’ for international relief personnel of registered entities (see previous recommendation) for use during emergencies when the entity has been requested or accepted to provide international assistance.
- The ‘humanitarian visa’ should be multiple entry, valid for a minimum period of 3 months and extendable in-country multiple times for up to 12 months each time free of charge, as needed for the provision of relief

and initial recovery assistance.

Both disaster management and communicable disease laws should:

- As part of the facilities provided to registered entities (see previous recommendation), include special measures for the arrival of international humanitarian personnel as follows:
 - Upon presentation of a valid passport and letter of authorization from the registered entity stating their qualifications/professional licences, humanitarian purpose and duration of the mission, immediately grant a ‘humanitarian visa’ upon arrival or through Cambodian consulates or embassies prior to departure.
 - In the case that personnel of certain nationalities require additional approval for reasons of national security, a list of these nationalities should be provided to registered entities in advance and approvals of such personnel should receive priority treatment and processed without undue delay.
 - Exempt holders of a ‘humanitarian visa’ from income and other personal tax requirements.
 - Grant holders of a ‘humanitarian visa’ temporary recognition of professional qualifications, driving licences and other types of licence and certificate that have been described by the registered entity in the visa application letter.
- Include specific additional provisions applicable to communicable disease emergencies as follows:
 - Request the additional provision of an international certificate of vaccination or prophylaxis (as provided in Annex 6 of the IHRs) when necessary.
 - Where personnel of a registered entity have come from an infected area and/or could reasonably be considered a potential risk to public health, any required health measures (which must be conducted in accordance with the provisions of the IHRs) must be carried out with the utmost urgency and priority for both entry and exit.
- Include a requirement that all focal points and procedures relating to incoming and outgoing humanitarian personnel be publicly accessible prior to an emergency and provided directly to registered entities from which assistance will be received in the event of an emergency

Communicable disease law should additionally:

- Replace the existing guidelines on health quarantine.
- Include provisions relating to the role and functions of Health Quarantine Officers at border entry points.
- Identify the measures necessary for screening travellers at entry points including use of the model aircraft general declaration and the model maritime declaration of health (see annexes 8 and 9 of the IHRs).
- Identify and determine the conditions under which health measures will be applied to travellers, in accordance with Chapter II of the IHRs on Special Provisions for Travellers.

Recommendations on rights and freedoms

Disaster management and communicable disease control laws should:

- As part of the facilities provided to registered entities (see previous recommendation) for the purposes of providing relief and initial recovery assistance, include the following:
 - Ensure their freedom of movement and unrestricted access to, from and within affected areas, subject to being made aware of any hazards or health risks.
 - In particular, measures should be taken to clearly indicate all areas affected by communicable disease, landmines or other hazards and to provide information to assisting entities of the nature and location of the risk.
 - Ensure unrestricted access to all affected persons, in particular to vulnerable groups, and people in isolation and quarantine, on the basis of need, regardless of legal status or other criteria
 - Ensure all appropriate measures are taken, including the identification and training of the responsible national department or agency, to address their security, including their personnel, premises, facilities, means of transport, equipment and goods. Special protective measures such as the provision of security guards or armed escorts should only be provided with the consent of the assisting entity.
- Ensure that all personal data collected in the course of disaster management or communicable disease control activities are:
 - Kept confidential and processed anonymously, except where essential for the purposes of managing a public health risk or disaster
 - Processed fairly and lawfully
 - Adequate, relevant and not excessive to the purpose
 - Accurate and where necessary kept up to date, taking all reasonable steps to erase or rectify inaccurate or incomplete data
 - Not kept longer than necessary.

Disaster management laws should additionally:

- Describe how the rights and freedoms of individuals as prescribed in the Constitution will be respected and protected in the context of disaster management activities, in particular in the case of evacuations and displacement of populations, following the recommendations of the IASC Operational Guidelines on Human Rights and Natural Disasters.

Communicable disease control law should:

- Describe how the rights and freedoms of individuals provided in the Constitution and other human rights instruments will be respected and protected in the context of communicable disease control activities, in particular in the case of medical isolation, treatment and vaccination, as described in Chapter III of the IHRs on special provisions for travellers.
- Clarify the authorities responsible for making decisions to ‘compel’ travellers to undergo the health measures described in IHRs art 31(2) and the circumstances under which this will occur. Describe the availability of safeguards such as independent reviews and remedies for wrongful treatment.

Recommendations on quality, accountability and transparency

Disaster management and communicable disease control laws should:

- Identify the authority responsible for ensuring the transparency and accountability of funds and donations received directly by the government from external sources in the wake of a disaster or communicable disease emergency.
- Expressly refer to existing national laws, regulations and guidelines which provide standards of quality and accountability for key disaster and communicable disease control activities, including:
 - Financial accountability and audit requirements for public and international donations
 - Anti-corruption, misappropriation, fraud, diversion of resource and other criminal activity
 - Human rights and protection
 - Public health & safety, hygiene and medical standards
 - Planning and construction
 - Water and sanitation
 - Transport
- With respect to registered entities, ensure that their initial and continued registration is linked directly to their ability to comply with the Responsibilities of Assisting Actors under art 4 of the IDRL Guidelines.
- Identify the authority responsible and the process involved for ensuring the compliance and monitoring of registered entities, while making sure this does not otherwise interfere with the provision of essential humanitarian assistance.

Other laws, regulations or guidelines:

Where there are no existing national laws, regulations or guidelines for key disaster management or communicable disease control activities, steps should be taken to develop them in collaboration with relevant national, international and civil society bodies.

End notes

- 1 See David Fisher, *Law and Legal Issues in International Disaster Response: A Desk Study – Summary Version* (International Federation of Red Cross and Red Crescent Societies 2007)
- 2 Adopted by Resolution 4 of the 30th International Conference of the Red Cross and Red Crescent (Geneva, 2007) and since recognised by the UN General Assembly, UNECOSOC and other international and regional bodies
- 3 Adopted by the 58th World Health Assembly in May 2005
- 4 The following information is from: *Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (IFRC, Geneva 2008) available at: <http://www.ifrc.org/what/disasters/idrl/resources/guidelines.asp>
- 5 For example, United Nation General Assembly Resolutions 63/139 and 63/141 of 2009 “encourage[d] Member States and, where applicable, regional organizations to strengthen operational and legal frameworks for international disaster relief, taking into account, as appropriate, the Guidelines for Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, adopted at the thirtieth International Conference of the Red Cross and the Red Crescent held in Geneva in November 2007”
- 6 The following information is from the IFRC IDRL website: <http://www.ifrc.org/what/disasters/idrl/research/libr.asp>. Further information is also available from the WHO website: <http://www.who.int/csr/ihl/en/>
- 7 This information is from the IFRC IDRL Website: <http://www.ifrc.org/what/disasters/idrl/research/tampere.asp>. Further information is also available from the official Tampere Convention webpage: <http://www.reliefweb.int/telecoms/tampere/index.html>
- 8 *World Conference on Disaster Reduction 18-22 January 2005, Kobe, Hyogo, Japan; Hyogo Framework For Action 2005-2015: Building the Resilience of Nations and Communities to Disasters* (2005)
- 9 *World Conference on Disaster Reduction 18-22 January 2005, Kobe, Hyogo, Japan; Hyogo Framework For Action 2005-2015: Building the Resilience of Nations and Communities to Disasters* (2005), p1
- 10 UNISDR and UNOCHA, *Disaster Preparedness for Effective Response Guidance and Indicator Package for Implementing Priority Five of the Hyogo Framework* (Geneva, 2008)
- 11 ASEAN Agreement on Disaster Management and Emergency Response (2005) art. 4
- 12 Available at: <http://www.asean.org>
- 13 World Health Organization Western Pacific Regional Committee, 56th Session, Noumea, New Caledonia, 19-23 September 2005, WPR/RC56/7
- 14 *Asia Pacific Strategy for Emerging Diseases* (WHO, 2005), Executive Summary
- 15 *Asia Pacific Strategy for Emerging Diseases* (WHO, 2005), Objective 3, Expected Result 1, see in particular footnotes 9 and 10
- 16 Asian Development Bank: <http://www.adb.org/GMS/agreement.asp>
- 17 ACMECS, *Economic Cooperation Strategy Plan of Action* (2003), <http://www.acmecs.org/>
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- 19 ACMECS, *Immediate Action Plan for Preventing and Controlling Avian Influenza Pandemic* (2006), <http://www.acmecs.org/>
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Annex 1

List of consultations

Individual interviews were conducted with:

Cambodian Red Cross

- H.E. Ouk Damry, First Vice President
- H.E. Pum Chantinie, Secretary General
- Lct. Mean Neary Sopheak, Deputy Secretary General
- H.E. Uy Sam Ath, Director of Disaster Management Department
- H.E. Sok Long, Director of Health Management Department
- Mr. Seng Samban, Community Health Program Officer

National Committee for Disaster Management

- H.E. Peou Samy, Secretary General
- H.E. Ross Sovann, Deputy Secretary General and Chief of Emergency Coordination Centre

Ministry of Health

- Dr Sok Touch, Director General of Communicable Disease Department
- Mr. Ly Sovan, Deputy Director General of Communicable Disease Department

World Health Organization

- Rodger Doran, Emergency and Humanitarian Action Programme for Mekong Countries
- Maggs McGuinness, Technical Officer Pandemic Planning

Danish Red Cross

- Andrew Oliver-Smith, Water and Sanitation Specialist

Siem Reap Province

- Mr. Bun Tharith, Deputy Governor, Siem Reap Province
- Dr. Dy Buncheon, Director of Health Department, Siem Reap Province
- Dr. Kheang Soktry, Deputy Director of Communicable Disease Control, Siem Reap Province
- Mr. Bun Ratha, Director of Siem Reap Airport

- Mr. Leang Panhawath, Deputy Director of Referral Hospital, Siem Reap Province
- Monk. Chhun Chhoeurn, Deputy Chief of Wat Domnak Temple, Siem Reap Province

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- UNDP Avian Influenza Partnership Meetings (Sept 2008, November 2008, January 2009)
- Cambodian Red Cross Partnership Meeting (Phnom Penh, October 2008)
- Cambodian Red Cross Annual Conference (Phnom Penh, December 2008)
- Pandemic Planning Simulation Workshops (Siem Reap, September and December 2008)
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Document layout and design by
Thomas Meadley and Mark Wesley-Smith,
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[Return to Table of Contents](#)

