

Implementing the Law on Disaster Management in Cambodia

Developing Subsidiary Legislation



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Since the finalization of the research (October 2016) and publication of the report (June 2017), there has been substantial progress in Cambodia in the development of many of the suggested implementing rules and regulations. The report has been updated where necessary to incorporate and reflect this progress.

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List of Abbreviation

AADMER	ASEAN Agreement on Disaster Management and Emergency Response	IFRC	International Federation of Red Cross and Red Crescent Societies
ADB	Asian Development Bank	MAFF	Ministry of Agriculture, Forestry and Fisheries
AHI	Avian and Human Influenza	MEF	Ministry of Economy and Finance
CBDRM	Community Based Disaster Risk Management	MOE	Ministry of the Environment
CBDRR	Community Based Disaster Risk Reduction	MOH	Ministry of Health
CCA	Climate Change Adaptation	MOI	Ministry of Interior
CGDM	Commune Committee for Disaster Management	MOP	Ministry of Planning
GDP	Commune Development Plan	MOWRAM	Ministry of Water Resources and Meteorology
GIP	Commune Investment Plan	MRD	Ministry of Rural Development
CRC	Cambodian Red Cross	NGDM	National Committee for Disaster Management
DCDM	District Committee for Disaster Management	PCDM	Provincial Committee for Disaster Management
DM	Disaster Management	RGC	Royal Government of Cambodia
DM Law	Law on Disaster Management	SFDRR	Sendai Framework for Disaster Risk Reduction 2015-2030
DMIS	Disaster Management Information System	SNAP	Strategic National Action Plan for Disaster Risk Reduction
DRR	Disaster Risk Reduction	SOP	Standard Operating Procedure
DRM	Disaster Risk Management	UNISDR	United Nations International Strategy for Disaster Risk Reduction
ECHO	European Commission Humanitarian Aid and Civil Protection Directorate General	UNDAC	United Nations Disaster Assessment and Coordination
EWS	Early Warning System	UNDMT	United Nations Disaster Management Team
HFA	Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities	UNDP	United Nations Development Programme
IDRL	International Disaster Response Laws Rules and Principles	WRI	World Risk Index

Summary for Policy Makers

In June 2015 Cambodia's legislature passed the Law on Disaster Management (DM Law).¹ This represents a major shift from an institutional system for disaster management based only on subsidiary legislation, which had been in place since 1995, to a broader and more authoritative legislative mandate on disaster management.² A legal framework for disaster management assigns legally binding roles and responsibilities, establishes institutions, and can also help ensure allocation of resources and mechanisms for coordination amongst different institutions.

Cambodia's DM Law objective is to regulate disaster management in Cambodia and it has the three stated goals of:

- Prevention, adaptation and mitigation in the pre-disaster period, due to natural or human-made causes
- Emergency response during the disaster
- Recovery in the post-disaster period.³

In addition, it clarifies that hazard risk prevention programmes need to address climate change adaptation.⁴

The DM Law formalizes the National Committee for Disaster Management (NCDM) as the main authority of the Royal Government of Cambodia (RGC) on disaster management, and mandates it to 'lead, administer and coordinate all disaster management activities.'⁵ The law also formalizes the expenditure mechanism for the functioning of NCDM which is allocated by the national budget in the budget plan of the Office of the Council of Ministers, and the state is required to maintain a sufficient reserve to resource disaster management.⁶ The NCDM is to be supported by a Secretariat-General, focal points in line government ministries, and Sub-National Committees for Disaster Management down to local level, which have a key operational role.⁷ The disaster management framework and relative responsibilities of these institutions are set out in broad terms within the law.⁸

The DM Law also provides, for the first time, a strong legal basis for the NCDM to coordinate international assistance during major disasters, including provisions to clarify the country's needs in the case of an appeal for assistance, and then facilitate tax exemption entry of humanitarian relief supplies, and coordination of assisting international institutions.⁹ The law also sets out rights, obligations and legal penalties concerning disaster situations.¹⁰

1 Promulgated by Royal Decree NS/RKM/0715/007, it was passed by the National Assembly 8 June 2015, and the Senate 30 June 2015. An English translation is used in the preparation of this report.

2 The NCDM was established in 1995 under Sub-decree No.35 of 27 June, 1995, which was modified by Sub-Decree No.54 ANKR-BK of June 14, 1999.

3 DM Law Arts. 1,2, 3.

4 Ibid. Art. 10.

5 Ibid. 6.

6 Ibid. Chapters 6, 7 and 8.

7 Ibid. 2, Arts. 7 -9.

8 Ibid. Chapters 3 and 4.

9 Ibid. 5, Arts. 28-34.

10 Ibid. Chapters 6, 7 and 8.

The DM Law, like most legislation in Cambodia, provides an ‘umbrella’ mandate that relies on subsidiary legislation to be made by the executive branch, the Royal Government of Cambodia (RGC), to provide for more detailed implementation. For example, under the DM Law, subsidiary legislation in the form of Royal Decrees (Preah Reach Kret), and Sub-Decrees (Anu-Kret), together with the principal law, provide the basis for policies, plans and implementation strategies on disaster management. The DM Law requires that decrees are made to set out in detail the organization and functioning of the NCDM and the Secretariat-General, including the appointment of senior officers in the Secretariat-General, as well the organization and functioning of the Sub-National Committees for Disaster Management.¹¹ A decree is required to establish a National Disaster Management Day,¹² as well as for key operational matters, including the national mobilization procedure after a disaster is declared, and how the entry of international humanitarian assistance will be facilitated in practical terms.¹³

The task of drafting such decrees, along with guidelines specified in the DM Law, is now a priority for full implementation of this law. This report is intended to provide the RGC, and more specifically the NCDM, with a practical resource and recommendations for the next stage of implementation of the DM Law.

The discussion in this report has focused on implementing the DM Law through the subsidiary legislation mandated within the law itself. The recommendations for development of substantive decrees are based on the specific provisions that require them, and the overall objectives and goals of the DM Law. An effort has also been made to address the key challenges identified by stakeholders and reviews of the pre-existing system. The report includes some additional areas proposed for subsidiary legislation for consideration of the RGC, which are not mandated by the DM Law, but fall within its general scope.

Table 1, below, summarizes the nine mandated Royal Decrees and Sub-Decrees in the DM Law and recommends a general approach to each. As noted in the table, not all of these decrees are intended to be substantive regulations. The Sub-Decree on the national disaster days (Article 5), and the Royal Decree appointing the NCDM office holders (Article 7) are straightforward procedural decrees that do not require further comment in this report. The remaining seven decrees, and recommendations on their content, are discussed below the table, with a summary of the report’s recommendations on their content.

11 Ibid. Arts. 6, 7, and 9.

12 Ibid. Art. 5.

13 Ibid. Arts. 25 and 34 respectively.

Table 1: Summary of Mandated Subsidiary Legislation and Recommended Approach

Type of Decree	DM Law Article No.	Purpose	Recommendation
1. Sub-Decree	Article 5	National Disaster Management Day jointly with the ASEAN Day for Disaster Management (ADDM) and the International Day for Disaster Reduction (IDDR). The date tentatively in the 2nd week or 13th October of the year.	This is a largely procedural decree to establish the dates and purposes of special days to raise disaster risk awareness. No recommendations are made in this report regarding this sub-decree.
2. Royal Decree	Article 6	Organization and Functioning of the NCDM	The Royal Decree was promulgated on 29 December 2015
3. Royal Decree or Sub-Decree	Article 7	Nomination of the Secretary-General and Deputy Secretary-Generals of the NCDM Secretariat-General	This is an internal administrative and decree procedures for the appointment of the Secretary-General and Deputy Secretary-Generals of NCDM.
4. Sub-Decree	Article 7	Organization and Functioning of the NCDM Secretariat-General	This will need to be a substantive regulation. It is recommended to set out detailed functional responsibilities of the Secretariat-General as a whole, based on the range of functions of the NCDM set out in the DM Law, and to review the existing departmental structure.
5. Sub-Decree	Article 9	Organization and Functioning of the Sub-National Committees for Disaster Management	This will need to be a substantive regulation. It will need to define membership and appointment of the Sub-National Committees for Disaster Management, and it is recommended that it set out the full range of functions for these Committees as described throughout the DM Law.
6. Sub-Decree	Article 25	Disaster Response Mobilization Procedure And Reimbursement for Use of Assets	This will be a technical regulation to advise on procedures, transparency and reimbursement for mobilization of state and private assets in an emergency response. It is recommended to use specialized legal and financial expertise to draft this Sub-Decree.
7. Sub-Decree	Article 34	Specific Procedure for facilitating the Entry of International Response Teams and Humanitarian Assistance	This will need to be a substantive regulation. It is recommended to use the IDRL Guidelines and the IDRL Model Act, as well as key AADMER related documents as resources to draft a stand-alone Sub-Decree on this, which must also be consistent with the other Sub-Decrees.
8. Resolution	Article 6	The appointment of the Components of the National Committee for Disaster Management (NCDM)	The Resolution was issued on 3 March 2016
9. Sub-Decree	Article - 8	Establishment a disaster management unit/ mechanism in the respective ministries-institutions and assign a focal point	To be drafted

Of the nine decrees mandated by the DM Law, the highest priority and most substantive ones are the following four:

1. Royal Decree on the Organization and Functioning of the NCDM (Article 6)

The Royal Decree defines the organization and functioning of the National Committee for Disaster Management hereafter referred to as “NCDM”, as the headquarters of the Royal Government to lead,

administer and coordinate all disaster management activities induced by either natural or human-made disasters in the Kingdom of Cambodia.

The NCDM has the following tasks and responsibilities:

- Issue the policies, strategic plans, plans of action, regulations, programmes and projects for disaster management;
- Issue guidelines for implementation of disaster management, promote public awareness, prevention, mitigation, preparedness, emergency response and recovery for safety and resilience;
- Recommend the Royal Government to take action on every case that will cause disaster and disaster occurrence;
- Coordinate the implementation of disaster risk reduction, mainstreaming of climate change, sustainable development, and gender issues by collaboration with line ministries in developing and strengthening the institutions, mechanisms and disaster management at all levels, in particular, at local community level to ensure better response during emergencies;
- Mobilize resources for implementation of policies, strategic plans, plans of action, relevant programmes and projects of disaster risk reduction;
- Strengthen collaboration and cooperation with development partners, public sector, private sector and civil society for the benefits of disaster reduction;
- Strengthen and expand collaboration at the regional and international levels in disaster reduction;
- Manage the information and communication associated with disaster risk reduction activities;
- Raise proposal to the Royal Government on the requirement, reserve, budget, resource and assistance for emergency response and recovery;
- Implement other tasks assigned by the Royal Government.
- Convene a meeting at least once a year upon the invitation of the President; and
- Invite the representatives of ministries, institutions, public sector, private sector, development partners, and civil society to participate in the consultation meeting and conduct the research on every issue associated with the disaster management framework.

2. Sub-decree on the Organization and Functioning of the NCDM Secretariat-General (Article 7)

The DM Law Article 7 requires two decrees concerning the NCDM Secretariat-General. One concerns only the appointment of the Secretary-General, and the Deputy Secretaries-General, which will be a short procedural Royal Decree or Sub-Decree once the other Sub-Decree is made. The other Sub-Decree, discussed in the report, is the one that establishes the organization and functioning of the Secretariat-General. It is recommended to follow a similar structure to the articles proposed for the NCDM establishment decree, but in addition:

Establish the structure of the Secretariat-General, including (a) the position of the Secretary-General, and the Deputy Secretaries-General and (b) the number and designation of the main departments (assuming each will be headed by a Deputy Secretary-General);

- a. Allocate more specific operational roles and mechanisms to the Secretariat-General, such as (a) requiring to develop guidelines and procedures such as Standard Operating Procedures (SOPs) for emergency response operations and national policies, and (b) identify focus areas to develop national capacity in disaster management, such as hazard mapping and risk assessments, training, drills and simulation exercises, developing the national EWS, maintaining a disaster management information system (DMIS) etc.

3. Sub-decree on the Organization and Functioning of the Sub-National Committees for Disaster Management (Article 9)

DM Law Article 9 requires a Sub-Decree on the Organization and Functioning of the Sub-National Committees for Disaster Management. As this is the only decree concerning the Sub-National Committees, it needs to establish their institutional structure as well as set out more specific functional responsibilities under the DM Law. It is recommended to follow a similar structure to that proposed for the NCDM establishment decree, which the report has detailed under five major headings:

- a. Creation of the Sub-National Committees for Disaster Management at each level – Province, District/ Precinct and Commune/Sangkat. Consideration could also be given to including village level structures, such as the Village Disaster Management Group (VDMG) previously established.
- b. Membership at each level
- c. Budget and resource allocation
- d. set out the lines of reporting and responsibility for each type of Sub-National Committee, especially vis-à-vis local government authorities, local branches of line ministries, the NCDM and the RGC.
- e. Specific functions and responsibilities under Chapter 4 on Governance, which include disaster risk identification, risk analysis and integrating DRR into development plans, developing contingency plans and reserving assets for disaster relief and emergency response, and acting as the first line emergency responders along with local authorities, with a key role in reporting to the NCDM to trigger national mobilization.

4. Sub-Decree on the Specific Procedure for Facilitating the Entry of International Response Teams and Humanitarian Assistance (Article 34)

It is recommended that key NCDM responsibilities for the coordination and facilitation of international assistance are part of the NCDM mandate and to be addressed in the decrees made under Articles 6 and 7. However the DM law also requires a Sub-Decree to set out specific procedures for facilitating the entry of international response teams and humanitarian assistance. The extent and scope of the Article 34 Sub-Decree will depend on how detailed the RGC decides to make the Article 6 and 7 general decrees on the NCDM and its Secretariat-General, concerning the many functions that the NCDM is given under Chapter 5 on international cooperation and assistance. The key objective will be to ensure that, between the different decrees, there is sufficient concrete guidance to operationalise the DM Law provisions, and that they form a seamless yet detailed regulatory framework for the entry and coordination of international disaster assistance.

This report recommends that the Article 34 sub-decree on international assistance is as comprehensive as possible, drawing on the key elements of facilitating and regulating international assistance

as found in the IDRL Guidelines and Model Act (should include footnote), so that all these substantial contents are detailed and clarified in one decree. Some potential content for the Article 34 Sub-Decree is set out in the report, based on the DM Law provisions and the IDRL Guidelines and related tools. These include the potential during a major disaster to:

- a. Initiate inter-ministerial “one-stop-shops” at entry points, to take care of customs/tax exemption procedures, visas and registration, a model recommended in the IDRL Model Act and used successfully in a number of countries, including Indonesia and the Philippines;
- b. Provide coordination and information for international teams operating in Cambodia during the disaster; and
- c. Provide for other mechanisms to support international responders, such as granting them temporary legal recognition as organizations (legal personality) so that they can enter contracts (hire local staff, rent premises, purchase good and equipment, open bank accounts).

Further details on the initiation, termination, facilitation and regulation of international disaster assistance can be drawn from tools such as the IDRL Guidelines and Model Act on International Disaster assistance, should the RGC wish to put in place detailed and adequate procedures.

5. The other three decrees mandated by the DM Law

These are more technical or procedural in nature. They include:

- a. The Article 5 Royal Decree setting dates for the national days on disaster management, which will need to be very short and procedural;
- b. The Article 7 Royal Decree or Sub-Decree appointing the NCDM Secretariat-General officer holders. This will be a short procedural decree which will need to be made after the other Article 6 decree establishing the Secretariat-General and the positions to be filled; and
- c. The Article 25 Sub-Decree to establish a procedure for disaster response mobilization and reimbursement. This will be a technical regulation concerning the manner in which the NCDM may mobilize public and private assets in the context of an emergency operation, and the compensation payable for such use. It is recommended that the RGC engages financial and legal experts in Cambodian law to assist with drafting this regulation.

6. Other recommended subsidiary legislation

In addition to the subsidiary legislation specifically mandated by the DM Law, the report also proposes three other areas that fall within the scope of the law, on which the RGC could usefully make additional subsidiary legislation. These are:

- a. **Disaster funds:** if there is a desire to establish special disaster management funds that are separate from the national budgets, this might require separate subsidiary legislation to be made at the discretion of the RGC. The DM Law provides sufficient powers for the RGC to do so, under Chapter 7, Articles 38 and 39. It is recommended that the RGC explore this option, which has been widely identified as one of the major issues impacting the effectiveness of the disaster management system to date, and may be considered a necessary part of fulfilling the goals of the DM Law. For example, specialist disaster management funds have been established in Viet Nam and the Philippines, the second of these including both disaster response funds and disaster risk reduction funds to be set aside at both national and local level.

- b. **International and regional instruments:** while the role of the NCDM regarding international and regional institutions could form part of the Royal Decree and Sub-Decrees on its organization and functioning, there may be other aspects of international and regional instruments that require additional subsidiary legislation to ensure the commitments are integrated into the disaster management system. The DM Law's very broad objectives and goals and disaster management framework (Chapters 1-3) provide scope for such additional subsidiary legislation. This may be especially relevant to regional cooperation with other ASEAN member states under the ASEAN Agreement on Disaster Management and Emergency Response (AADMER,) and the need to have clear roles and procedures within Cambodia's DM system to make its commitments effective. There may also be a need to set up new mechanisms for creating targets for Cambodia and monitoring their implementation under the Sendai Framework for Disaster Risk Reduction 2015-2030 (SFDRR).
- c. **Joint Ministerial Initiative on Managing Climate Risk:** The inclusion of climate risk as an essential aspect of hazard risk prevention is included in the DM Law in Article 10. This will require particular cooperation with the Ministry of the Environment, which has primary responsibility for climate change issues. At its discretion, the RGC could make subsidiary legislation to support policies and procedures to achieve this, based on DM Law Article 10. It is recommended that this aspect of the DM law implementation be undertaken in consultation with the Ministry of the Environment and the drafting team of the proposed new environmental code, which is currently being prepared with support from UNDP in Cambodia.

Implementing the Law on Disaster Management in Cambodia

Developing Subsidiary Legislation

Main Report

Part I. Introduction

1. Overview

In June 2015 Cambodia’s legislature passed the Law on Disaster Management (DM Law).¹⁴ This represents a major shift from an institutional system for disaster management based only on subsidiary legislation, which had been in place since 1995, to a broader and more authoritative legislative mandate on disaster management.¹⁵ A legal framework for disaster management assigns legally binding roles and responsibilities, establishes institutions, and can also help ensure allocation of resources and mechanisms for coordination amongst different institutions.

The objective of Cambodia’s DM Law is to regulate disaster management in Cambodia, and it has the three stated goals of:

- Prevention, adaptation and mitigation in the pre-disaster period, due to natural or human-made causes
- Emergency response during the disaster
- Recovery in the post-disaster period.¹⁶

In addition, it clarifies that hazard risk prevention programmes need to address climate change adaptation.¹⁷

The DM Law formalizes the National Committee for Disaster Management (NCDM) as the main authority of the Royal Government of Cambodia (RGC) on disaster management, and mandates it to ‘lead, administer and coordinate all disaster management activities.’¹⁸ The law also formalizes the expenditure mechanism for the functioning of NCDM which is allocated by the national budget in the budget plan of the Office of the Council of Ministers, and the state is required to maintain a sufficient reserve to resource disaster management.¹⁹ The NCDM is to be supported by a Secretariat-General, focal points in line government ministries, and Sub-National Committees for Disaster Management down to local level, which have a key operational role.²⁰ The disaster management framework and relative responsibilities of these institutions are set out in broad terms.²¹

The DM Law also provides, for the first time, a strong legal basis for the NCDM to coordinate international assistance during major disasters, including provisions to clarify the country’s needs in an appeal for international assistance is made, and then to facilitate tax exemption entry of humanitarian relief supplies, and coordination of assisting international institutions.²² The law also sets out rights, obligations and legal penalties concerning disaster situations.²³

14 Promulgated by Royal Decree NS/RKM/0715/007, it was passed by the National Assembly 8 June 2, and the Senate 30 June 2015. An English translation is used in the preparation of this report.

15 The NCDM was established in 1995 under Sub-decree No.35 of 27 June, 1995, which was modified by Sub-Decree No.54 ANKR-BK of June 14, 1999.

16 DM Law Arts. 1,2, 3.

17 Ibid. Art. 10.

18 Ibid. 6.

19 Ibid. Chapters 6, 7 and 8.

20 Ibid. 2, Arts. 7 -9.

21 Ibid. Chapters 3 and 4.

22 Ibid. 5, Arts. 28-34.

23 Ibid. Chapters 6, 7 and 8.

The DM Law, like most legislation in Cambodia, provides an ‘umbrella’ mandate that relies on subsidiary legislation to be made by the executive branch, the Royal Government of Cambodia (RGC), to provide for more detailed implementation of the law. For example, under the DM Law, subsidiary legislation in the form of Royal Decrees (Preah Reach Kret), and Sub-Decrees (Anu-Kret), together with the principal law, provide the basis for policies, plans and implementation strategies on disaster management. The DM Law requires that decrees are made to set out in detail the organization and functioning of the NCDM and the Secretariat-General, including the appointment of senior officers in the Secretariat-General, as well the organization and functioning of the Sub-National Committees for Disaster Management.²⁴ Decrees are required to establish a National Disaster Management Day,²⁵ as well as for key operational matters, including the national mobilization procedure after a disaster is declared, and how the entry of international humanitarian assistance will be facilitated in practical terms.²⁶

The task of drafting such decrees, along with guidelines specified in the DM Law, is now a priority for full implementation of the law. This report is intended to provide the RGC, and more specifically the NCDM, with a practical resource and recommendations for this next stage of implementation of the DM Law.

2. Purpose and structure of this report

This report considers the DM Law goals, definitions, institutional arrangements and resourcing provisions as the basis for interpreting the purposes and possible content of the various decrees and guidelines which the DM Law mandates. It addresses the scope of the specified subsidiary legislation in fulfilling the DM Law’s goals, while recognizing the importance of building on the pre-existing institutions and policies to ensure the most practical path to implementation. The report also notes that the DM law requires the development of Guidelines by the NCDM at national level to guide Sub-National Committees and other institutions in implementing the DM Law.

Secondly, the report considers the relationship between the DM Law and Cambodia’s commitments to regional cooperation and national disaster risk reduction under two key regional and international DRM frameworks, the ASEAN Agreement on Disaster Management and Emergency Response (AADMER) and the Sendai Framework for Disaster Risk Reduction 2015-2030 (SFDRR). Although the DM Law does not directly refer to international or regional instruments, the reports considers whether the DM Law provisions and the subsidiary legislation it calls for can strengthen Cambodia’s implementation of these agreements, and how it this might be done.

Finally, the report explores some remaining gaps, and highlights some other areas where subsidiary legislation could potentially be made, at the discretion of the RGC, to ensure procedural clarity and ongoing human and financial resource investments in disaster and climate risk management in Cambodia.

The report is based on:

- a. An analysis of the provisions of the DM Law concerning subsidiary legislation and guidelines, considered in the context of the law’s overall priorities for disaster management and the institutional arrangements it mandates;

24 Ibid. Arts. 6, 7, and 9.

25 Ibid. Art. 5.

26 Ibid. Arts. 25 and 34 respectively.

- b. Key informant interviews and a focus group discussion with stakeholders, undertaken by Dr Humayun. Participants are listed in Annex A;
- c. Secondary sources concerning international best practice on implementing laws and developing subsidiary legislation on disaster risk management (DRM) and disaster risk reduction (DRR). This includes IFRC and UNDP's prior work on effective law and regulation for disaster risk reduction and on legal preparedness for international assistance during major disasters. Key resources include: the *IDRL Guidelines* concerning legal preparedness to facilitate international humanitarian assistance during disasters,²⁷ and associated tools such as the *Model Act on International Disaster Assistance*,²⁸ a *Draft Model Emergency Decree*,²⁹ and the *Checklist on Law and Disaster Risk Reduction*,³⁰ its associated implementation *Handbook*,³¹ and the comparative country research report on which these DRR tools were based.³²
- d. Principles and mechanisms established by relevant international and regional agreements on disaster risk management to which Cambodia is one of the participatory member states, in particular the Sendai Framework and one of the signatories to the AADMER.

The analysis is undertaken in light of the pre-existing national roles and responsibilities and policy frameworks, as well as stakeholder consultations and secondary resources used in the preparation of this report. The report aims to make practical suggestions about the mandated subsidiary legislation and other potential tools for implementing the DM Law.

The remaining two sections of this introduction describe briefly the country's disaster and climate risk as the challenges addressed by the disaster management law and institutions, and then overview the types of legislation that can be made in Cambodia, to explain the role of subsidiary legislation. Part II of the report then provides a snapshot of how the country's disaster management system evolved prior to 2015 DM Law, the pre-existing institutional and policy framework, and the issues and challenges of this system that the DM Law may be able to improve. Part III then analyses the DM Law and current policy framework in more detail, highlighting the specific provisions for subsidiary legislation and proposing some options for the content of Royal Decrees, Sub-Decrees, and guidelines that it mandates. It also then highlights some aspects of implementation for which there is no specifically mandated decree or guideline within the DM Law, but which could be supported with other types of subsidiary legislation, at the discretion of the RGC and sub-national administrations.

3. Managing Cambodia's Disaster and Climate Risk

Cambodia is vulnerable to a range of natural hazards, primarily hydro-meteorological, including flash floods, riverine floods, drought, and tropical cyclones/storms. The Mekong River bisects the eastern third of the country, running north to south, along with Tonlé Sap Lake and the Tonlé Sap River, which creates a vast flood plain in the center of the country. Combined with monsoonal rainfall patterns, this makes the country especially prone to riverine floods.³³

27 IFRC. 2008 (rev. 2011). *Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*. IFRC; Geneva. Available at: <http://bit.ly/16TxYJv>.

28 IFRC, IPU, OCHA. 2013. *Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance and Commentary*. Available at: <http://bit.ly/17IYOG9>.

29 IFRC, OCHA. 2014. *Draft Model Emergency Decree for the Facilitation and Regulation of International Disaster Relief and Initial Recovery* (consultation version). Available at: <http://bit.ly/134YH7N>.

30 IFRC, UNDP. 2015. *Checklist on Law and Disaster Risk Reduction* (pilot version) (2015). Available at: <http://bit.ly/1FRXDrs>.

31 IFRC, UNDP. 2015. *The Handbook on Law and Disaster Risk Reduction*. Available at: <http://bit.ly/29LdcHy>

32 IFRC, UNDP. 2014. *Effective law and regulation for disaster risk reduction: a multi-country report*. Available at: <http://bit.ly/1r0SdxV> (full version), and <http://bit.ly/1rxvi0K> (summary version).

33 The Mekong River, flowing out of Laos, through Cambodia into Vietnam is the world's 12th longest river system, with a total length of 4,400 km, a drainage area of 795,000 sq. km and an average annual runoff of 475,00 million cubic meters.

The 2015 World Risk Index (WRI) currently places Cambodia as the eighth most at-risk country globally from disasters triggered by five indicative natural hazards: earthquake, cyclone/tropical storm, flood, drought, and sea-level-rise.³⁴

Floods: In 2011, eighteen of the twenty-four provinces were affected by floods, which resulted in 25 deaths, affected 1.5 million people, damaged almost 700,000

hectares of agricultural land, and resulted in a total damage bill of over 630 million US dollars;³⁵ four provinces along the Mekong River and Tonle Sap were worst hit. The country suffered major floods again in both 2011 and 2013, with the latter impacting twenty provinces, and affecting 377,354 households.³⁶ Previous major national disasters, in 2000, 1994 and 1991, were also due to flooding and, although the establishment of the disaster management system in 1995 has undoubtedly contributed to a much lower rate of death and injury from floods, both the human and economic cost of such events remains high.³⁷

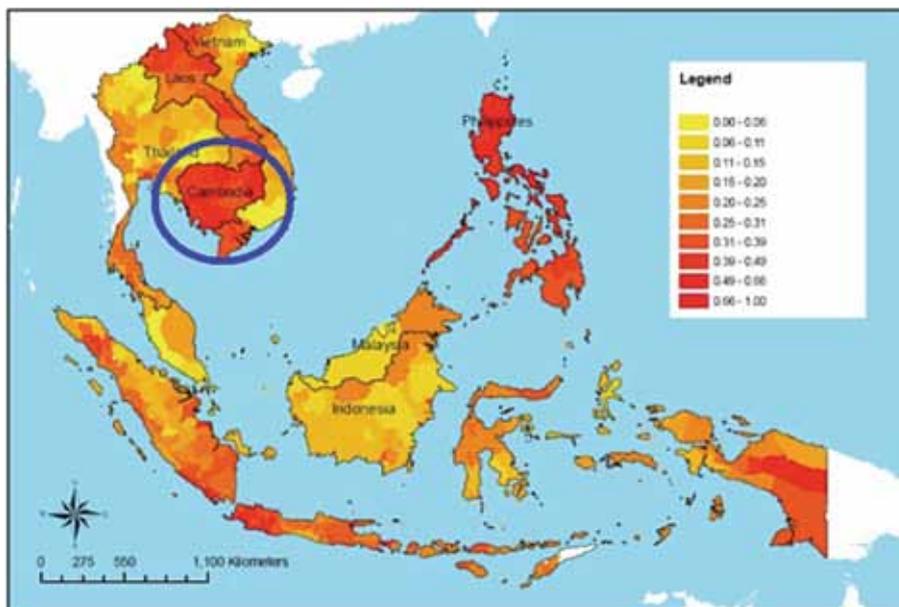


Figure 1: Natural Hazard Vulnerability Map of South East Asia. Source: UNISDR, Prevention Web, 2009

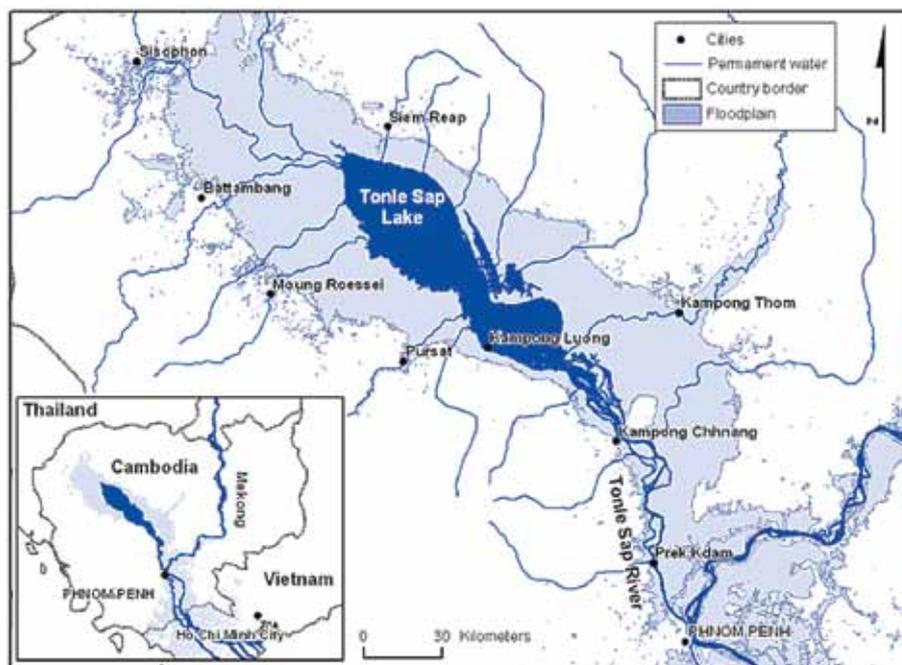
34 UNU-EHS & Alliance Development Works. 2016. *World Risk Report 2015*. Bonn, Germany. P. 64. The previous year's report placed Cambodia as the 9th most at risk, so its relative risk level has worsened in relation to other countries.

35 Daly, Patrick and R. Michael Feener. 2016. *Rebuilding Asia Following Natural Disasters: Approaches to Reconstruction in the Asia-Pacific Region*. Appendix A.

36 ECHO. 2016. *Mekong Region (Cambodia, Lao PDR, Vietnam)*. ECHO Factsheet. EC: Brussels. Available at http://ec.europa.eu/echo/files/aid/countries/factsheets/mekong_en.pdf

37 Ibid. In 1991, floods in 4 provinces left 100 dead, affected 900,000, destroyed national roads, railways and bridges, and damaged over 10,000 hectares of rice fields; in 1994 floods in Central Cambodia left 500 dead and 12,000 displaced; the 2000 floods left more than 170 dead, affected 121,000 and caused USD 10 million damage to agricultural land.

Drought: Although historically less frequent than floods, droughts are also of serious concern. In recent years Cambodia suffered from agricultural droughts in 2009, 2010, 2011 and 2012.³⁹ Droughts in Cambodia are understood to be the result of inconsistent rainfall patterns coupled with an underdeveloped irrigation system (with irrigation coverage at 20% of agricultural land in 2014).⁴⁰ It has been estimated that up to 2013, approximately



Map of Cambodia floodplains: by C C Mkummu.³⁸

7.8 million people had been affected by droughts, with an estimated damage of US\$165 million.⁴¹ In 2016, however, Cambodia is experiencing a major drought,⁴² reportedly its worst in fifty years, with eighteen of the country's twenty-five provinces currently experiencing water shortages.⁴³

Climate change: Risks from climate change are also becoming better known. The Intergovernmental Panel on Climate Change (IPCC) states that, "climate change will amplify existing risks and create new risks for natural and human systems."⁴⁴ A projected increase in intensity and duration of monsoon precipitation is an important element of increasing climate risks,⁴⁵ and clearly one which affects Cambodia's already-chronic flood risk. Sea level rise is also likely to have a gradual and permanent impact on coastal residents and key agricultural areas, the effects of which will be exacerbated by seasonal floods. One of the other key projections of the IPCC is that climate and weather extremes will increase.⁴⁶

Other hazards include:

- Infrequent tropical cyclones/typhoons, which induce heavy rains that contribute to the extensive flooding in the country. For example, in 2009 Typhoon Ketsana affected 180,000 households, killed 43 people and injured 67 people.⁴⁷

38 <https://commons.wikimedia.org/w/index.php?curid=2351587> (accessed Sep 2016)

39 The droughts severely affected the agriculture sectors, whereby rice crops on 2,621 hectares were destroyed in 2009, 5,415 hectares of subsidiary crops in 2010, 3804 hectares of rice crop in 2011 and 14,190 hectare of rice fields destroyed in 2012.

40 NCDM. 2014. *Cambodia HFA Progress Report 2014*, Presented at Kobe, Japan.

41 Jerome Casals. 2013. *Institutional Review & Capacity Assessment of the NCDM*. Manila: Asian Development Bank.

42 'Desperation grows as drought grips Cambodia'. *Channel News Asia*. 18 May 2016. Available at <http://www.channelnewsasia.com/news/asiapacific/desperation-grows-as/2792150.html>

43 ACAPS. 3 May 2016. Briefing Note: Cambodia Drought.

Available at http://reliefweb.int/sites/reliefweb.int/files/resources/start_acaps_cambodia_drought.pdf

44 IPCC. 2014. *Summary for policymakers, in Climate Change 2014: Impacts, Adaptation, and Vulnerability*. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change. P.14

45 IPCC. 2013. *Summary for Policymakers, in Climate Change 2013: The Physical Science Basis*. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change. P.21

46 IPCC. 2014. *Summary for policymakers, in Climate Change 2014: Impacts, Adaptation, and Vulnerability*. P.12

47 NCDM. 2014. *Cambodia HFA Progress Report 2014*, Presented at Kobe, Japan.

- Communicable diseases, such as the Avian Influenza virus (H5N1) that spread from poultry to humans in 2005, causing seven human fatalities between then and 2008.⁴⁸
- Occasional industrial/urban disasters such as fire and building collapse.

Although Cambodia's population has a high exposure to natural hazards, with an estimated average of 27.65 % of the population exposed to the hazards indexed by WRI in any year, exposure alone does not result in disaster.⁴⁹ The term 'disaster' does not describe the hazard itself, but the extent to which it impacts a community through loss of life, injury, disruption of social supports and livelihoods, and damage to property. The DM Law adopts a widely accepted definition of disaster as:

“A serious disruption of the functioning of a community or a society involving widespread human, material, economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources”.⁵⁰

The level of disaster risk in Cambodia is therefore based on a combination of the population's exposure to hazards and its vulnerability to them. It is demonstrably possible to reduce disaster risk by knowing the risks in advance (i.e. how likely is an extreme natural event, and whether it will affect people), and then reducing vulnerability to those risks. Reducing vulnerability is complex, and includes: (i) reducing susceptibility, or the likelihood of people or communities suffering harmful impacts; (ii) improving coping capacity to reduce negative consequences of hazards and any disaster situations they cause; and (iii) improving adaptive capacity or, in other words, the extent to which the society is taking preventive measures to face natural hazards to be reckoned with in the future.⁵¹

A country's disaster management system is the key governance mechanism to reduce the population's vulnerability to hazards, even while their exposure is high. For example, a country with a similar hazard profile and development level to Cambodia is Bangladesh. According to the WRI index, both Cambodia and Bangladesh have very low coping capacity, low adaptive capacities, and high levels of vulnerability and susceptibility to hazards.⁵² Bangladesh has an even higher average hazard exposure level of 31.7% of the population every year, but it has been able to reduce its level of disaster risk in recent years.⁵³ From the 1970s into the 1990s, for example, cyclone-related floods in Bangladesh caused over 100,000 deaths per major event, but in recent years, events of the same magnitude have caused very little loss of life, between 10 and 30 people.⁵⁴ Bangladesh has been able to reduce the impact of cyclones and related floods under its comprehensive disaster management system, based on its 2012 Disaster Management Act and policy, which includes a strong institutional structure. It has focused on disaster risk reduction and early warning, as well as more effective response through national and international coordination.⁵⁵ This positive example suggests that there is considerable potential for Cambodia to also reduce its level of disaster risk by addressing these factors through government and community action, including engagement with civil society and the private sector, through the disaster management system.

48 HPPI has a fatality rate of between 50-80 per cent and the potential to mutate into a pandemic influenza virus.

49 World Risk Report 2015. P.64.

50 Annex of the DM Law. Glossary. (This reflects the definition in the *UNISDR Terminology 2009*).

51 World Risk Report 2015. P. 8

52 World Risk Report 2015. P. 64.

53 World Risk Report 2015. P.64; and World Risk Report 2014, p.64: Bangladesh moved from being ranked as the 5th highest disaster risk country in 2014, to the 6th highest in 2015.

54 Mahmood, M. Khalid, Bangladesh Ministry of Disaster Management. 2016. 'Strengthening Legal Framework for Response and Risk Reduction.' Presentation at Joint Workshop of The Commonwealth and British Red Cross, Marlborough House, London, 13 June 2016. Slide 14.

55 Bangladesh: Disaster Management Act 2012; Standing Order on Disaster (SOD) revised to include DRR and CCA in 2010; and the National Disaster Management Plan 2010.

The DM Law, and the institutional and policy frameworks it supports as the basis for a national system of disaster management, is a key pillar in Cambodia's national efforts to reduce the impact of both natural and human-made hazards, through reduction of risks, early warning, and improved preparedness, response and recovery. An important element of the law is also its mandate to improve the national system's capacity for effective coordination of international assistance during large-scale disasters.

Although Cambodia's climate risk assessment and adaptation falls primarily within the portfolio of the Ministry of the Environment, climate risk is now also understood to be an important element of managing disaster risk in Cambodia. It is part of the mandate that the DM Law gives to the NCDM in developing and implementing its hazard risk prevention programmes, under the DM Law Article 10. This needs to be taken into consideration in implementation of the DM Law, including in its subsidiary legislation, and clearly requires cross-sectoral cooperation with the Ministry of the Environment, which has primary responsibility for climate change issues.

4. Types of laws and subsidiary legislation in Cambodia

It is important to outline the types of laws that are made in Cambodia, to clarify the process for making subsidiary legislation under the DM law. *The Constitution of the Kingdom of Cambodia* is the supreme law with which all other laws must be consistent.⁵⁶ It establishes a constitutional monarchy, with the King as Head of State and an elected National Assembly and Senate, which share the legislative power ("the legislature"). Senators, members of the National Assembly and the Prime Minister have the right to initiate legislation.⁵⁷ The Prime Minister is elected by a majority vote of the 123 members of the National Assembly, who are elected every five years in a general election, and is officially appointed by His Majesty the King. The Prime Minister then heads the executive government – the Royal Government of Cambodia (RGC) – as head of the Council of Ministers.⁵⁸ Administratively, Cambodia is divided into 24 provinces and one capital city, Phnom Penh (district level status). It has 159 districts, 8 Khans, 26 cities, and 1,621 communes.⁵⁹

Once laws are passed by the legislature they are promulgated under the King's signature by a type of Royal Decree, a 'Preach Reach Kram', which is a procedural mechanism that brings the law into force (such as NS/RKM/0715/007, which promulgated the 2015 DM Law after it was passed by the legislature). The Constitution is thus the highest order law, and legislation passed by the legislature, as promulgated by Royal Decree (Kram), is the second highest-ranking law.⁶⁰

The RGC, as the executive branch of government, can issue subsidiary legislation that is consistent with the Constitution and with any relevant laws passed by the legislature. The two highest-ranking types of subsidiary legislation are:

56 *The Constitution of the Kingdom of Cambodia* 2004 ("The Constitution"). Official English translation, as amended to Jan 2008, promulgated 2014. (Available at: http://www.senate.gov.kh/home/constitution/constitution_english.pdf).

57 *The Constitution*. Arts. 1, 7, 90, 91, 99.

58 *Constitution*, Art.s 19, 119; and *Law on the Organization and Functioning of the Council of Ministers* 1994, Arts. 28, 29.

59 NCDM. 2014. *Country Report of Cambodia Disaster Management*. P.5.

60 The background information on Cambodian laws in this section is drawn from a range of English language sources as follows: Chbab.net, a Destination Justice Project (<http://www.chbab.net/>, accessed July 2016); Open Development Cambodia, 'Laws and Regulations' (<http://www.opendevdevelopmentcambodia.net/laws-regulations/>, accessed July 2016); Holligan, Jennifer and Tarik Abdulhak. 2013. 'UPDATE: Overview of the Cambodian History, Governance and Legal Sources'. GlobalLex, Hauser Global Law School Program, (available at: <http://www.nyulawglobal.org/globalex/Cambodia1.html>); and Phallack, Kong. 2012. "Overview of the Cambodian Legal and Judicial System and Recent Efforts at Legal and Judicial Reform". In *Introduction to Cambodian Law*, Hor Peng, Kong Phallack, Jörg Menzel (Eds.) Konrad-Adenauer-Stiftung. Phnom Penh.

- a. The Preah Reach Kret, which comes third in the hierarchy of laws and is a substantive type of Royal Decree, It is an executive regulation formally issued by the King under his Constitutional powers, but only following a request from the Council of Ministers.
- b. A Sub-Decree (known as ‘Anu-Kret’), which comes fourth in the hierarchy of laws is and is an executive regulation prepared by the relevant Ministry, approved by the Council of Ministers, and signed by the Prime Minister.

A law passed by the legislature will often specify that certain Royal Decrees or Sub-Decrees must be made in order to implement some of its provisions. This is the case in the DM Law, which specifies both Royal Decrees and Sub-decrees, as discussed in Part IV of this report, and summarized in Table 1, Summary of Mandated Subsidiary Legislation and Recommended Approach, in Part III of this report. The initiative for drafting such decrees normally comes from the relevant Ministry, in this case presumably the NCDM and/or the Office of the Council of Ministers, and in practical terms often from the specific body allocated responsibility under the law. Thus it can be expected that the NCDM will have a primary role in drafting the subsidiary legislation under the DM Law. Following the development of drafts:

- a. Draft Royal Decrees must be approved by the Council of Ministers, after which the Prime Minister requests His Majesty the King to issue the Royal Decree.
- b. Draft Sub-Decrees can be adopted by the Council of Ministers and brought into force through signature of the Prime Minister.

There are also other types of subsidiary legislation available under Cambodian law. In descending order these are:

- c. Ministerial Order or Proclamation (Prakas), which is prepared and signed by the relevant Minister(s)
- d. Decision (Sech Kdei Samrach), which is normally a temporary measure made by the Prime Minister or another minister, although a decision issued by the Constitutional Council is final and binding.
- e. Circular (Sarachor), which is not legally binding but is an administrative tool signed by the Prime Ministers or another minister
- f. Local regulation or By-Law (Deika), which is a legal rule issued by a local council at sub-national level, which is only binding within the territorial authority of that council.

All of these forms of subsidiary legislation are available for implementation under the DM Law, at the discretion of the RGC, the relevant minister or local authority, although the DM Law only requires that certain decrees are made. Other decrees and other types of subsidiary legislation may also be useful for the RGC to provide additional regulation or guidance outside the formally mandated decrees, or to initiate temporary or local disaster management measures, as discussed in Part IV.

Part II: The Disaster Management System Until 2015

The DM Law is now at the centre of Cambodia’s disaster management system, and it annuls any prior decrees or other subsidiary laws or policies that are not consistent with it. However, as the DM Law builds on the previous system and its institutions, and requires subsidiary legislation in order to re-establish many of the same institutions and to detail their new mandates, it is also important to understand the system that existed at the time the DM Law was enacted, and as it largely continues to date. Therefore, this part of the report commences with a snapshot of the legal and institutional arrangements, and existing national policies made under them, up to 2015. It then highlights some of the key issues and challenges with the previous system, as identified through research and stakeholder consultations for this report. This is done in order to better understand the features of the system that the DM Law and its proposed subsidiary legislation seeks to correct.

1. Evolution of the Disaster Management System prior to 2015

The development of disaster risk management legislation around the world is triggered and sustained by a number of factors, including major disasters, political shifts, international and regional commitments, and advocacy by civil society groups and international organizations. The occurrence of major disasters is one of the key factors that prompts the development and strengthening of legal frameworks for preparedness, response and recovery from disasters.⁶¹ Indeed, the history of the legal framework for disaster management in Cambodia can be traced back to the early nineties, when the recurring floods and drought outlined in Part II led to the introduction of the first formal instrument in 1995. This was Sub-decree No.35 of 1995 that first established the National Committee for Disaster Management (NCDM). The system in Cambodia evolved and was updated through a range of decrees and other subsidiary legislation between 1995 and 2010, as well as some significant policy initiatives. It was also influenced by international developments, especially the Hyogo Framework for Action (HFA).⁶² However, prior to the adoption of the DM Law in 2015, Cambodia’s disaster management system continued to be based only on subsidiary legislation, and its institutions did not have a permanent legal status or budget allocation. The RGC chose to establish a legislative basis to further strengthen the disaster management system, in order to address some of the issues identified with the previous system. The key components of Cambodia’s DM system prior to the enactment of the 2015 DM law, which the law builds upon, are described below.

1.1 Legal & Institutional Basis

A detailed outline of the evolution of the legal and institutional basis for Cambodia’s DM system prior to 2015 is provided in Annex C. In summary, and prior to the passage of the DM Law in 2015, the key operational legal instruments which underpinned the DM system were:

- o A 2002 Royal Decree and a 2002 Sub-Decree, made in the aftermath of the devastating floods of 2000, 2001 and 2002, which together revised the structure and mandates of the NCDM and

61 Neil R. Britton. 2006. Getting the foundation right: in pursuit of effective disaster legislation for the Philippines. Second Asian Conference on Earthquake Engineering 2006. March 10-11, 2006. Manila; and Shirley Mattingly. 2002. “Lessons Learned, Best Practices, and Next Steps: A Summary” Paper from the Regional Workshop on Policies, Legal and Institutional Arrangements, and Plans for Disaster Management. Bangkok, Thailand, 25-27 April 2002.

62 World Conference on Disaster Reduction, Kobe, Japan. 2005. *Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities*. UNISDR ; Geneva. Signed by Cambodia in 2005. (Available at <http://www.unisdr.org/we/inform/publications/1037>).

established Sub-National Committees for disaster management at provincial and district levels (having replaced the earlier decrees establishing the NCDM).⁶³

- o A 2006 Sub-decree that aimed to comply with the HFA by establishing disaster management committees at commune/Sangkat level,⁶⁴ supplemented by a 2010 order establishing Village Disaster Management Groups.⁶⁵

The institutions and mandates established by these decrees were:

A. The National Committee on Disaster Management (revised structure and functions 2002)

1. A seventeen-member NCDM, headed by the Prime Minister, as President of the Committee, with the Ministers of Interior and National Defence as Vice-Presidents. The other members of the NCDM included the Minister in charge of the Office of the Council of Ministers, and the ministers of: Economy and Finance; Foreign Affairs and International Cooperation; Water, Resources and Meteorology; Agriculture, Forestry and Fisheries; Commerce; Health; Rural Development; Public Works and Transport; and Education, Youth and Sports. Membership also included a representative of each of the Royal Cambodian Armed Forces, the National Society of Cambodian Red Cross, and the State Secretariat of Civil Aviation.⁶⁶
2. The NCDM mandate included: (i) responsibility for coordination with all Ministries; (ii) formulation of policies and plans for disaster declaration, prevention, response and rehabilitation; (iii) mainstreaming DRR; (iv) strengthening linkages with communities; (v) and recommending measures to the RGC for providing resources for stockpiling, human resource development, preparedness, emergency relief, response and recovery;⁶⁷
3. A dedicated Secretariat General for the NCDM was established, to act as its administrative arm.⁶⁸ The Secretariat General was required to: (i) manage the general administrative responsibilities of the NCDM; (ii) to coordinate with government ministries and departments, and international organizations working in Cambodia; (iii) review all disaster management related documents and report on this to the NCDM; (iv) commission research on natural hazards and risks; (v) guide Sub-National Committees for Disaster Management in their work on damage needs assessments, relief and rehabilitation; and (vi) design training programs for the officials working at provincial, district and local levels.⁶⁹
4. The Secretariat General was structured into five departments of NCDM: the Department of Administration and Finance, the Department of Information and Relations, the Department of Emergency Response and Rehabilitation, the Department of Preparedness and Training, and the Department of Search and Rescue.⁷⁰
5. The NCDM budget was brought under the budget of the Council of Ministers.⁷¹
6. Procedurally, the NCDM was required to meet at least once every six months. An NCDM Executive Committee, made up of the Committee President, Vice Presidents and Secretary General, was required to meet at least once a month.⁷²

63 Royal Decree NS/RKT/0202/040-2002 (February 2002); and Sub-Decree No. 30 ANKR BK- 2002 (April 2002).

64 Sub-Decree No. 61 ANKR.BK-2006 on Commune/Sangkat Committees for Disaster Management

65 Direction No. 315 of 2010.

66 Art. 1, Royal Decree NS/RKT/0202/040-2002.

67 Art. 2, Royal Decree NS/RKT/0202/040-2002.

68 Art. 3, Royal Decree NS/RKT/0202/040-2002; and Arts. 12-16, Chapter IV, Sub-Decree No. 30 ANKR BK- 2002.

69 Art. 11, Sub-Decree No. 30 ANKR BK- 2002

70 Ibid. Art. 9

71 Ibid. Arts. 3, 5 6.

72 Royal Decree NS/RKT/0202/040-2002; and Arts. 4 and 7, Sub-Decree No. 30 ANKR BK- 2002.

B. Disaster Management Working Group (new in 2002)

The 2002 Sub-decree established the Inter-Ministerial Disaster Management Working Group, with a focal point in each government ministry and institution.⁷³

C. Sub-National Committees for Disaster Management (established between 2002-2010)

1. *Provincial/ Municipal Committees for Disaster Management-Secretariat, Structure and their Role:* The 2002 Sub-decree established Provincial/Municipal Disaster Management Committees with the respective Governors acting as the Presidents of the Committees. The members of these committees included the Deputy Governor, heads of the relevant government departments and the Director of Provincial/Municipal Cambodian Red Cross.⁷⁴ It also provided for Provincial/Municipal level secretariats to support the committees, to be headed by the chief of provincial/municipal office as the Secretary to P/MCDM. The key roles assigned to the P/MCDMs included: (i) implementation of the National Policy on Disaster Management; (ii) preparing guidelines and supporting district level Committees for Disaster Management; (iii) preparing and recommending proposals for financial resources, equipment, materials, means of transport and intervention in times of disaster; (iv) training officials and conducting public education programs for the communities; and (v) submitting recommendations to the NCDM on measures for disaster prevention, preparedness, emergency response and rehabilitation in their respective jurisdictions.⁷⁵
2. *District/ Precinct Committees for Disaster Management:* The 2002 Sub-Decree also provided for the composition and role of District Committees for Disaster Management (DCDM). DCDM were to be headed by the District Governor and the committee included the Deputy Governor as Vice President and heads of relevant government institutions as members. The district head of Cambodia Red Cross (CRC) was also the member of the committee.⁷⁶ The key duties assigned to the DCDMs included: (i) implementation of national policy; (ii) preparation and dissemination of disaster related information to the public; (iii) leading disaster response, relief, evacuation, and rehabilitation activities; and (iv) preparing and submitting reports to the PCDM on damages and needs assessments.⁷⁷
3. *Commune/Sangkat Committees for Disaster Management:* established in 2006 in order to comply with commitments under the Hyogo Framework for Action to establish effective disaster risk management institutions at local level.⁷⁸ Sub-Decree No. 61 was issued in 2006. The Sub-Decree provides for the establishment of Commune/Sangkat Committees for Disaster Management. The decree was particularly aimed at strengthening Community Based Disaster Management (CBDRM) projects and practices in Cambodia.
4. *Village Disaster Management Teams:* established under Direction No. 315 of 2010, in order to further the objectives of the 2006 Sub-Decree to strengthen CBDRM.

1.2 Impact of Regional and International Commitments

International and regional policy instruments often prove effective in guiding states towards specific actions. Two key multilateral instruments shaping Cambodia's efforts in this period are outlined below.

⁷³ Art. 17, Sub-Decree No. 30 ANKR BK- 2002.

⁷⁴ Ibid. Art. 18

⁷⁵ Art. 19, Chapter VI, Sub-Decree No. 30 ANKR BK- 2002

⁷⁶ Art. 21, Chapter VII, Sub-Decree No. 30 ANKR BK- 2002

⁷⁷ Art. 22, Chapter VII, Sub-Decree No. 30 ANKR BK- 2002

⁷⁸ Sub-Decree No. 61 ANKR.BK-2006; and

A. Hyogo Framework for Action and Sendai Framework

A non-binding international agreement, the Hyogo Framework for Action (HFA) provided a strong basis for national implementation of disaster risk reduction measures for state signatories. Of particular relevance was ‘Priority 1’ on the need to strengthen the legal and institutional basis for disaster risk reduction and management. This was particularly influential in Cambodia, and gave rise to the 2006 Sub-decree establishing local level disaster management committees, and influenced national policies as outlined below. The HFA has now been replaced by the Sendai Framework, which continues along the same lines in promoting DRR and supporting countries’ implementation with targets, indicators, guidance and tools developed by UNISDR. One change has been that the Sendai Framework focuses especially on integrating DRR into development planning, as a way to prevent the creation of new risks. This objective is also part of Cambodia’s DM Law.⁷⁹

Most participatory countries to the HFA established or designated a National Platform on DRR to oversee implementation. Most have also submitted to UNISDR voluntary national HFA progress reports.⁸⁰ Cambodia did not establish a new national platform for DRR but nominated the NCDM as the national focal point under HFA. Cambodia’s last published HFA progress report was in 2009, but in 2014 the country published and presented its own report at the DRR conference in Kobe.⁸¹ It appears that DRR and preparedness have not been a significant aspect of Cambodia’s pre-existing disaster management system, under the legal frameworks, or resourcing arrangements. The somewhat greater emphasis on these aspects of disaster management under the DM Law may open further opportunities for Cambodia to more fully utilize the guidance and tools available to it as a participatory to the Sendai Framework.

B. ASEAN Agreement on Disaster Management and Emergency Response (AADMER)

Regional initiatives are also important in national hazard management. Although the impact of natural hazards is usually dealt with at the national level, their trans-boundary nature and at times their magnitude (e.g. Indian Ocean Tsunami 2004), require coordinated response and preparedness efforts by the member states.

The ASEAN Agreement on Disaster Management and Emergency Response (AADMER) was signed by heads of the ASEAN member states in 2005. The agreement entered into force on 24 December 2009 after ratification by all ASEAN member states.⁸² AADMER is a fundamental disaster risk management policy pillar and cooperation mechanism for Cambodia, as part of the Southeast Asian region and as a member of ASEAN.

AADMER establishes a regional mechanism for DRR and disaster response. The agreement outlines a cooperative and preventive disaster management approach, including cross-sectoral cooperation. It requires ASEAN member states to establish effective early warning systems (EWS), to develop and share hazard and risk knowledge, and to actively support and cooperate on data sharing, and technological and scientific research. Cambodia was actively trying to implement its commitments under AADMER in the period before the DM law was passed, and it can be said that their role as Chair of the ASEAN Committee on Disaster Management (ACDM) in 2015 was a catalyst for adopting the new law, which had been under development for several years.

79 DM Law Art. 14.

80 See UNISDR biennial HFA Monitoring and Progress Review reports, at <http://www.preventionweb.net/english/hyogo/progress/reports/>

81 NCDM. 2014. *Country Report of Cambodia Disaster Management 2014*. Presented at Kobe, Japan; and NCDM. 2009. Cambodia: National progress report on the implementation of the Hyogo Framework for Action

82 Details of implementation are available on ASEAN’s AHA Centre website, at: <http://www.ahacentre.org/about-aadmer>

The DM Law does not make specific mention of any international institutions or instruments. However, Cambodia has entered disaster management obligations through AADMER, and the DM Law designates the NCDM as the national lead agency on DM, so the relevant institutional roles could be regarded as part of its core mandate. Of particular relevance are Cambodia's representation in the ASEAN Committee on Disaster Management (ACDM), and the obligations under AADMER concerning both DRR and emergency response, and coordination with the ASEAN Humanitarian Assistance Coordinating Centre (AHA Centre) that was mandated by AADMER.

1.3 National Policy Foundations

National policies developed prior to the passage of the DM Law remain relevant in two respects. They have both shaped the disaster management system that is in place today, and key multi-year policies remain in effect in 2016 and beyond. An overview of the key policies is important background when considering subsidiary legislation and how it will support policy revision and formulation under the DM Law.

A. National Contingency Plan for Disaster Response (NCP 2012)

The National Contingency Plan for Disaster Response was approved in 2012.⁸³ The plan outlines a detailed strategy to reduce the adverse effects of floods and drought, the most frequent natural disasters faced by Cambodia. The contingency plan is also a road map for a timely and effective response to natural hazards. The NCP has been acknowledged by the stakeholders as a useful strategic document in the development of future planning. However, stakeholders highlighted its limitations as a mechanism for coordinating a national emergency response.

B. Strategic National Action Plan for Disaster Risk Reduction 2008-2013 (SNAP)

This first *Strategic National Action Plan for Disaster Risk Reduction 2008 – 2013* (SNAP) was developed by the NCDM and the Ministry of Planning around the key priorities identified in the HFA.⁸⁴ Its objectives included: (i) Contributing towards a common understanding, knowledge and awareness of disaster risk reduction; (ii) Establishing a comprehensive framework for disaster risk reduction in the country; (iii) Working towards creation of a conducive environment for mainstreaming disaster risk reduction into development plans, policies and projects of the government; (iv) Enhancing coordination and cooperation with national and international development partners; and (v) Improving the efficiency of resource allocation and utilization in disaster reduction.

Some substantial achievements under SNAP included its influence on the National Strategic Development Plan, as well as hazard mapping by MOWRAM, integration of DRR into the agriculture and health sectors, development of Provincial Contingency Plans, and development of guidelines for the Emergency Preparedness and Response Plan (EPRP). However, challenges remained in: (i) strengthening coordination mechanisms at national level; (ii) mainstreaming DRR into planning in major sectors; (iii) mobilizing public sector investments for strengthening preparedness and response capacities from national to local level; and (iv) developing an effective early warning system (EWS). Cambodia's HFA progress report also identified challenges in enforcing building codes, settlement regulations/policies and reconstruction as two key areas which required more attention from policy makers.⁸⁵

83 NCDM. 2012. *National Contingency Plan for Disaster Response*.

84 NCDM & MOP. 2008. *Strategic National Action Plan for Disaster Risk Reduction 2008 ~ 2013*. National Committee for Disaster Management and Ministry of Planning. Phnom Penh.

85 Riquet, Damien. 2013. *Cambodia DRR Strategic National Action Plan (SNAP) 2008-2013 Independent Evaluation Final Assessment Report*. Plan International.

C. National Action Plan for Disaster Risk Reduction (NAP-DRR 2014-18)

The adoption of the current National Action Plan for Disaster Risk Reduction (2014-18), which replaces the SNAP 2008-2013, is indicative of the continuing efforts of the RGC to develop a comprehensive policy for responding to natural and man-made disasters.⁸⁶ NAP-DRR aligns its policy priorities with key regional policies, especially AADMER, and key national policies, including Cambodia's National Strategic Development Plan (NSDP 2014-2018), the Climate Change Response Strategic Plan 2014-2023, the National Education Strategic Plan 2009-13, Women Development Plan (Ratanak III 2009-2013), and the National Agriculture Strategy. It is significant to note that NAP has also been aligned with the planning cycle of National Strategic Development Plan.

After taking stock of the major gaps in existing policy, NAP-DRR was geared to address the challenges of: (i) finalizing the required policies and legal processes to strengthen DRM in Cambodia (including the DM law); (ii) Optimizing efforts to mainstream DRR into planning processes in every sector; (iii) Focusing on capacity building at national and sub-national levels for better preparedness and effective response; (iv) creating the necessary synergies between DRR and climate change adaptation (CCA); (v) promoting knowledge production which is relevant to the Cambodian context; and, above all, (vi) ensuring dedicated resources for strengthening the NCDM and the Sub-National Committees for Disaster Management. In order to achieve these objectives NAP is structured around five strategic components including:

Strategic Component 1 – Consolidating and further enhancing capacity of the disaster management institutions at national, sub-national and local community levels;

Strategic Component 2 – Enhancing risk assessment and improving early warning systems;

Strategic Component 3 – Development and use of innovation and knowledge to build resilience;

Strategic Component 4 – Reduction of the underlying causes of risks;

Strategic Component 5 – Enhancing emergency response and recovery capabilities at all levels.

The plan has also provides an estimated budget for the implementation of the activities under each strategic component over four years. The implementation from 2014-18 has been projected at 166 Million USD.

D. National Strategic Development Plan (NSDP 2014-2018)

The National Strategic Development Plan (NSDP) is the key policy document of the RGC that outlines the country's overall development goals and provides the strategy for achieving them. The former NSDP 2009-13 had referred briefly to the need for investment in DRR, but as a result of the efforts of the NCDM and stakeholders, the NSDP 2014-18 has dedicated sections for identifying and addressing DRR challenges.⁸⁷ Importantly, the NSDP 2014-18 also identifies financial resources to be allocated to disaster risk management during its period of operation.⁸⁸

86 NCDM. 2014. *National Action Plan for Disaster Risk Reduction 2014 - 2018*.

87 MOP. 2014. *National Strategic Development Plan*. Pp. 37-39, 140-142.

88 *Ibid.* P. 204.

2. Issues and Challenges in the Pre-Existing System

Key issues and challenges of the pre-existing disaster management system give an insight into aspects of the system that the DM Law and its subsidiary legislation aim to improve. Those identified through research and consultations for this report are summarized below.

2.1 Institutional mandates and resources

A. NCDM

The NCDM and its Secretariat have reportedly been constrained by limited availability of finances, which some stakeholders and researchers have attributed to the fact that the NCDM has been a governmental committee rather than a Ministry, with its primary source of funding derived from within the budget of the Council of Ministers, rather than directly under national budget law.⁸⁹ In addition, although the Ministry of Economy and Finance has provided extra funds in times of disasters, an absence of dedicated funds/resources at national (and subnational) levels has resulted in delays in resource mobilization.⁹⁰

B. NCDM Secretariat-General

The issues and challenges identified regarding the Secretariat-General in the pre-existing system include an overall shortage in the human and financial resources necessary to fulfill its role as the administrative arm of the NCDM. But shared challenges in all five departments of the NCDM Secretariat-General have reportedly ranged from lack of planning and availability of required skill sets, to cross-cutting mandates of the departments. In particular:

- a. There are currently overlapping roles between the Department of Emergency Response, Department of Search and Rescue and the Emergency Coordinating Center (ECC). These overlapping roles have reportedly limited the capacity to mount an effective response in times of disaster.
- b. The Department of Preparedness and Training is a key department, but its functioning has been particularly constrained by a lack of financial and human resources. This Department has been facilitating training and capacity building activities, which conducted by external partners for disaster management officials at the province, district, and commune levels. However the training has been very limited in scope, and so far a calendar of training or a program for capacity building for the relevant departments and Sub-National Committees⁹¹ has not been regularly updated.

C. Sub-National Disaster Management Committees and Teams

The Sub-National Disaster Management Committees at Provincial, Municipal, Commune and Sangkat levels, mandated under Sub-Decrees in 2002 and 2006 have been established at all levels, and their roles defined under the pre-existing subsidiary legislation. However, their past performance has been inhibited because:⁹²

89 Art. 5, Sub Decree No. 30 .2002 and Art. 7, Circular No. 02. 2001

90 RGC. 2010. *Cambodia Post-Ketsana Disaster Needs Assessment: Part I: Main Report*. (Report prepared in collaboration with World Bank, GFDRR, UN System, ADB and ADPC) (“Post-Ketsana Report”). P.116

91 See: Jerome Casals. 2013. *Institutional Review & Capacity Assessment of the NCDM – Final Report*. Manila; ADB; and RGC. 2010. *Post-Ketsana Report*.

92 IFRC. 2009. *Legal Preparedness for Responding to Disasters and Communicable Disease Emergencies in Cambodia*. Geneva; IFRC. (“Legal Preparedness Report”)

- a. There have been insufficient budget allocations to implement their activities. The Sub-National Disaster Management Committees do not have any budget allocation, and must obtain funds through line ministries. For example, at provincial level, there are very small-scale funds provided to provincial governors for responding to emergencies. In case of any major disaster, funds have to be sought from the Ministry of Economy and Finance. These provincial funds can also be used only for response purposes, and the provincial governors have limited budget for disaster risk reduction, prevention and preparedness activities. This situation has reportedly inhibited the performance of the committees and impeded rapid disaster response and early recovery efforts.⁹³
- b. The Sub-National Committees also face serious challenges due to lack of permanent staff and of relevant skill-based training, as well as the absence of local level plans and strategies to manage and respond to disaster situations.
- c. There has been an absence of formal guidelines for horizontal and vertical coordination between national and sub-national institutions.

2.2 Institutional coordination

With regard to institutional coordination, stakeholders have reported challenges in the pre-existing system concerning both horizontal and vertical coordination between the disaster management institutions, as follows:

- a. The Inter-Ministerial Disaster Management Group formed by NCDM and its five sectoral working groups met only rarely, and communication between the key ministries and institutions at national level was not sufficient to achieve a comprehensive disaster risk reduction and management framework.
- b. The channels for NCDM coordination and communication with the Sub-National Committees and the line agencies and departments have been very limited. This challenge has been compounded by the absence of Standard Operating Procedures (SOPs) and system-wide protocols for managing disaster situations. For example, in the aftermath of Typhoon Ketsana and subsequent floods, the collation of damage figures became a serious challenge as the absence of established procedures/protocols resulted in varying damage figures.⁹⁴ The coordination and communication between the provincial, district, commune and village committees for disaster management has reportedly been not precise with similar challenges.

2.3 Disaster risk reduction and early warning

With regard to DRR and preparedness, it is noted that stakeholder feedback and research for this report have indicated three key areas of concern:

A. Financial Resources:

- a. The budget assigned to NCDM annually has so far covered only basic administrative costs at national level and has not included any funds for DRR, mitigation or preparedness activities.⁹⁵
- b. The limited disaster management funds provided to provincial governors have not been approved for use in DRR and prevention activities, only for disaster response.⁹⁶

93 Ibid.

94 RGC. 2010. Post-Ketsana Report. P.116

95 UNOCHA. 2009. *Report from the UNDAC Disaster Response Preparedness Mission to Cambodia 14-28 March 2009* (“UNDAC Report”).

96 IFRC. 2009. Legal Preparedness Report

- c. Sub-National Committees have not had any separate budget allocation, but have needed to obtain all funds through line ministries or provincial governors, and have not therefore been able to resource DRR activities.⁹⁷

B. Early Warning Systems at National and Sub-National Levels

Early warning systems (EWS) are a key tool for disaster preparedness and mitigation, as they can prevent loss of life and damage, especially for hazards such as flooding that can be predicted when rainfall and rivers are monitored, as the basis for issuing timely warnings.

There are two key institutions that monitor, produce and disseminate weather and flood-related data in Cambodia. The first is the Ministry of Water Resources and Meteorology (MoWRAM) and its provincial branches, which monitor, collect, and circulate data and information on weather forecasts. The second is a treaty-based regional organization established by the four states that border the lower Mekong River, which is the Mekong River Commission (MRC). The MRC is involved in supporting early warning systems at both national and provincial level in Cambodia, by providing Mekong River flow data.

The NCDM has been mandated to collaborate with MoWRAM and the Ministry of Information, to broadcast relevant information to provincial, district, commune and village levels for preparing and or mitigating the possible disaster. A number of sub-decrees and circulars on disaster management have to date established a process for the flow of information about the occurrence of hazards between different levels of government from the commune to provincial to national levels.⁹⁸

Cambodia's EWS is reportedly fragile for the following reasons:

- a. Assessment reports have highlighted limitations in the national EWS related to the capacity of MoWRAM, including insufficient funding, outdated communication systems, and lack of equipment.⁹⁹
- b. While the flood hazard monitoring is very effective, the issue of communicating warnings at sub-national levels has been identified as needing improvement. For example, during Typhoon Ketsana in 2009, the affected provinces (Kampong Thom, Ratanak Kiri, and Siem Reap) were not able to provide timely early warnings to the authorities and residents of their communes, resulting in higher loss and damage.¹⁰⁰ In 2000, flood warnings delivered one day in advance were not sufficient for communities to prepare themselves to cope with the consequences, as the warnings came too late and the communities were also not prepared in advance to receive and act on such warnings.¹⁰¹

C. Risk Knowledge

Risk Knowledge is another major area which research and stakeholder feedback has identified as requiring significant work by NCDM.

97 UNOCHA. 2009. UNDAC Report.

98 Art. 2, Sub Decree No. 61 on the Establishment of Commune/Sangkat; Art. 11 Circular No. 01 of 2002 on Disaster Preparedness and Response; Art. 13, Circular No. 02 for 2001.

99 IFRC. 2009. Legal Preparedness Report; and RGC. 2010. Post-Ketsana Report.

100 RGC. 2010. Post-Ketsana Report.

101 IFRC. 2009. Legal Preparedness Report.

Particular issues and challenges identified are outlined as follows:

- a. There have been some risk assessments, however NCDM has yet to develop multi-hazard profiles and undertake vulnerability and risk assessments at a national level. Similarly, though a lot of information on local risks, hazards and vulnerabilities is available, and also collected by a number of institutions, there is no system to collate, verify and consolidate all the disaster related information.
- b. NCDM has yet to institutionalize a disaster management information system (DMIS) to support the analysis and dissemination of risk data and information, although the National Action Plan for Disaster Risk Reduction (NAP-DRR 2014-18) proposed the establishment of a new DMIS department at NCDM. If this is done, it will require adjustment to the mandates of other NCDM departments that currently work in some aspects of risk information, as well as effective and regular liaison with the MRC, MOWRAM and MOI. Such an initiative could build on a process that the NCDM has already commenced, with support from UNDP, to establish a system for disaster related data management and information (known as CamDi).

2.4 Disaster Response

As noted above, effective emergency response during disasters has reportedly been inhibited by insufficient resources. Other key challenges in emergency response noted by stakeholders and previous assessment reports include:

- a. There is an absence of standard operating procedures (SOPs) for emergency response and search and rescue operations. The absence of SOPs inhibits an effective and timely emergency response operation, which has been highlighted in a number of assessments.¹⁰² Such a guideline is widely regarded as necessary for the NCDM, as the lead agency, to coordinate with a number of actors during the time of emergency response. These range from provincial, district, and commune committees for disaster management, to line ministries, provincial administrations, civil aviation, military, police, Royal Cambodian Air Force, and international partners.
- b. Taking stock and tracking of the relief being distributed is a key component of an effective response. The NCDM has so far been constrained in such relief tracking, due to not having a system or database which can help identify and track assistance from the Cambodian public sector and national organizations, as well as from regional and international organizations.
- c. There is an absence of procedures for the effective facilitation and regulation of incoming international assistance, which was identified as a key gap in the IFRC's previous research. There is also no clear procedure for coordination of international responders within Cambodia during an emergency response and recovery operation.¹⁰³ These are issues which could be addressed in the development of the sub-decree on international assistance, utilizing IFRC tools such as the IDRL Guidelines and Model Act, as elaborated in the sections below.
- d. Civil society initiatives such as the Humanitarian Forum and the Joint Action Group have been established to resource and support effective response, but the opportunity to institutionalize such civil society leadership and coordination.

102 For example, in the RGC. 2010. Post-Ketsana Report.

103 IFRC. 2009. Legal Preparedness Report.

2.5 Recovery and reconstruction

Post-disaster recovery has not been significantly addressed in the legal framework for disaster management, (check article 13 of DM Law) although the NCDM Secretariat-General has included rehabilitation in the mandate of one of its five departments, the Department of Emergency Response and Rehabilitation.¹⁰⁴

2.6 International and regional coordination

So far there has not been a clear legal basis for action on Cambodia's international and regional commitments and obligations. In particular, these are:

- a. The obligations of Cambodia and the role of the NCDM regarding participation in ASEAN institutions, in particular the ASEAN Secretariat, the ASEAN Committee on Disaster Management (ACDM), the obligations under AADMER concerning both DRR and emergency response, and coordination with the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre) that was mandated by AADMER (details will be elaborated in sub-decrees or regulations).
- b. The commitments of Cambodia and the role of the NCDM concerning implementation of the Hyogo and Sendai Frameworks.
- c. Coordination with international and regional partners for the rapid and effective provision of humanitarian assistance in large-scale emergency response operations.
- d. Coordination with international development partners in the pre-disaster, and post-disaster phases, on activities related to DRR, mitigation, preparedness, rehabilitation and reconstruction.

104 Art. 9, Sub-Decree No. 30 ANKR BK- 2002.

Part III. Implementing the Law on Disaster Management

This part first discusses the provisions of the DM Law in more detail, in particular the aspects of the pre-existing DM system that it has changed or left the same, and any new elements introduced by the law. It then considers the provisions for mandated subsidiary legislation, summarized in Table 1, and makes recommendations on the scope of the decrees required. These recommendations are based on the specific wording of the provisions requiring sub-decrees, but are also understood in light of the overall objective and goals of the law and the institutional mandates it prescribes. They also bear in mind the importance of continuity with the pre-existing system. The recommendations refer to legislative tools and research developed by the IFRC and UNDP, as well as Cambodia’s regional and international commitments under the AADMER and the Sendai Framework. The discussion then turns to other types of guidance that the DM law specifies must be developed. Finally, it proposes some other areas within the scope of the DM Law objectives that could benefit from more detailed regulation through subsidiary legislation, which could be made by the RGC at its discretion, but are not elaborated by the DM Law.

1. The Disaster Management System under the DM Law

In considering the structure and content of subsidiary legislation under the DM law, it is important to take account of the structure of the law itself; it is a short law with only 48 articles. Of its ten chapters, six are most relevant to the question of implementing its primary objectives and goals, through a combination of the provisions of the law itself, and the mandated subsidiary legislation.¹⁰⁵

The overall objectives of the DM Law, already described, are set out in Chapter 1. This chapter also mandates a Royal Decree concerning special national days on disaster risk management.¹⁰⁶

1.1 Institutions:

Chapter 2 of the DM Law sets out the “Disaster Management Mechanism”, referring to the institutional structures. It states that the NCDM is to be “established as the headquarters of the Royal Government to lead, administer and coordinate all disaster management activities.”¹⁰⁷ The chapter then primarily sets out the subsidiary legislation that is needed to re-establish the existing institutions with potentially new organization and functioning. These are: the NCDM, the NCDM Secretariat-General, and the Sub-National Committees for Disaster Management.¹⁰⁸ The membership, organizational structure and functions of all of these institutions are to be established by either Royal Decree (to be issued by His Majesty the King at the request of the Prime Minister), or Sub-Decree, which can be approved by the Council of Ministers.

While the chapter also requires the nomination of focal points in all ministries, it does not either establish a formal body, or mandate a decree, to re-establish the previous mechanism for inter-ministerial cooperation, the Inter-Ministerial Disaster Management Group.¹⁰⁹

¹⁰⁵ Chapters 1-5 and Chapter 7 are considered here. Chapter 6 concerns rights and obligations of individuals, Chapter 8 concerns legal penalties, and Chapters 9 and 10 concern transitional and final provisions.

¹⁰⁶ DM Law, Art.5.

¹⁰⁷ Ibid. Art. 6,

¹⁰⁸ Ibid. Arts. 6, 7, 9.

¹⁰⁹ Ibid. Art. 8.

1.2 “Disaster Management Framework” – types of activities mandated

Chapter 3 of the DM Law is described as the “Disaster Management Framework”. This details four main types of activity that must be undertaken under the general categories of: (i) prevention and mitigation; (ii) preparedness; (iii) emergency response; and (iv) recovery.¹¹⁰ This chapter uses mandatory language (“shall”) but does not specify institutional responsibilities or roles regarding any of these activities. It is therefore understood as presenting the overall scope of activities necessary to achieve the objectives of the law, most of which would be the primary responsibility of the NCDM as the lead agency.¹¹¹ The chapter does not require specific subsidiary legislation, but it does require that “regulations and measures will be formulated” concerning public awareness on DRR and CCA, which is discussed later in this section.¹¹² It would also be logical that such key responsibilities are included in the NCDM Royal Decree concerning its organization and functioning, and possibly also in the Sub-Decrees establishing the NCDM Secretariat-General and the Sub-National Committees.¹¹³

1.3 “Governance” – Roles of NCDM and Sub-National Committees, declaration of disaster and emergency response

Chapter 4, on “Governance,” describes the roles of the NCDM and the Sub-National Committees for Disaster Management, concerning identification of risks, coordination, the necessity for the NCDM to issue guidelines for the Sub-National Committees and other government agencies, and emergency response.¹¹⁴

Most of this chapter concerns emergency response, as does the DM law in general. It allocates local responsibility for initial assessment and emergency response to the Sub-National Committees for Disaster Management. It then provides for the NCDM to mobilize emergency operations, based on their reports, by convening the RGC for decision on declaration of a disaster in the affected areas.¹¹⁵ These provisions appear to establish the procedure that the Sub-National Committees are responsible for disaster management within their towns, district or provinces, and that the NCDM mobilizes only after receiving a report from them.¹¹⁶ At the same time, after receiving such a report, the NCDM can convene the RGC to declare a disaster in the relevant area, and it is then the RGC that determines the next actions.¹¹⁷ Articles 20 and 21 are key provisions, setting out RGC declaration of disaster and its subsequent options, including placing relevant areas under a ‘disaster situation’.¹¹⁸ In this regard it notes that any declaration of a national emergency must be done under the Constitution.¹¹⁹ Article 22 of the Constitution states that:

“When the nation faces danger, His Majesty the King, with the joint approval of the Prime Minister, the President of the National Assembly and the President of the Senate, shall make a proclamation to the people putting the country into a state of emergency”.

It is not clear from the wording of Article 21 in the English translation, whether the RGC can declare a national disaster, or only a disaster in a specific area under the DM Law - or whether a national disaster is considered to be the same as a state of emergency, requiring a declaration of emergency under the Constitution.

110 Ibid. Arts. 10-13.

111 Ibid. Art. 6.

112 Ibid. Art. 10.

113 Ibid. Arts. 6, 7, 9.

114 Ibid. Arts. 14-17.

115 Ibid. Arts. 18-20.

116 DM Law Art.s 18-20.

117 Ibid. Art. 20.

118 Ibid. Arts. 20-21.

119 *The Constitution of the Kingdom of Cambodia* 2004. Official English translation, as amended to Jan 2008, and promulgated 2014.

In any event, if the disaster exceeds the capacity of the Sub-National Committees, they apply to the NCDM to mobilize at the national level.¹²⁰ After a declaration of disaster by the RGC, the NCDM and Sub-National Committees are empowered to mobilize both public and private assets for emergency operations.¹²¹ The mobilization and reimbursement procedures are to be regulated by a Sub-Decree made under Article 25. International organizations and foreign missions in Cambodia can also be involved in emergency response and relief operations (though it does not state at whose request or how this is coordinated).¹²²

It is the combined role of the NCDM and the Sub-National Committees to lead and coordinate the post-disaster damage, loss and recovery needs assessment at their respective levels.¹²³ The DM Law thus allocates key operational roles to the Sub-National Committees as well as to the NCDM in emergency response and recovery operations, while requiring the RGC to determine disaster declarations, disaster areas or a state of emergency (in accordance with the Constitution).¹²⁴

The responsibilities for emergency response are set out in very broad terms and appear to need SOPS or other guidance to clarify some aspects and to become operational. The DM Law does not specifically require subsidiary legislation under this chapter, apart from the mobilization and reimbursement procedure, but these are essential functions of the NCDM and Sub-National Committees. It would therefore be advisable to include this in the decrees setting out their organization and functioning. The SOPS themselves may need to be developed separately as one of the key tasks of the NCDM to make the system fully operational, but for them to be enforceable with other institutions they would need the authority of subsidiary legislation, which could either be made separately at the discretion of the RGC, or specifically authorized by the decrees establishing the NCDM.

1.4 International Cooperation and Assistance

Chapter 5 of the DM law, on “International Cooperation and Assistance,” gives a particular role to the NCDM in accepting and coordinating international assistance (especially Articles 30 and 32). In general, the chapter is focused on international assistance in the context of an emergency response operation, and not on DRR, prevention, recovery or reconstruction activities before and after a disaster. It captures many of the key elements of the IFRC’s 2007 *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (“IDRL Guidelines”), although the operational detail is not included in the DM law itself.¹²⁵ (details will be elaborated in sub-decrees or regulations).

Specifically, the chapter makes NCDM the leader in international and regional coordination and requires NCDM to take action in advance of a disaster by establishing a system for such cooperation and coordination.¹²⁶ It further outlines that “every tax and duty imposed on assistance for disaster management and humanitarian response activities being provided to Cambodia shall be borne by the state.”¹²⁷ This concept of tax exemption international assistance and facilitation of the entry of foreign relief personnel and equipment is supported generally in later provisions in the chapter, including a provision for a separate Sub-Decree on the entry of international assistance (personnel, goods, equipment, facilities) under Article 34.

120 Ibid. Arts 20, 22.

121 Ibid. Arts. 23, 25.

122 Ibid. Arts. 24, 25, 26.

123 Ibid. Art. 27.

124 Ibid. Arts 20-21. Constitution Art. 22.

125 In IFRC. 2008 (rev. 2011). Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance. IFRC; Geneva. Available at: <http://bit.ly/16TxYJv>.

126 DM Law Arts. 28-30.

127 Ibid. Art. 31.

There are also important provisions on requesting international assistance, accepting it, and initiating ‘special rules, regulations and procedures’ for its delivery into the country. Article 32 in particular empowers the NCDM to make a request to the RGC for an international appeal “in the event that the disaster is greater than the response capacity of the country.” The RGC is required to make such an appeal (“shall”) if requested by the NCDM, after which the NCDM has the following options under Article 32:

Upon the commitment of international communities to provide assistance, NCDM could:

1. Declare the acceptance of international assistance.
2. Command the relevant authorities to cooperate and collaborate with donors and international response teams in the response operation.
3. Authorize the utilisation of international assistance to be delivered into the country under special rules, regulations and procedures.¹²⁸

Of particular note here is that the call for international assistance does not require either a declaration of disaster or a declaration of emergency. Once the RGC has made the call, upon the NCDM’s request, it is the NCDM that is empowered to accept the international assistance offered and to make the necessary domestic authorizations to facilitate its entry.

In terms of the procedure for offering assistance, all “individuals or international institutions” willing to provide assistance must inform the Ministry of Foreign Affairs and International Cooperation (MOFAIC), and provide details¹²⁹ This leaves open the question of whether such offers need to be accepted, or whether MOFAIC is simply notified. It also creates a situation where MOFAIC is receiving notifications, under Article 33, but NCDM is the responsible agency for accepting offers, under Article 32. This will require excellent and speedy communication between MOFAIC and NCDM, and such coordination should be clearly outlined as part of the procedure for the entry of assistance under the proposed Article 34 Sub-Decree. It could be facilitated by the creation of a joint MOFAIC and NCDM mechanism for offers and acceptance of international assistance as part of the Sub-Decree. This could even be part of a general one-stop-shop for entry and facilitation of assistance during disasters, as a number of other countries have now done, which could also be created by the Sub-Decree. For example:

The Philippine Disaster Risk Reduction and Management Act of 2010 (DRRMA) provides for the tax-free importation of international humanitarian assistance to areas under a declaration of calamity, which it makes possible by amending the relevant customs and tax laws (DRRMA Section 18). In practice this was implemented by the Philippines Government during the 2013 Haiyan response by administratively establishing “one-stop-shops” for the entry of all international humanitarian assistance, covering goods and people, customs, tax and immigration. Such “one-stop-shops” were put in place in Manila and Cebu City and were effective in facilitating the entry of humanitarian assistance.¹³⁰

The Indonesian Law on Disaster Management (Number 24 of 2007) has specific regulations on Participation of International Institutions and Foreign Non-Governmental Organizations in Disaster Management (Regulation No 23 of 2008). Under these, there is provision for ‘facilitation’ of international organizations and foreign NGOs as provided for in regulations in accordance with temporary

128 *ibid.* Art. 32 (in part).

129 *ibid.* Art. 33.

130 HERE-Geneva. 2015. The Impact of Regulatory Problems and the Gains from Legal Preparedness In Recent Response Operations. (Commissioned by the International Federation of Red Cross and Red Crescent Societies for the Expert Meeting – 10 March 2015), p.9.

regulations that can be made (Article 13). One of the ways this has been implemented in Indonesia is by establishing one-stop-shops with tax exonerations for specific types of assistance¹³¹

With regard to recovery activities, in, as its states that “The recovery activities either under the grant or concessional loan shall comply with the legal procedures and effective regulations,” which suggests they are. This will likely require clarification in the Article 34 subsidiary legislation, particularly for initial recovery assistance.

The Sub-Decree mandated in Chapter 5, Article 34, is stated as concerning, the “specific procedure on granting visa to personnel of the international response teams and the import of materials, equipment, facilities and humanitarian assistance”. This suggests a fairly narrowly focused Sub-Decree. To be truly effective, it will also need to clarify roles and responsibilities in using the procedure. The core responsibilities of the NCDM regarding international assistance should also be part of the general Royal Decree and Sub-Decrees on the NCDM organization and functioning. Care will need to be taken to ensure that these two Sub-Decrees establish a single and seamless set of responsibilities and procedures, to ensure the provisions of the DM Law on international assistance can be implemented effectively. The recommendation is that the Chapter 5 sub-decree on international assistance is as comprehensive as possible, drawing on the key elements of facilitating and regulating international assistance as found in the IDRL Guidelines and Model Act, so that all these issue are detailed and clarified in one decree.

1.5 Resources and Funds

Chapter 7 of the DM Law has only two short articles regarding resources and funds. It states simply that NCDM expenditure is to be “allocated by the national budget in the budget plan of the Office of the Council of Ministers.”¹³² This may not be a substantial change from the previous system, under which the budget mechanism through the Council of Ministers was identified by some assessment reports as a contributing factor to the lack of resources for the NCDM. However, if this means that the NCDM will have its own line item in the national budget, albeit under that of the Office of the Council of Ministers, this does appear to be a stronger guarantee of a specific and public resource allocation to the NCDM. Importantly, the DM Law also requires that the state “shall have the appropriate reserve budget and resource to be ensured for the disaster management”.¹³³ The law also allows the NCDM to receive and use external funds in its own right.

Although there is no specifically mandated subsidiary legislation concerning resources and funding under this chapter, the mandated Royal Decree and Sub-Decrees concerning the structure and functioning of the NCDM, the NCDM Secretariat-General and the Sub-National Committees (Articles 6, 7 and 9) would logically include clarification of institutional budget allocations. However, if there is a desire to establish independent disaster contingency funds, or DRR funds, at national and local levels, this might require separate subsidiary legislation to be made at the discretion of the RGC. The RGC may wish to consider the question of establishing ready funds, as this has been widely identified as one of the major issues inhibiting the effectiveness of the disaster management system to date, and may be considered a necessary part of fulfilling the goals of the DM Law. Such funds have been implemented successfully in the Philippines and Viet Nam, as discussed in Part III.

131 Ibid.

132 DM Law. Art. 38.

133 Ibid. Art. 39.

2. Mandated Subsidiary Legislation

As already noted, the DM Law mandates nine specific Royal Decrees and Sub-Decrees that are essential to the establishment and functioning of the disaster management institutions and for operationalizing the law. The Royal Decrees are formally issued by His Majesty the King after their approval by the Council of Ministers, while the Sub-Decrees are made by the RGC/Council of Ministers under its own executive powers. These decrees are discussed first, and are the main focus of recommendations.

The DM Law also requires the creation of a range of other types of guidance which, in the English translation, are called “regulations and measures,” “measures,” “guidelines,” setting up a “system” and “special rules, regulations and procedures.”¹³⁴ These are not the terms used in most translations of the types of subsidiary legislation in Cambodia (as summarized in Annex B), so they may not be intended as formal documents, but some of them are important to the functioning of the DM Law, and they may be appropriately codified under one of the forms of subsidiary legislation available.

Additionally, the previous analysis in this report has highlighted a number of areas where other subsidiary legislation could help to operationalize the DM Law, even though it is not specifically required under the law, and so suggestions for these are made at the end of this part for the attention of the NCDM and RGC.

Table 1 summarizes the nine mandated Royal decrees and Sub-Decrees in the DM Law and recommends a general approach to each.

As noted in Table 1, not all of these decrees are intended to be substantive regulations. The Sub-Decree on the national disaster days (Article 5), and the Royal Decree appointing the NCDM office holders (Article 7) are straightforward procedural decrees that do not require further comment in this report. The remaining five decrees and recommendations on their content, are discussed below.

Table 1: Summary of Mandated Subsidiary Legislation and Recommended Approach

Type of Decree	DM Law Article No.	Purpose	Recommendation
1. Sub-Decree	Article 5	National Disaster Management Day jointly with the ASEAN Day for Disaster Management (ADDM) and the International Day for Disaster Reduction (IDDR). The date tentatively in the 2nd week or 13th October of the year.	This is a largely procedural decree to establish the dates and purposes of special days to raise disaster risk awareness. No recommendations are made in this report regarding this sub-decree.
2. Royal Decree	Article 6	Organization and Functioning of the NCDM	The Royal Decree was promulgated on 29 December 2015
3. Royal Decree or Sub-Decree	Article 7	Nomination of the Secretary-General and Deputy Secretary-Generals of the NCDM Secretariat-General	This is an internal administrative and decree procedures for the appointment of the Secretary-General and Deputy Secretary-Generals of NCDM.
4. Sub-Decree	Article 7	Organization and Functioning of the NCDM Secretariat-General	This will need to be a substantive regulation. It is recommended to set out detailed functional responsibilities of the Secretariat-General as a whole, based on the range of functions of the NCDM set out in the DM Law, and to review the existing departmental structure.

134 Ibid. Arts. 10, 14, 16, 17, 30, and 32, respectively.

Type of Decree	DM Law Article No.	Purpose	Recommendation
5. Sub-Decree	Article 9	Organization and Functioning of the Sub-National Committees for Disaster Management	This will need to be a substantive regulation. It will need to define membership and appointment of the Sub-National Committees for Disaster Management, and it is recommended that it set out the full range of functions for these Committees as described throughout the DM Law.
6. Sub-Decree	Article 25	Disaster Response Mobilization Procedure And Reimbursement for Use of Assets	This will be a technical regulation to advise on procedures, transparency and reimbursement for mobilization of state and private assets in an emergency response. It is recommended to use specialized legal and financial expertise to draft this Sub-Decree.
7. Sub-Decree	Article 34	Specific Procedure for facilitating the Entry of International Response Teams and Humanitarian Assistance	This will need to be a substantive regulation. It is recommended to use the IDRL Guidelines and the IDRL Model Act, as well as key AADMER related documents as resources to draft a stand-alone Sub-Decree on this, which must also be consistent with the other Sub-Decrees.
8. Resolution	Article 6	The appointment of the Components of the National Committee for Disaster Management (NCDM)	The Resolution was issued on 3 March 2016
9. Sub-Decree	Article - 8	Establishment a disaster management unit/ mechanism in the respective ministries-institutions and assign a focal point	To be drafted

2.1 Royal Decree on the Organization and Functioning of the NCDM (Article 6)

The Royal Decree on establishment of the NCDM under the authority of the DM Law sets out to determine the membership and leadership of the NCDM, and also to provide a description of its mandate as set out in the DM Law. As well as describing the broad responsibilities under the law, the decree needs to provide the basis for operationalizing those responsibilities, and show how they relate to other institutions. For example, Chapter 4 of the DM Law on Governance, sets out roles for the Sub-National Committees, the NCDM and the RGC concerning declaration of disasters and mobilization of an emergency response, but it does not provide guidance on the precise mechanisms for each institution fulfilling its role, or which of them is responsible for developing the procedures.

It is recommended that the RGC base this Royal Decree on the style of legislative descriptions for national disaster management authorities now found in many disaster risk management laws around the globe.¹³⁵ Essentially, this could follow a sequence of approximately ten key articles along the following lines:

1. **Establish the NCDM and its Executive Committee**, membership, appointment process, responsibilities, and frequency of meetings.
2. **Define the NCDM legal status and level of executive government regulatory powers.** The DM Law does not define the NCDM’s legal status, so the decree would need to confer legal personality if that is intended. It should also clarify whether it is intended that the NCDM have ministerial-level executive powers, or the capacity to make certain defined types of subsidiary legislation

¹³⁵ For example: Bangladesh Disaster Management Act 2012, Chapter 2; Seychelles Disaster Risk Management Act 2014, Part II; or Indonesia Law on Disaster Management 2007, Chapter IV.

under the DM law. One question is whether all subsidiary legislation under the DM Law (decrees, proclamations, decisions and circulars) and formal policy documents from the NCDM will require approval by the Council of Ministers, or whether there is some level at which the NCDM can act autonomously;

3. **Describe the broad role and objectives of the NCDM** under the DM law drawing on: (i) Articles 1, 2, 3 in Chapter 1 concerning the objectives and goals of the law; (ii) Article 6 in Chapter 2 stating the NCDM is the headquarters of the RGC concerning disaster management and is to “lead, administer and coordinate all disaster management activities;” and (iii) the disaster management framework set out in Chapter 3 which sets out the broad scope of disaster management activities that must be undertaken under the DM law, and highlights the four key areas of prevention and mitigation (including climate change adaptation), preparedness, emergency response and recovery.
4. **Set out the budget and resource allocation to the NCDM**, including the fact that the NCDM will have a budget allocation made under the national budget as part of the budget plan of the Office of the Council of Ministers under Article 38, and that the state will maintain an “appropriate reserve budget and resources to be ensured for the disaster management,” pursuant to Article 39.
5. **Cross-reference to the NCDM Secretariat-General Sub-Decree**, recognizing the fact that the NCDM’s daily operations will be supported by a Secretariat-General whose organization and functioning is established by a separate Sub-Decree.
6. **Set out the specific operational responsibilities allocated to the NCDM** under the DM Law Chapter 4 on governance, covering:
 - a. Risk information, preparedness and integrating DRR into development (Articles 10, 11 and 14). The decree should encourage the NCDM to use current guidance and tools and international frameworks in these areas, and give it the authority to work with national and international development partners in building up the DRR and preparedness aspects of disaster management in Cambodia, as well as working cross-sectorally within government, especially with the Ministry of the Environment, on integrating climate risk monitoring and climate change adaptation, as required by in the DM law Article 10). In this regard it is noted that drafters of this decree have access to extensive resources on DRR and preparedness, including the Sendai Framework itself and a range of tools on law and DRR from the IFRC and UNDP, including: the 2015 *Checklist on Law And Disaster Risk Reduction*; the 2015 *Handbook on Law and Disaster Risk Reduction*; and the 2014 background report, *Effective Law and Regulation for Disaster Risk Reduction: A Multi Country Report*.¹³⁶
 - b. Horizontal coordination within the government (Articles 8 and 15) as well as with private sector and civil society organizations (Articles 15, 16, 17);
 - c. Guidance to Sub-National Committees and the other government and non-government participants in the disaster management system (Articles 16 and 17);
 - d. Clarification of NCDM role vis-a-vis Sub-National Committees and RGC in emergency response (Articles 18-23). This also requires cross-referencing to the separate Sub-Decree on Sub-National Committees (to be made under Article 9). The DM Law gives the first-line role to local authorities / Sub-National Committees, then national mobilization to the NCDM, and declaration of a disaster area or a national emergency is done by the RGC. It is noted that the

¹³⁶ See Annex D Bibliography for full details and online links in multiple languages including English and French. In terms of risk information, there is also the UNDP-supported project within NCDM to support the establishment of a disaster management information system, “CamDi”.

- criteria and process for when one body takes over from another, or how coordination occurs if responsibilities are shared, may be needed in this decree or other subsidiary legislation; and
- e. The NCDM’s role in mobilization of public and private resources under Articles 25-26 should also be outlined, as well as cross-referencing the separate Sub-Decree on the mobilization procedures required by Article 25.
7. **Set out the NCDM responsibilities on coordination of international relief** under the DM Law Chapter 4 Article 24, and Chapter 5 on international cooperation and assistance. It should:
- a. Highlight the key responsibility of the NCDM to “set up a system to provide the coordination and cooperation in managing the international assistance for disaster management activities with transparency and efficiency” in Article 30.
 - b. Ideally the Royal Decree would clarify the role of the NCDM itself in the process of making an international appeal, the process for offers and acceptance of relief, and coordination of international organizations pursuant to Articles 28-34. It is recommended that the drafters consider the IDRL Guidelines, the Model Act on International Disaster Assistance, the IFRC Legal Preparedness Report on Cambodia, and the various IDRL legislative tools available, to assist with constructing clear and comprehensive mandates and procedures on the appeal, acceptance, entry and coordination of international humanitarian assistance.
 - c. The decree should also include a cross-reference to the separate Sub-Decree on the specific procedure to facilitate international assistance as required by Article 34, and these two decrees need to be made compatible to ensure no inconsistencies in the systems they establish.
 - d. Some particular questions to consider regarding this Sub-Decree and the Article 34 Sub-Decree, are (i) whether the RGC wishes to make any special category or eligibility requirements of international humanitarian agencies to receive expedited entry and tax relief for goods and equipment, or whether it prefers a blanket policy for all providers of relief,¹³⁷ and (ii) whether it may be possible to create a “one-stop-shop” for entry of all international humanitarian personnel, goods and equipment during a declared disaster, where immigration, customs and registration of in-country relief providers could all occur in one step at the main entry points, as had been done successfully in countries such as Indonesia and the Philippines, as discussed above.
8. **Define the NCDM role regarding regional and international bodies and commitments**, especially regarding ASEAN disaster management institutions and specifically AADMER and the AHA, if the NCDM is to be the key point for coordination and liaison with counterparts in the other ASEAN state parties and the AHA. Under the SFDRR there may also be a need to set up new mechanisms for creating DRR targets for Cambodia and monitoring their implementation, and such a role would logically fall to the NCDM (especially if the NCDM is to be the National Platform on DRR under the Sendai Framework). This issue is discussed more fully below, as the RGC could decide to include this detail either in this NCDM Royal Decree, or in additional subsidiary legislation as discussed, given that other RGC agencies are also involved. However, it appears necessary to specify in this Article 6 Royal Decree, at least some oversight role for the NCDM regarding implementation of regional and international agreements related to disaster management.

137 For guidance on the question of facilitating eligible international agencies, see : (1) The IDRL Guidelines Parts IV and V, in IFRC. 2008 (rev. 2011). *Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (“the IDRL Guidelines”). IFRC, Geneva, pp. 18-22. (Available at: <http://bit.ly/16TxYJv>); and (2) the IDRL Model Act Chapters V and VI, in IFRC, IPU, OCHA. 2013. *Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance and Commentary*. IFRC, Geneva, pp 34-46. (Available at: <http://bit.ly/171YOG9>).

9. **Outline key policies, procedures and guidelines that the NCDM needs to approve and review** ¹⁾ on an ongoing basis to ensure the smooth operation of the disaster management system. The NCDM Secretariat-General would likely have the responsibility for preparing these, but the request for review, oversight and approval of policies and strategies would be appropriately allocated to the NCDM. For example, the Royal Decree could enumerate the various guidelines and measures required under the DM Law itself, as well as requiring the NCDM to maintain updated key national policies and strategies and, importantly, to develop and implement a national contingency plan and SOPs for emergency response, as well as to develop and maintain plans and strategies for post-disaster recovery and reconstruction, in consultation with stakeholders.
10. **Make annual reporting requirements of the NCDM** to the RGC / Office of the Council of Ministers, since the NCDM has delegated responsibilities from the RGC under Article 6. Public reporting and open access website data could also partly fulfill the right (and obligation) of individuals under the DM Law to access risk information, and participate in the disaster management system (under Chapter 6 of the DM Law, not otherwise discussed in this report).

2.2. Sub-decree on the Organization and Functioning of the NCDM Secretariat-General (Article 7)

The DM Law Article 7 requires two decrees concerning the NCDM Secretariat-General. One concerns the appointment of the Secretary-General and the Deputy Secretaries-General, which will be a short procedural Royal Decree or Sub-Decree once the other Sub-Decree is made. The other Sub-Decree, discussed here, is the one that establishes the organization and functioning of the Secretariat-General.

1. This Sub-Decree could follow a similar structure to the proposed ten articles of the Royal Decree establishing the NCDM itself, but will need to allocate more specific operational roles and mechanisms at each point. For example, where the NCDM is required to issue guidance under Articles 15 and 16, the task of preparing these would be allocated to the Secretariat-General. Similarly, it is presumed the Secretariat-General would prepare draft policies and strategies, SOPs, and annual reports and financial reports for NCDM approval, as well as generally undertaking its work under the direction or governance of the NCDM.
2. In a structural sense, this Sub-Decree on the NCDM Secretariat-General needs to:
 - a. Establish the Secretariat-General as an administrative body responsible to the NCDM (DM Law Article 7), including frequency of meetings;
 - b. Clarify the delegations and relative responsibilities as between the NCDM and the Secretariat-General, in particular whether it is intended that the NCDM continues to operate essentially as a policy oversight and governing board that delegates organizational management to the Secretariat-General;
 - c. Establish the structure of the Secretariat-General, including (i) the position of the Secretary-General, and the Deputy Secretaries-General (ii) the number and designation of the main departments (assuming each will be headed by a Deputy).
 - d. Cross-reference the need for the Royal Decree or other Sub-Decree (Article 7), which is solely for the purpose of nominating the Secretary-General, and the Deputy Secretaries-General, and will therefore need to be made afterwards.
3. This Sub-Decree could also mandate specific responsibilities to the NCDM Secretariat-General under the broad mandate of the NCDM, in particular the following high-need areas as indicated by feedback and research on the pre-existing system. Some suggested areas for specific NCDM Secretariat-General action are:

- a. Develop and regularly update a set of Standard Operating Procedures (SOPs) for emergency response operations and conduct training, drills and simulation exercises to ensure all relevant participants understand the procedures;
 - b. Further develop and maintain a national EWS that ensures that the monitoring data can be used to provide timely and clear warnings down to village level, especially for flood warning;
 - c. Progressively conduct risk mapping and risk assessments for disaster and climate risk from national to local level, prioritizing the highest risk areas based on previous disasters, to inform disaster management and development planning;
 - d. Acquire and maintain a disaster management information system (DMIS) to integrate risk data and development planning as well as contingency planning for disasters, in line with the National Action Plan for Disaster Risk Reduction (NAP-DRR 2014-18);
 - e. Provide disaster management training to government officials and sub-national committees;
 - f. Conduct CBDRR training and awareness and emergency drills at commune and village levels; and
 - g. Acquire and maintain a system for transparent tracking and accountability for humanitarian assistance from all sources during disasters, including from national and international sources.
4. At the initial stage of implementation it may also be advisable for this Sub-Decree to task the Secretariat-General with preparing the drafts of the other mandated subsidiary legislation under the DM Law, in consultation with stakeholders. It would also be useful to allocate this as an ongoing responsibility, to keep these up-to-date or to propose new subsidiary legislation to the NCDM/RGC as and when required.

2.3 Sub-decree on the Organization and Functioning of the Sub-National Committees for Disaster Management (Article 9)

Article 9 of the DM Law requires a Sub-Decree on the Organization and Functioning of the Sub-National Committees for Disaster Management. As this is the only decree concerning the Sub-National Committees, it will need to establish their institutional structure as well as set out their functional responsibilities under the DM Law. A recommended structure and function for this decree is outlined as follows:

1. *Establishment*: Create the Sub-National Committees for Disaster Management at each level – Province, District/ Precinct and Commune/Sangkat. Consideration could also be given as to whether this should include village level structures, such as the Village Disaster Management Teams previously established under lower level subsidiary legislation.
2. *Membership*: Define the types of government agencies and local stakeholder organizations and experts to be appointed to each type of Sub-National Committee, and outline the process for appointment of the members;
3. *Budget and resource allocation*: set out the sources and mechanism of allocating Sub-National Committee annual operational budgets. If they are also to have access to other funds, such as special funds for DRR, EWS, or emergency response, outline what these funds are and how the Committees access them.
4. *Delegations and accountability*: Set out the lines of reporting and responsibility for each type of Sub-National Committee, especially vis-à-vis local government authorities, local branches of line ministries, the NCDM and the RGC. Three particular questions that should be clarified are (i) how the Committees' roles in local first response relate to those of the mainstream sub-national

government institutions at the same level, especially when it comes to coordinating or directing a local emergency response operation;¹³⁸ (ii) how the different levels of the sub-national committees coordinate vertically, and whether there is a supervisory role by, for example, the provincial committee over the district committee;¹³⁹ and (iii) how the Sub-National Committees relate to the NCDM, which is required to give them guidance, but may or may not have a supervisory role in relation to their operations.

5. Specific functions and responsibilities: As the sub-national structures for disaster management, the areas of activity set out in the DM Law Chapter 3 on the disaster management framework presumably apply as the broad mandate of the Sub-National Committees (as well as for the NCDM). Chapter 3 (Articles 10-13) highlights the four key areas of (i) prevention and mitigation (including climate change adaptation), (ii) preparedness, (iii) emergency response and (iii) recovery. These could be described in terms of how the Sub-National Committees are to work on the issues. There are then a number of other functions mentioned at different points in the DM law, including to:
 - a. Take measures on disaster risk identification, risk analysis and integrating DRR into development plans, working under NCDM guidelines and with other government agencies and stakeholders (Articles 14 and 16);
 - b. Working under NCDM guidelines, and with other government agencies and stakeholders, participate in developing contingency plans and reserving assets for disaster relief and emergency response (Article 17);
 - c. Act as the first line emergency responders along with local authorities (subject to the meaning of Articles 18 and 25 “on-site” local authorities), assess needs and report to the NCDM as the basis for its decision to mobilize national action (Articles 18, 19, and 20) and request the RGC to declare a disaster area.

2.4. Sub-decree on Disaster Response Mobilization Procedure and Reimbursement for Use of Assets (Article 25)

The Sub-Decree to establish a procedure for disaster response mobilization procedure and reimbursement for use of assets is required by DM Law Article 25. This is a technical regulation concerning the manner in which the NCDM may mobilize public and private assets in the context of an emergency operation, and the compensation payable for such use. It is recommended that the RGC engages financial and legal experts in Cambodian law to assist with a first draft of this regulation, which must also be consistent with the general objectives and goals of the DM Law, and the Sub-Decrees to be made in relation to the NCDM functions and organization.

2.5. Sub-decree on the Specific Procedure for Facilitating the Entry of International Response Teams and Humanitarian Assistance (Article 34)

The Sub-Decree to establish a specific procedure for facilitating the entry of international response teams and humanitarian assistance is required by DM Law Article 34. This is a Sub-Decree that will form part of the general scheme of DM Law Chapter 5 concerning international assistance and the various responsibilities of the RGC, NCDM and Ministry of Foreign Affairs and International Cooperation. It has been presumed in this report that the three general decrees on the organization

¹³⁸ The DM law Article 18 refers to “the on-site competent authorities” conducting emergency operations in the affected areas, and describes them as assisting the “responsible committees for disaster management.” Article 19 appears to allocate responsibility directly to the Committees. But Article 25 then distinguishes between the “administration on-site and the responsible sub-national committees.”

¹³⁹ The DM Law Article 19 defines responsibility as based on the geographical scope of the disaster, but does not detail whether, for example, a provincial DM committee could direct or coordinate the District and commune committees in its province.

and functioning of the NCDM and the NCDM Secretariat-General will outline their responsibilities concerning the entry and coordination of international humanitarian assistance, as the Article 34 decree refers predominantly to the “specific procedure on granting visa to personnel and of the international response teams and the import of materials, equipment, facilities and humanitarian assistance.” Therefore these recommendations focus on some of the more specific mechanisms and legal issues that need to be taken into account for such a regulation, which appears largely technical in intent. As with the recommendations above concerning broader roles of different actors, these observations and questions are based firstly on the DM Law, and then draw on relevant aspects of the IDRL Guidelines and the IDRL Model Act.

1. The description of the Sub-Decree as outlined in Article 34 at first appears to focus on facilitating international assistance only at the point of entry (after any advance offers and acceptances have been made), and does not appear to extend to coordination of international response teams after their entry. However, the first paragraph of Article 34 is broader and mandates the NCDM and “the relevant ministries-institutions” to facilitate entry of international response personnel and their equipment, and also to register them, and provide “other services as deemed necessary.” Given this, the RGC should consider the following when developing this sub-decree:
 - a. There is a clear mandate for the RGC to establish inter-ministerial “one-stop-shops” at entry points, to take care of customs/tax exemption issues, visas and registration. This model is recommended in the IFRC’s Model Act on International Assistance and has been used successfully in a number of countries, including the Philippines and Indonesia;
 - b. There is also scope for the Sub-Decree to set out powers to provide coordination and information for international teams operating in Cambodia during the disaster; and
 - c. There is scope for the Sub-Decree to provide for other mechanisms to support international responders by granting them temporary legal recognition as organizations (legal personality) so that they can enter contracts (hire local staff, rent premises, purchase good and equipment, open bank accounts). These are facilities recommended in the IDRL Guidelines and Model Act, given that a lack of legal capacity has been proven to contribute to the disruption of international response efforts in many countries in the past. By contrast, facilitation in areas such as freedom of movement, tax exemptions and legal personality, have had demonstrably positive effects on disaster operations.¹⁴⁰
2. Another relevant aspect for the Article 34 Sub-Decree, is that these special rules are apparently set in operation by the NCDM under Article 32, and only occur after the disaster is deemed to be beyond the response capacity of Cambodia and an international appeal has been made by the RGC (at the request of the NCDM). Article 32 also appears to assume that the “special rules, regulations and procedures” are prepared in advance and, although it does not refer to Article 34, it seems that the Article 34 Sub-Decree is one and the same as the Article 32 special rules. However, Article 30 simply states that all taxes and duties on “assistance for disaster management and humanitarian response activities being provided to Cambodia shall be borne by the state”, which could also refer to development assistance provided by international organizations or NGOs other than in an emergency context, as well as to the internal assistance activities during an emergency response of such organizations already active in Cambodia. In order to avoid any overlap or confusion, this issue needs to be clarified in the Article 34 Sub-Decree, especially as the last line of Article 32 suggest recovery activities have a different status.

140 HERE-Geneva. 2015. *The Impact of Regulatory Problems and the Gains from Legal Preparedness In Recent Response Operations*. Pp. 15-15.

3. The extent and scope of the Article 34 Sub-Decree will depend on how detailed the RGC decides to make the Article 6 and 7 general decrees on the NDCM and its Secretariat-General concerning the many functions the NCDM is given under Chapter 5 on international cooperation and assistance. The key objective will be to ensure that, between the different decrees, there is sufficient concrete guidance to operationalize the DM Law provisions, and that they form a seamless and comprehensive regulatory framework for the entry and coordination of international assistance. However, this report recommends that the Article 34 sub-decree on international assistance is as comprehensive as possible, drawing on the key elements of facilitating and regulating international assistance as found in the IDRL Guidelines and Model Act, so that all these issues are detailed and clarified in one decree.

3. Mandated Guidelines and Measures in the DM Law

The specific areas where the DM Law requires additional guidelines, measures etc. are summarized in Table 2 below. As can be seen, most of the specific guidance or measures mentioned fall within the general mandate of the NCDM. Given they are mentioned especially in the DM Law, however, it is recommended that these various measures and guidelines be included as specific obligations of the NCDM / NCDM Secretariat-General in the Royal Decree and Sub-Decree establishing them under Articles 6 and 7.

Table 2: Summary of guides and measures required by the DM Law

Type of Guidance	DM Law Article No.	Purpose	Recommendation
“Regulations and measures”	Article 10	To strengthen public engagement in hazard risk prevention and climate change adaptation	Include as specific obligations of the NCDM / Secretariat-General in the Royal Decree and Sub-Decree establishing them under Articles 6 and 7
NCDM “appropriate measures”	Article 14	To define disaster risk identification and integrate DRR into development planning	While this issue should be listed as part of the NCDM specific obligations under the Article 6 and 7 decrees, it is also a question of inter-ministerial cooperation and vertical cooperation with sub-national governments, for which the RGC may need to formalize the focal points under Article 8.
NCDM Guideline for Sub-National Committees, ministries-institutions, armed forces, public & private sector, civil society	Article 16	Guidance on conducting risk assessments, DRR and CCA	Include as specific obligations of the NCDM / Secretariat-General under the Article 6 and 7 decrees.
NCDM Guideline for Sub-National Committees, ministries-institutions, armed forces, public & private sector, civil society	Article 17	Guidance on developing contingency plans and reserving assets for disaster relief and emergency response	Include as specific obligations of the NCDM / Secretariat-General under the Article 6 and 7 decrees.
NCDM System for international cooperation	Article 30	The nature of the system is set out in the whole of Chapter 5, and is aimed at NCDM facilitating and coordinating international response teams and their goods and equipment.	This should be included as a specific obligation of the NCDM/Secretariat-General under the Article 6 and 7 decrees. Part of this system is also the formulation of the Article 34 Sub-Decree on entry of foreign response teams, as the special rules under Article 32

4. Other Potential Subsidiary Legislation

4.1 Disaster funds

If there is a desire to establish special disaster management funds that are separate from institutional budgets, this might require separate subsidiary legislation to be made at the discretion of the RGC. The DM Law provides sufficient powers for the RGC to do so in accordance with Chapter 7, Articles 38 and 39. Under these provisions it would be possible to pass subsidiary legislation creating reserve funds for emergency management, and also to create separate funds for DRR, or other aspects of disaster management. It is recommended that the RGC explore this option, as lack of ready funds for emergency response has been widely identified as one of the major issues inhibiting the effectiveness of the disaster management system to date, and may be considered a necessary part of fulfilling the goals of the DM Law. Likewise, lack of funds for DRR and preparedness have been identified as a challenge, although this could be remedied by regular budget allocations to the NCDM and Sub-national Committees earmarked for DRR.

Other ASEAN countries have established special disaster management funds, which can provide useful models for Cambodia, including both Viet Nam and the Philippines.

- a. Viet Nam's Law on Natural Disaster Prevention and Control provides that national budget allocations include resourcing for national responsibilities under the law.¹⁴¹ It also establishes Natural Disaster Prevention and Control Funds to be established at provincial level, funded by local taxes.¹⁴²
- b. The Philippine Disaster Risk Reduction and Management Act of 2010 (DRRMA) has taken an innovative approach to providing both disaster contingency funds and funds for disaster risk reduction (DRR).¹⁴³ The National Disaster Risk Reduction and Management Council (NDRRMC) was mandated under the law to establish a National Disaster Risk Reduction and Management Fund (NDRRMF), as well as Provincial and Local DRRM Funds.¹⁴⁴ The major innovation in the Philippine law, that has been cited as best practice globally, is the requirement that local authorities allocate at least 5% of their revenues to these local funds (Sections 21), and also allocate certain portions for rapid response and disaster risk reduction. The national fund is also allocated an annual budget under the national budget process and must allocate fund both for rapid response and DRR.¹⁴⁵

4.2 International and regional agreements

As noted above, the DM Law itself does not make any specific mention of international or regional agreements or commitments. This is not unusual in a national law such as this, as the external instruments often change and the principal law would then need to be amended. However, the DM Law does give the NCDM broad mandates concerning both disaster risk reduction and international cooperation. The DM Law's very broad objectives and goals and disaster management framework (Chapters 1-3) therefore provide scope for such additional subsidiary legislation as may be needed to make international and regional agreements operational. As proposed in 2.1 above, the general role of the NCDM regarding international and regional relations on DRM could form part of the Royal Decree and Sub-Decrees on its organization and functioning. However, in order to fulfill Cambodia's specific international and regional commitments, additional subsidiary legislation may also be needed to clarify specific responsibilities and institutional mechanisms for the NCDM and/or other

141 Law No. 33/2013/QH13 of 2013, which commenced on 1 May 2014, Article 9.

142 Ibid. Article 10.

143 Republic Act No. 10121

144 Philippine NDRRMA Section 6.

145 Ibid. Sections 21 and 22.

RGC agencies. For example:

- a. **Sendai Framework Implementation** – Although the DM Law gives the NCDM a broad mandate concerning disaster risk reduction, it does not provide details of what this means for Cambodia, or set out national objectives on DRR. The Sendai Framework and the many resources established by UNISDR for its implementation is an obvious source of guidance on this issue. However, there also needs to be clarity of DRR objectives and targets within Cambodia, and for this to occur the institutional roles and responsibilities could be established using subsidiary legislation under the DM Law. The process of applying DRR principles in Cambodia’s law is then well supported by the research and tools developed by the IFRC and UNDP concerning legislative support for DRR, namely the 2015 *Checklist on Law And Disaster Risk Reduction*; the 2015 *Handbook on Law and Disaster Risk Reduction*; and the 2014 background report, *Effective Law and Regulation for Disaster Risk Reduction: A Multi Country Report*.¹⁴⁶
- b. **The AADMER Implementation** – The objective of the AADMER is “...to provide effective mechanisms to achieve substantial reduction of disaster losses in lives and in the social, economic and environmental assets of the Parties, and to jointly respond to disaster emergencies through concerted national efforts and intensified regional and international co-operation”(Article 2). Among other things this requires Cambodia to designate the “competent authorities” to act on its behalf concerning implementation of the agreement, including when Cambodia is acting as an “Assisting Entity”, or “Receiving Party” or “Requesting Party” under AADMER in the event of a disaster emergency (Article 1). AADMER thus has an internal national component, for Cambodia to give it effect within its own government institutions. As an ongoing regional agreement, within the ASEAN framework, there is also a need for Cambodia to have national representation in the various committees and technical working groups in the detailed work plan for the AADMER implementation.

4.3 Joint Ministerial Initiative on Managing Climate Risk

The inclusion of climate risk as an essential aspect of hazard risk prevention in DM law Article 10 will require particular cooperation with the Ministry of the Environment, which has primary carriage of climate change issues. For example, this convergence of DRR and CCA has been recognized in a number of Pacific nations,¹⁴⁷ which have established joint initiatives on climate change or, as in the case of Vanuatu, have fully integrated these areas in institutional arrangements and in drafting a new law (still under way).¹⁴⁸ Lao PDR has also recently reviewed its environmental code and its Environmental Protection Law 2013 is a good practice example of how climate and disaster risk can be integrated into environmental planning – and especially into the various types of environmental assessments that occur in general development planning and before specific new developments are approved.¹⁴⁹ The Ministry of Natural Resources and the Environment is also currently working on a new Disaster and Climate Change law, which seeks to address all aspects of the disaster management cycle as well as integrate climate change adaptation measures.

¹⁴⁶ See Annex D Bibliography for full details and online links in multiple languages including English and French. In terms of risk information, there is also the UNDP-supported project within NCDM to support the establishment of a disaster management information system, “CamDi”.

¹⁴⁷ E.g. Tonga, Joint National Action Plan (JNAP) on Climate Change Adaptation and Disaster Risk Management 2010; and Tuvalu, National Strategic Action Plan for Climate Change and Disaster Risk Management 2012; and the Nauru Framework for Climate Change Adaptation and Disaster Risk Reduction (RONAdapt) important 2015.

¹⁴⁸ Vanuatu is reviewing its DRM law, in part to integrate DRM and climate change adaptation. It has already done this at an institutional level by merging the relevant government entities in 2013, creating the National Advisory Board on Climate Change and Disaster Risk Reduction.

¹⁴⁹ Lao PDR, Environmental Protection Law 2013, especially Article 1 purposes, Article 19 on strategic environmental assessment (SEA), and Article 20 on Preventive Measures Against Natural Disasters. Available at <http://faolex.fao.org/docs/pdf/lao151747.pdf>

Given the link between floods, climate variability, and sea level risk for Cambodia’s disaster risk, increased inter-ministerial cooperation on climate change may be necessary to fulfill the objectives of the DM Law. At its discretion, the RGC could make subsidiary legislation to support policies and procedures to achieve this, based on DM Law Article 10. It is recommended that this aspect of the DM law implementation be undertaken in consultation with the Ministry of the Environment and the drafting team of the proposed new environmental code, which is currently being prepared with support from UNDP in Cambodia.

5. Summary of Recommendations

The discussion in this report has focused on how best to implement the DM Law through the subsidiary legislation mandated within the law itself. The recommendations for development of substantive decrees are based on the specific provisions that require them as contained in the DM Law, and in line with its overall objectives. An effort has also been made to address the key challenges identified by stakeholders and reviews of the pre-existing system for disaster management in Cambodia. There are also some additional areas proposed to develop subsidiary legislation which are not contained in the DM Law but fall within its general scope. Whether or not to develop such legislation will be at the discretion of the RGC.

The recommendations concerning subsidiary legislation as outlined in the body of this report are summarized below. Of the seven decrees mandated by the DM Law, the highest priority and most substantive ones are the following four:

A. The Royal Decree on the Organization and Functioning of the NCDM (Article 6)

It is recommended to draw on the prior structure of the NCDM but review membership to re-assess stakeholder involvement, and include a summary of the range of functional areas for the NCDM as set out in the DM Law. The report has proposed a detailed plan for the decree.

B. The Sub-decree on the Organization and Functioning of the NCDM Secretariat-General (Article 7)

The DM Law Article 7 requires two decrees concerning the NCDM Secretariat-General. One concerns only the appointment of the Secretary-General, and the Deputy Secretaries-General, which will be a short procedural Royal Decree or Sub-Decree once the other Sub-Decree is made. The other Sub-Decree, discussed in the report, is the one that establishes the organization and functioning of the Secretariat-General. It is recommended to follow a similar structure to the ten articles proposed for the NCDM establishment decree, but in addition:

- a. Establish the structure of the Secretariat-General, including (a) the position of the Secretary-General, and the Deputy Secretaries-General and (b) the number and designation of the main departments (assuming each will be headed by a Deputy);
- b. Allocate more specific operational roles and mechanisms to the Secretariat-General, such as (a) requiring it to produce drafts of guidelines and procedures such as Standard Operating Procedures (SOPs) for emergency response operations and national policies, and (b) and identify focus areas to develop national capacity in disaster management, such as risk mapping and risk assessments, training, drills and simulation exercises, developing the national EWS, maintaining a disaster management information system (DMIS) etc.

C. The Sub-decree on the Organization and Functioning of the Sub-National Committees for Disaster Management (Article 9)

DM Law Article 9 requires a Sub-Decree on the Organization and Functioning of the Sub-National Committees for Disaster Management. As this is the only decree concerning the Sub-National Committees, it needs to establish their institutional structure as well as set out their functional responsibilities under the DM Law. It is recommended to follow a similar structure to that proposed for the NCDM establishment decree, which the report has detailed under five major headings:

- a. Creation of the Sub-National Committees for Disaster Management at each level – Province, District/ Precinct and Commune/Sangkat. Consideration could also be given as to including village level structures, such as the Village Disaster Management Teams previously established.
- b. Membership at each level
- b. Budget and resource allocation
- d. Delegations & accountability, to set out the lines of reporting and responsibility for each type of Sub-National Committee, especially vis-à-vis local government authorities, local branches of line ministries, the NCDM and the RGC.
- e. Specific functions and responsibilities under Chapter 4 on Governance, which include disaster risk identification, risk analysis and integrating DRR into development plans, developing contingency plans and reserving assets for disaster relief and emergency response, and acting as the first line emergency responders along with local authorities, with a key role in reporting to the NCDM to trigger national mobilisation.

D. The Sub-decree on the Specific Procedure for Facilitating the Entry of International Response Teams and Humanitarian Assistance (Article 34)

While it is recommended that the NCDM responsibilities for the coordination and facilitation of international assistance are part of the mandate establishing the NCDM as outlined in the decrees under Articles 6 and 7, the DM law also requires a Sub-Decree to set out specific procedure for facilitating the entry of international response teams and humanitarian assistance. The extent and scope of the Article 34 Sub-Decree will depend on how detailed the RGC decides to make the Article 6 and 7 general decrees on the NDMC and its Secretariat-General concerning the many functions the NCDM is given under Chapter 5 on international cooperation and assistance. The key objective will be to ensure that, between the different decrees, there is sufficient concrete guidance to operationalize the DM Law provisions, and that they form a seamless and comprehensive regulatory framework for the entry and coordination of international assistance.

This report recommends that the Article 34 sub-decree on international assistance is as comprehensive as possible, drawing on the key elements of facilitating and regulating international assistance as found in the IDRL Guidelines and Model Act, so that all these issues are detailed and clarified in one decree. Some potential content for the Article 34 Sub-Decree is set out in the report, based on the DM Law provisions and the IDRL Guidelines and related tools. These include the potential during a major disaster to:

- a. Initiate inter-ministerial “one-stop-shops” at entry points, to take care of customs/tax exemption issues, visas and registration, a model recommended in the IDR Model Act and used successfully in a number of countries;
-

- b. Provide coordination and information for international teams operating in Cambodia during the disaster; and
- c. Provide for other mechanisms to support international responders, such as granting them temporary legal recognition as organizations (legal personality) so that they can enter contracts (hire local staff, rent premises, purchase good and equipment, open bank accounts).

E. The other three decrees mandated by the DM Law are more technical or procedural in nature.

These are:

- a. The Article 5 Royal Decree setting dates for the national days on disaster management, which will need to be very short and procedural;
- b. The Article 7 Royal Decree or Sub-Decree appointing the NCDM Secretariat-General officer holders. This will be a short procedural decree which will need to be made after the other Article 6 decree establishing the Secretariat-General and the positions to be filled; and
- c. The Article 25 Sub-Decree to establish a procedure for disaster response mobilization and reimbursement. This will be a technical regulation concerning the manner in which the NCDM may mobilize public and private assets in the context of an emergency operation, and the compensation payable for such use. It is recommended that the RGC engages financial and legal experts in Cambodian law to assist with drafting this regulation.

F. Other recommended subsidiary legislation

In addition to the subsidiary legislation specifically mandated by the DM Law, the report also proposes three other areas that fall within the scope of the law, on which the RGC could usefully make additional subsidiary legislation at its discretion. These are

- a. **Disaster funds** – if there is a desire to establish special disaster management funds that are separate from institutional budgets, this might require separate subsidiary legislation to be made at the discretion of the RGC. The DM Law provides sufficient powers for the RGC to do so, under Chapter 7, Articles 38 and 39. It is recommended that the RGC explore this option, as lack of ready funds for emergency response has been widely identified as one of the major issues impacting the effectiveness of the disaster management system to date, and may be considered a necessary part of fulfilling the goals of the DM Law. For example, specialist disaster management funds have been established in Viet Nam and the Philippines, the second of these including both disaster response funds and disaster risk reduction funds to be set aside at both national and local level.
- b. **International and regional instruments** – while the role of the NCDM regarding international and regional institutions could form part of the Royal Decree and Sub-Decrees on its organization and functioning, there may be other aspects of international and regional instruments that require additional subsidiary legislation to ensure the commitments are integrated into the disaster management system. The DM Law’s very broad objectives and goals and disaster management framework (Chapters 1-3) provide scope for such additional subsidiary legislation. This may be especially relevant to regional cooperation with other ASEAN states under the AADMER, and the need to have clear roles and procedures within Cambodia’s DM system to make its commitments effective. There may also be a need to set up new mechanisms for creating targets for Cambodia and monitoring their implementation under the Sendai Framework..

- c. **Joint Ministerial Initiative on Managing Climate Risk** – The inclusion of climate risk as an essential aspect of hazard risk prevention in DM law Article 10 will require particular cooperation with the Ministry of the Environment, which has primary carriage of climate change issues. At its discretion, the RGC could make subsidiary legislation to support policies and procedures to achieve this, based on DM Law Article 10. It is recommended that this aspect of the DM law implementation be undertaken in consultation with the Ministry of the Environment and the drafting team of the proposed new environmental code, which is currently being prepared with support from UNDP in Cambodia.

Annex A: List of Persons in Interviews and Focus Group

Name and Designation	Organization
H.E. Mr. Ponn Narith, <i>Former Secretary General</i>	National Committee for Disaster Management (NCDM)
H.E. Mr. Ma Norith, <i>Deputy Secretary-General</i>	National Committee for Disaster Management (NCDM)
H.E. Mr. Ross Sovann, <i>Deputy Secretary-General</i>	National Committee for Disaster Management (NCDM)
Ms. LAK Mony Rasmey, <i>Country Support Plan Coordinator, Cambodia Country Office</i>	International Federation of Red Cross and Red Crescent Societies
Mr. Napoleon Navarro, <i>Senior Policy Advisor</i>	UNDP Cambodia
Vladislav Lobanov	World Food Program
Mr. Chandarith Som, <i>Advisor, Support to the Identification of Poor Households Programme</i>	Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH
Mr. Philip Sen	Joint Action Group(JAG)/ Actionaid
Mr. Chanthou Hem	Asian Development Bank
Mr. LIM Vannak <i>National Emergency Preparedness and Response Officer, Humanitarian Response Forum</i>	World Food Programme
Mr. Polin Nop	Dan Church Aid
Mr. Sar Kosal	Ministry of Planning
Mr. Bou Vanna	Ministry of Planning
Mr. Sovannarith Hang	UNDP Cambodia

Annex B: Outline of Hierarchy of Laws in Cambodia

Constitution: The supreme law of the Kingdom of Cambodia

International treaties: The king signs and ratifies international treaties and conventions after their approval by the National Assembly and the Senate. After such ratification, international treaties and conventions become law and may be used as the basis for judicial decisions. (Article 26 of the Constitution).

Kaw/Chbab: Legislation adopted by the National Assembly and the Senate (the legislature).

Royal Decree / Preah Reach Kram and Preah Reach Kret: issued under the name of the King in execution of his constitutional powers. are procedural Royal Decrees that promulgate a law after it has been passed by the legislature. Preah Reach Kret are substantive regulatory decrees that are approved by the executive branch, the Royal Government of Cambodia (the Prime Minister and the Council of Ministers), and are then made by the King at the Council's request.

Sub-decree / Anukret: A regulation from the executive government - signed by the Prime Minister after adoption by the Council of Ministers in a cabinet meeting, which is executed under the PM's regulatory powers. If there is no Cabinet meeting, the PM can issue a Sub-Decree with a counter signature of the sectoral Minister.

Proclamations / Prakas: Are issued by members of the government (Ministers or equivalent) in execution of their own regulatory powers.

Decision / Sechdei samrech: Individual decision(s) made by the prime minister, minister or governor (prakas-deika), which are made in execution of their own regulatory powers

Circular / Sarachor: In general, a circular is issued by the prime minister as the head of government, or the minister of the relevant ministry, either to explain or clarify legal regulatory measures, or to provide instructions.

Provincial ordinance / Deika: Order issued by a governor within the territorial limits of the province.

Annex C: Legal Instrument Establishing the Disaster Management System 1995-2015

The legal framework for DRR from 1995 to 2015 was a body of multiple subsidiary legislation including Royal Decrees, Sub-Decrees, Circulars and Notifications, Circulars, and Deika (orders). These instruments were issued for a number of purposes, ranging from the establishment of National and Sub-National Committees for Disaster Management to formulation of their mandates and roles.

Following is a brief history of the major subsidiary legislation issued during this period.

1. Sub-decree No 35 ANKR-BK 1995 (27 June 1995) – Establishment of National Committee on Disaster Management (NCDM):

The Sub-decree No.35 issued in 1995 established National Committee for Disaster Management (NCDM). NCDM was established as the national focal point, for disaster risk management in Cambodia. National Committee for Disaster Management (NCDM) was entrusted with the responsibility of coordinating disaster risk management in Cambodia. NCDM was established under the council of ministers with Prime Minister as the President/head of the committee. The membership of NCDM comprised ex-officio representation from all the key ministries (22 members) as well as the heads of Armed forces and representatives of Cambodia Red Cross (CRC).

Members of the NCDM included: Prime Minister of the Kingdom of Cambodia, and Ministers of, Ministry of Interior (MIN), Council of Ministers Office (CMO), Ministry of National Defence (MND), Ministry of Environment (MOE), Ministry of Economy and Finance (MEF), Ministry of Social Welfare, Labour and Veterans (MSWL), Ministry of Public Works and Transport (MPWT), Ministry of Agriculture, Forests and Fisheries, Ministry of Foreign Affairs and International, Ministry of Health (HOM), Ministry of Planning (MOP), Ministry of Information (MINF), Ministry of Education, Youth and Sport (MEYS), Ministry of Cults and Religious Affairs (MCRA), Ministry of Rural Development (MRD), Ministry of industry Mines and Energy (MINE), Cambodia Development Council (CDC), Secretary of State, Women's Affairs (SSWA), Cambodia Red Cross (CRC), and Permanent Secretary of NCDM.

2. Sub-Decree No.54 ANKR-BK; 21999 (June 14, 1999) - Reorganization of NCDM

Subsequent to Sub-decree No 35, a new sub-decree, Sub-Decree No. 54, was issued in June 1999 with a revised membership of the committee. With Prime Minister of Kingdom of Cambodia as the President, Ministers of Interior and National Defence as the Vice Presidents, the members included, Ministers of Economy and Finance, Water Resource and Meteorology, Council of Ministers' office, Representative of Royal Cambodian Armed Forces, Secretary of State for Civil Aviation, and Member of the Committee in Charge of Special Coordinating Mission Prime (Article 2).

3. Royal Decree NS/RKT/0202/040-2002- Revisiting Composition and Role of NCDM

Cambodia again faced devastating floods and droughts in 2000, 2001 and 2002. The experience of responding to frequent disasters resulted in revisiting the composition and role of NCDM. Royal Decree NS/RKT/0202/040 was issued in 2002 (16 February 2002), which made minor changes in

the composition of NCDM, stipulated its mandate and provided for the establishment of NCDM Secretariat General. Key features included:

- a. NCDM was headed by the Prime Minister as President of the committee, with the Minister of Interior and National Defence as Vice-Presidents. The number of the members was increased to 17. Under Article 1, the members of NCDM included; Higher Ranking Official First Vice-President, Minister of the Ministry of Interior (Vice-President), Minister of the Ministry of National Defense (Vice-President), Minister in charge of the Office of the Council of Ministers, Minister of the Ministry of Economy and Finance, Minister of the Ministry of Foreign Affairs and International Cooperation Member, Minister of the Ministry of Water, Resources and Meteorology Member, Minister of the Ministry of Agriculture, Forestry and Fisheries Member, Minister of the Ministry of Commerce Member, Minister of the Ministry of Health Member, Minister of the Ministry of Rural Development Member, Minister of the Ministry of Public Works and Transport, Minister of the Ministry of Education, Youth and Sports, Representative of the Commander In Chief of the Royal Cambodian Armed Forces, Representative of the Chairman of the National Society of Cambodian Red Cross, Secretary of State of the State Secretariat of Civil aviation Member.
- b. The mandate of the NCDM was also outlined in the Royal Decree, which included the responsibility for coordination with Ministries, formulation of policies and plans for declaration, prevention, response and rehabilitation as a result of disasters. The Royal Decree also entrusted NCDM with the responsibility of mainstreaming DRR, strengthening the linkages with communities and to recommend measures to the RGC for providing resources for stockpiling, human resource development, preparedness, emergency relief, response and recovery (Article 2).
- c. The decree also provided for the establishment of a dedicated General Secretariat for NCDM to act as its administrative arm (Article 3).
- d. The Royal Decree however did not provide for the frequency of the meetings of the committee. The committee was specified to meet when the President of NCDM, i.e. Prime Minister convened such a meeting (Articles, 3, 5 and 6).

4. Sub-Decree No. 30 ANKR BK- 2002-Organization and Functioning of the National Committee for Disaster Management:

- a. Further to the Royal Decree NS/RKT/0202/040 issued in February 2002, Sub-Decree No. 30 ANKR BK was issued on 09 April 2002. The sub-decree is significant as it elaborates on the functions and roles to be performed by NCDM, and the Sub-national Disaster Management Committees in detail. Key features include:
 1. *NCDM – Role, Frequency of Meeting, Budget:* The sub decree besides providing for the functions and responsibilities, provided for the meeting of the committee at least once in six months. The budget of NCDM has been made part of the budget of Council of Ministers (Articles , 3, 5 and 6).
 2. *Establishment of Executive Committee of NCDM:* Article 4, of the Sub-Decree establishes an executive committee of NCDM which includes President, Vice President and Secretary General of NCDM (Articles 4 and 7). The Executive Committee as stipulated in the Sub-Decree should convene at least once in every month.
 3. *NCDM-Structure:* The decree provided for a detailed structure of NCDM (Articles 4 and 7). The structure had four key components which included the following;
 - *NCDM President and his Cabinet* – the composition was retained as provided in the Royal Decree NS/RKT/0202/040.

- *Secretariat General* to act as the administrative arm of NCDM, with five departments namely; Department of Administration and Finance, Department of Information and Relations, Department of Emergency Response and Rehabilitation, Department of Preparedness and Training, Department of Search and Rescue.
 - Disaster Management Working Group of the Ministries
 - Sub-National Disaster Management Committees (Provincial and District)
4. *NCDM Secretariat General and Constituent Departments*: Chapter IV of the Sub-decree provided details of the role and composition of NCDM Secretariat General. It also set out the roles to be performed by the five departments of NCDM (Articles 12-16). The Secretariat General while acting as the headquarters of the NCDM has following duties. Managing the general administrative responsibilities, the Secretariat General was entrusted with research on natural hazards and risks, and guiding provincial, municipal, and District Committees for Disaster Management in their work for damage need assessment, relief and rehabilitation. The secretariat was also entrusted with the responsibility for designing training programs for the officials working at provincial, district and local levels. Coordination with government ministries and departments, and international organizations working in Cambodia was also identified as a key role of the Secretariat General. The Secretariat General was also assigned the responsibility of reviewing all disaster management related documents and submitting report to the NCDM (Article 11).
 5. *Disaster Management Working Group*: Article 17 of the sub-decree established the inter-ministerial disaster management working group, with a focal point in each government ministry and institution.
 6. *Provincial/Municipal Committees for Disaster Management-Secretariat, Structure and their Role*: The decree established Provincial/Municipal Disaster Management Committees with the respective Governors acting as the Presidents of the Committees. The members of the committee included the Deputy Governor, heads of the relevant government departments and the Director of Provincial/Municipal Red Cross (Article 18). The decree provided for Provincial/Municipal level secretariats, to be headed by the chief of provincial/municipal office as the Secretary to P/MCDM. The key roles assigned to the P/MCDM included the implementation of the National Policy on Disaster Management, preparing guidelines and supporting District level Committees for Disaster Management, preparing and recommending proposal for financial resources, equipment, materials, means of transport and intervention in times of disaster. P/MCDM were also entrusted with the responsibility of training officials and conducting public education programs for the communities. The committees were also responsible for submitting recommendations to the NCDM for undertaking measures for disaster prevention, preparedness, emergency response and rehabilitation in their respective jurisdictions (Article 19).
 7. *District/Precinct Committees for Disaster Management*: The Sub-Decree also provided for the composition and role of District Committees for Disaster Management (DCDM). DCDM were to be headed by the District Governor and the committee included the Deputy Governor as Vice President and heads of relevant government institutions as members. The district head of Cambodia Red Cross (CRC) was also the member of the committee (Article 21). The key duties assigned to the DCDM included, implementation of national policy, preparation and dissemination of disaster related information to the public, leading disaster response, relief, evacuation, and rehabilitation activities, and preparing and submitting reports to the PCDM on damages and needs assessments (Article 22).

5. Sub-Decree No. 61 ANKR.BK-2006 – Commune/Sangkat Committees for Disaster Management:

In order to comply with the Hyogo Framework for Action (HFA 2005-2015), especially Cambodia's commitment to establish effective disaster risk reduction and management institutions at local level, Sub-Decree No. 61 was issued in 2006. The Sub-Decree provided for the establishment of Commune/Sangkat Committees for Disaster Management (Article 22). The decree was particularly aimed at strengthening Community Based Disaster Management (CBDRM) projects and practices in Cambodia.

In order to further this objective, in 2010, Village Disaster Management Group (VDMG) was also established under Direction No. 315.

6. Miscellaneous Instruments:

RGC also issued several additional instruments for strengthening the DRR framework in the country, some of these included:¹⁵⁰

- a. Circular No. 02 for 2001 on Reduced Preparedness and Disaster Management, Royal Government of Cambodia (2001)
- b. Circular No. 01 of 2002 on Disaster Preparedness and Response, Royal Government of Cambodia (2002)
- c. Circular No. 01 of 2002 on Disaster Preparedness and Response
- d. Circular No. 02 of 2001 on Reduced Preparedness and Disaster Management;
- e. Provincial Order on the Establishment of Disaster Management Commissions (2007)
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- g. Provincial Order of 2007 on the Establishment and Functioning of the PCDM.

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