



CAMBODIA NATIONAL LAW AND POLICY REPORT

CONSULTATION DRAFT 2020

Displacement in the Context of Disasters and Climate Change

**RAOUL
WALLENBERG
INSTITUTE**

This report was prepared by Victor Bernard (RWI) and Matthew Scott (RWI)

2020

Funded by



TABLE OF CONTENTS

1	INTRODUCTION	1
	1.1. A human rights-based approach	1
2	Displacement in Numbers	3
	2.1. Number of disasters and people affected in the last ten years (2009–2018)	3
3	Recommendations from Human Rights Monitoring Bodies	4
4	Legal and Policy Framework	8

1 INTRODUCTION

As reflected in the *Sendai Framework for Disaster Risk Reduction* (SFDRR)¹ and the *Paris Agreement*,² and recent statements and declarations at the Global Platform on Disaster Risk Reduction (GPDRR)³ and the Asia Ministerial Conference on Disaster Risk Reduction (AMCDRR),⁴ displacement in the context of disasters and climate change is increasingly being seen by actors concerned with disaster risk management at international, regional and national levels as a phenomenon requiring concerted attention. The series of country reports of which this document is a part address the policy objective of further integrating displacement considerations into wider disaster risk management and climate change adaptation measures at the sub-national level.⁵ The reports present the results of a mapping exercise in which national law and policy was reviewed in order to identify existing references to different aspects of displacement, including prevention of and preparedness for displacement, protection during evacuation and throughout displacement, and facilitation of durable solutions. Setting out the extent to which sub-national law and policy presently addresses these different aspects of displacement provides a helpful starting point for future engagement with relevant actors on ways of further integrating displacement considerations.

Only documents that are expressly related to disasters, climate change and displacement are considered in this report. Due to the cross-cutting, whole-of-society impact of many disasters, a wide range of other legal and policy frameworks may well have relevance for specific kinds of engagements relating to disaster displacement or disaster risk management and climate change adaptation more generally. However, in order to retain the clear focus on addressing the extent to which displacement is already integrated into sub-national law and policy, a restrictive approach was taken in the review.

1.1. A human rights-based approach

In line with Paragraph 19(c) of the SFDRR,⁶ Paragraph 28 of the *Co-Chairs' Summary* of the GPDRR 2019, and Paragraph 11 of the *Ulaanbaatar Declaration* at the AMCDRR, the reports embrace a human rights-based approach to disaster displacement. In brief, this approach sees states as having the primary responsibility for protecting persons from harm associated with displacement in the context of disasters and climate change. It recognises the 1998 Guiding Principles on Internal Displacement, as well as the wider body of international human rights law underpinning those Principles, as foundational. Having a legal and policy framework in place that incorporates core principles and defines roles and responsibilities of responsible actors also contributes to transparency and accountability.

1 *Sendai Framework for Disaster Risk Reduction* (SFDRR), see for example paras. 28(d), 30(l), 33(h, j, m).

2 *Paris Agreement*, see Article 8, which references the Warsaw International Mechanism, under which a Taskforce on Displacement was created, <unfccc.int/wim-excom/sub-groups/TFD>, visited on 14 October 2020.

3 *Global Platform on Disaster Risk Reduction 2019, Co-Chairs' Summary* (GPDRR), see paras. 6, 12 and 28, <www.preventionweb.net/files/58809_chairsummary.pdf>, visited on 14 October 2020.

4 Paragraph 1 of the *Ulaanbaatar Declaration* at the 2018 Asian Ministerial Conference on Disaster Risk Reduction (AMCDRR) expresses "deep concern at the continuing impact of disasters in the region, resulting in recurrent loss of human lives and livelihoods, displacement of people, and environmental, economic, social and material damages", <www.preventionweb.net/files/56219_ulaanbaatardeclarationfinal.pdf>, visited on 14 October 2020 2019.

5 GPDRR 2019, *supra* note 3, para. 28: "Governments and the international community must do more to reduce the risk of disaster displacement before disasters strike. Disaster risk reduction strategies and policies should address the drivers and consequences of disaster displacement and contribute to durable solutions."

6 SFDRR, *supra* note 1, para. 19(c) reads: "[m]anaging the risk of disasters is aimed at protecting persons and their property, health, livelihoods and productive assets, as well as cultural and environmental assets, while promoting and protecting all human rights, including the right to development".

Further, a human rights-based approach recognises that disasters do not affect all persons in the same way, and highlights the differential exposure and vulnerability that manifests along intersecting gender, ethnicity, age, disability and other lines. The gendered nature of displacement is emphasised, as is the need to tackle structural barriers to equality in order to strengthen resilience to disaster risk. It follows that consultation, participation and equal access to information are cornerstones of the approach. The approach can be condensed into four elements, namely:

- governance: transparency and accountability
- procedural: participation, consultation and access to information
- substantive: express focus on fundamental rights
- non-discrimination and equality: focus on the particular situation of traditionally marginalised groups.

More details on the international standards and guidelines that reflect this approach are contained in the Background Brief on Key International Standards and Guidelines Relating to Displacement in the Context of Disasters and Climate Change, which accompanies this series of country policy reports.⁷

The report has four substantive sections. First, a snapshot of the numerical scale of disaster displacement in the country is presented, drawing on data from the Internal Displacement Monitoring Centre (IDMC) and the EM-DAT database. Next, in the interests of connecting the analysis to the relevant wider human rights law context, disaster-specific observations from human rights monitoring bodies and mandate holders under the UN system are highlighted. Then, the domestic law and policy framework is presented and analysed against a set of core principles concerning prevention of and preparedness for displacement, protection during evacuation and throughout displacement, and the facilitation of durable solutions. Finally, reflecting on this material, a concluding section summarises strengths and areas inviting closer engagement by relevant actors.

The intended audience of this report series includes domestic actors with responsibility for disaster risk reduction (DRR) and management (DRRM), climate change adaptation (CCA), and protection of persons in situations of climate- and disaster-related displacement at the national and sub-national level. It is hoped that these actors will find value in a consolidated overview of the domestic legal and policy framework from a human rights-based approach, read alongside the Background Brief on international standards and guidelines, not least in light of the imperative under the SFDRR to address disaster risk through “promoting and protecting all human rights”.

It is also hoped that civil society, the UN, and intergovernmental and academic actors at (sub)national, (sub)regional and international levels will find the series of country reports of interest and value. The compendium of which this report is a part provides a depth of insight into how different countries across the region are working to address the pressing challenge of displacement in the context of disasters and climate change. It is hoped that the compendium of reports will provide material that contributes to an enhanced appreciation of the relevance of human rights to addressing disaster displacement, the exchange of good practices, and the further integration of displacement into existing disaster risk reduction and climate change adaptation initiatives.

⁷ Available at: <rwi.lu.se/disaster-displacement/>.

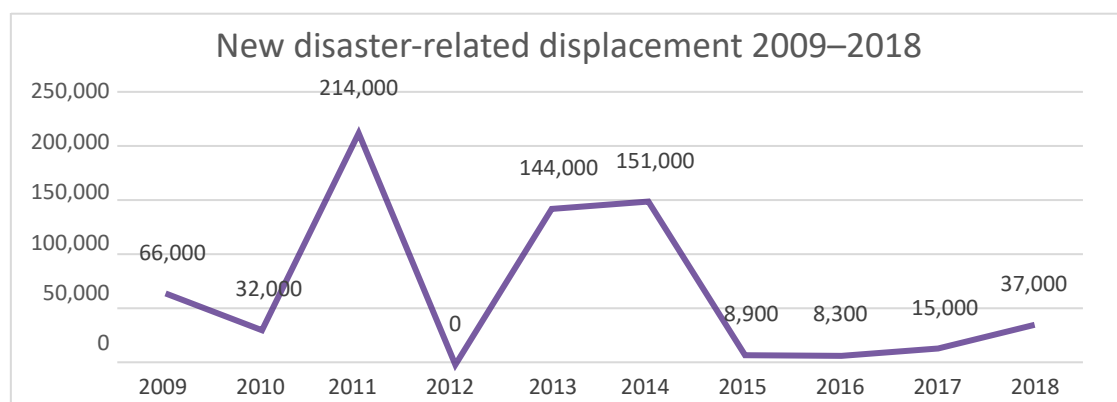
2 Displacement in Numbers

2.1. Number of disasters and people affected in the last ten years (2009–2018)

Hazard	Number	People affected ⁸
Drought	1	2,500,000
Flood	7	3,769,790
Storm	3	184,391
TOTAL	11	6,454,181
Source: < public.emdat.be >.		

The highest percentage of newly displaced persons in any year relative to the national population was in 2011, when 200,000 out of 14,537,886 people were displaced as a result of heavy rains in the northern part of Cambodia, which resulted in the highest water levels in the lower Mekong in ten years.⁹ The number of displaced accounted for 1.38 per cent of Cambodia's population in 2011. This was followed by 2014, when 151,000 people were newly displaced due to flooding wrecking homes and property, as well as destroying rice fields, which corresponds to 0.99 per cent of the national population (15,270,790 people).¹⁰

The annual number of new displacements over the last ten years is reflected below.



Source: <www.internal-displacement.org/database/displacement-data>.

With substantial displacements triggered by a variety of hazards, especially by flooding and droughts that will only worsen with climate change, how Cambodia approaches the protection of persons from displacement, during evacuation, and throughout displacement and the facilitation of durable solutions has implications for the enjoyment of a range of human rights, including the rights to life, shelter, property, food, health, physical security,

⁸ 'Affected' means "[p]eople requiring immediate assistance during a period of emergency, i.e. requiring basic survival needs such as food, water, shelter, sanitation and immediate medical assistance", source: *ibid*.

⁹ Sources: Internal Displacement Monitoring Centre (IDMC), Global Internal Displacement Database (IDMC, 2018), <www.internal-displacement.org/database>, visited on 14 October 2020; The World Bank, *World Bank Open Data: Population, Total: Cambodia* (The World Bank, 2014), <data.worldbank.org/indicator/SP.POP.TOTL?locations=KH&view=chart>, visited on 14 October 2020; CARE, *2011 flood response* (Care, 2011), <www.care-cambodia.org/flood-response-2011>, visited on 14 October 2020.

¹⁰ R. Finney, 'Cambodia Hit Hard by Floods And Drought', *Radio Free Asia*, 25 August 2014, <<https://www.rfa.org/english/news/cambodia/double-08252014165854.html>>, visited on 20 April 2019.

livelihoods and many more. Section 3 considers what human rights treaty monitoring bodies and mandate holders have recommended in terms of Cambodia's approach to disaster risk reduction and climate change adaptation generally. Annex 1 provides a comprehensive overview of the legal and policy framework currently in force in the country, with a focus on measures that address all phases of the displacement cycle.



After the flooding Kampot Cambodia. Photo by: Adam Jones Kelowna BC Canada. Source: Wikimedia Commons

3 Recommendations from Human Rights Monitoring Bodies

A human rights and gender-equal approach to law, policy and practice on displacement in the context of disasters and climate change may benefit from a grounding in existing recommendations from human rights monitoring bodies. Based on a review of Concluding Observations from the most recent periodic review before treaty monitoring bodies and other mechanisms within the UN system, coupled with the reports of various Special Rapporteurs, a series of country-specific recommendations relating to climate change adaptation and disaster risk reduction and management has been consolidated.

Cambodia is party¹¹ to the following international human rights treaties of relevance to displacement in the context of disasters and climate change:

- Convention on the Elimination of Racial Discrimination 1965 (CERD)
- International Covenant on Economic, Social and Cultural Rights 1966 (CESCR)
- International Covenant on Civil and Political Rights 1966 (CCPR)
- Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW)
- Convention on the Rights of the Child 1989 (CRC)
- Convention on the Rights of Persons with Disabilities 2006 (CRPD).

The CERD¹² and CCPR¹³ committees and the Universal Periodic Review (UPR)¹⁴ do not address disasters, climate change or displacement in their Concluding Observations and the report of the working group. The CEDAW, CESCR and CRC committees consider disasters and climate change somewhat briefly. The Royal Government of Cambodia (RGC) is at the beginning of its second UPR cycle. The Draft Report of the Working Group on the UPR for 2019 briefly references disaster and climate change, albeit not displacement.¹⁵ These reports are addressed in turn below.



Heavy rains plunged the coastal city of Sihanoukville Cambodia under water.
Photo by M'lop Tapang source kimedia.blogspot.com

11 Source: <indicators.ohchr.org/>, visited on 1 April 2019

12 Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Cambodia* (1 April 2010), CERD/C/KHM/CO/8-13, <tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/KHM/CO/8-13&Lang=En>, visited on 1 April 2019.

13 Human Rights Committee, *Concluding observations on the second periodic report of Cambodia: Cambodia* (27 April 2015), CCPR/C/KHM/CO/2, <tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/KHM/CO/2&Lang=En>, visited on 1 April 2019.

14 UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Cambodia* (27 March 2014), A/HRC/26/16, <www.refworld.org/docid/539995984.html>, visited on 1 April 2019.

15 *Supra* note 15 [draft] (8 February 2019), A/HRC/WG.6/32/L.14, <www.refworld.org/docid/539995984.html>, visited on 1 April 2019.

The CEDAW Committee, in its Concluding Observations,¹⁶ records:

“While noting some of the efforts made by the State party to improve the livelihood of women and men living in rural areas through, among others, its sanitation and rural electrification programmes, the Committee is concerned that women living in rural areas continue to have limited access to basic services, latrines, clean and safe drinking water, education, employment, health services, credit and loan facilities. The Committee also notes that the impacts of climate change and natural disasters disproportionately affect women and children, especially in rural areas.”¹⁷

The Committee recommends that the State Party:

“[f]urther ensure that women are actively involved in decision-making on the policies and programmes for disaster prevention and management, especially those relating to climate change adaptation and mitigation”.¹⁸

While references to displacement are made in relation to large-scale land concessions and urban development, no reference is made to displacement in the context of disasters and climate change.¹⁹

As will be demonstrated below, Cambodia has made gender equality and gender mainstreaming a core objective in its disaster management and climate change policy framework since at least 2012. This perspective is most evident in the 2015 DM Law. Recognising that Cambodia lacks any protection or remedy for indigenous people, displaced by Cambodia’s rapid economic land concessions, which have adversely impacted ecology and biodiversity and in turn their livelihoods, the CESC Committee, in its Concluding observations,²⁰ states that:

“[t]he Committee is deeply concerned about the most recent FAO global forest survey estimating that the State party has lost 29 per cent of its primary tropical forest cover over the last five years, one of the most serious cases being the continuing destruction of the Prey Long forest in Northern Cambodia. The Committee is also concerned about the reports that the rapid increase in economic land concessions in the last several years, even within the protected zones, is the major factor in the degradation of natural resources, adversely affecting the ecology and biodiversity, resulting in the displacement of indigenous peoples from their lands without just compensation and resettlement, and in the loss of livelihood for rural communities who depend on land and forest resources for their survival”.²¹

16 CEDAW, Concluding Observations CEDAW/C/KHM/CO/4- (29 October 2013), para. 30, <[tinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKHM%2fCO%2f4-5&Lang=en](http://internet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKHM%2fCO%2f4-5&Lang=en)>, visited on 1 April 2019.

17 *Ibid.*, para. 40.

18 *Ibid.*, para. 41(c).

19 *Ibid.*, para. 42.

20 CESC, Concluding Observations, E/C.12/KHM/CO/1 (12 June 2009), <[tinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fKHM%2fCO%2f1&Lang=en](http://internet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fKHM%2fCO%2f1&Lang=en)>, visited on 1 April 2019.

21 *Ibid.*, Art. 1, para. 15.

The Committee urged the State Party to

“[r]eview its policy regarding the conversion of protected zones into economic concessions, by conducting environmental and social impact assessments including consultations with relevant stakeholders and communities with due regard to their right to participate in informed decisions that affect their lives. The Committee strongly recommends that the granting of economic concessions take into account the need for sustainable development and for all Cambodians to share in the benefits of progress rather than for private gain alone. The Committee requests the State party to give, in its next periodic report, detailed information on the progress made in the implementation of these policies”.²²

However, the CESCR Committee stops short of referencing displacement in the context of disasters and climate change.

Further strengthening the protection of vulnerable and disadvantaged children in Cambodia’s fiscal policy even in the event of a disaster, the CRC Committee, in its Concluding Observations,²³ calls on the State party to:

“[d]efine strategic budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures, and make sure that those budgetary lines are protected, even in situations of economic crisis, natural disasters or other emergencies”.²⁴

In the Report of the Special Rapporteur on the Situation of Human Rights in Cambodia,²⁵ human rights protections for displaced persons were considered unsatisfactory. It states:

“[i]n assessing the progress made by the Government in establishing an independent human rights institution, the Special Rapporteur focused on the independence of those State institutions that are responsible for monitoring human rights and ensuring that remedy is provided where violations are found to have occurred. The Special Rapporteur considers that many of the issues highlighted in his earlier reports and the high level of dissatisfaction revealed at the last parliamentary elections reflect a failure to protect the human rights of a large number of Cambodians who claim to have been disenfranchised and/or displaced or who are economically, politically and otherwise vulnerable.”²⁶

No explicit reference is made to displacement in the context of disasters and climate change.

22 *Ibid.*

23 CRC, Concluding Observations, CRC/C/KHM/CO/2-3 (3 August 2011), <[tinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fKHM%2fCO%2f2&Lang=en](http://internet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fKHM%2fCO%2f2&Lang=en)>, visited on 1 April 2019.

24 *Ibid.*, para. 17(f).

25 UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in Cambodia*, Surya P. Subedi, A/HRC/27/70 (15 August 2014), <www.ohchr.org/en/hrbodies/hrc/regularsessions/session27/documents/a-hrc-27-70_en.doc>, visited on 1 April 2019.

26 *Ibid.*, para. 6.

Clearly, a human rights-based approach to displacement in the context of disasters and climate change in Cambodia should take into account relevant recommendations from treaty monitoring bodies and other mechanisms. These recommendations are summarised as:

- Strengthen human rights protections for displaced persons in relation to their right of access to justice, encompassing the right to effective remedy in response to arbitrary displacement, and their right to participate in informed decisions that affect their lives.
- Adopt an express gender-equality approach to climate change adaptation and disaster risk reduction, involving women in the formulation and implementation of policies.
- Address challenges relating to displacement, including the issue of relocation as a consequence of environmental degradation by Cambodia's rapid economic development.

Some of these recommendations appear to be partly addressed in the domestic legal and policy documents addressed below.

4 Legal and Policy Framework

Despite rising living standards and decreasing absolute poverty levels since the 1990s, Cambodia is still ranked as one of the countries in the world that are most vulnerable to natural hazards, including flash floods, riverine floods, drought, and tropical cyclones/storms²⁷. The Mekong River bisects Cambodia, running 500 km north to south in parallel with Tonle Sap Lake and the Tonle Sap River, which in turn engenders a vast floodplain at the centre of the country. Coupled with monsoonal rainfall patterns, this geographical feature renders Cambodia especially prone to riverine floods.²⁸

Cambodia is ranked the twelfth most at-risk country globally from disasters triggered by five indicative natural hazards: earthquake, cyclone, flood, drought and sea-level rise, in the 2018 World Risk Index. In this index, Cambodia's at-risk status is classified as particularly high in the categories: 'lack of coping strategies' and 'vulnerability'.²⁹

The Cambodian Constitution³⁰ – the supreme law with which all other laws and policies must be consistent – contains no explicit provisions relating to climate change adaptation, disaster management or displacement, referring instead to more general obligations. The Constitution establishes a constitutional monarchy with the King as the Head of State, and an elected National Assembly and Senate which share the legislative power. Senators, Members of the National Assembly and the Prime Minister have the right to initiate legislation.

27 P. Bopha, 'Underprepared Cambodia Vulnerable to Climate Change', *Voice of America*, 27 November 2015, <www.voanews.com/a/changing-climate-has-major-impacts-for-under-prepared-cambodia/3075404.html>, visited on 25 April 2019.

28 S. Humayun and M. Picard, *Implementing The Law On Disaster Management In Cambodia: Developing Subsidiary Legislation* (1st edn., IFRC and UNDP, 2017), p. 13, <reliefweb.int/sites/reliefweb.int/files/resources/Cambodia%20DM%20Subsidiary%20Legislation%20Report%20LR.PDF>, visited on 28 January 2019.

29 H.-J. Heintze et al, 'World Risk Report 2018' (Bündnis Entwicklung Hilft and Ruhr University Bochum – Institute for International Law of Peace and Armed Conflict, 2018), p. 48, <reliefweb.int/sites/reliefweb.int/files/resources/WorldRiskReport-2018.pdf>, visited on 28 January 2019.

30 The Constitution of the Kingdom of Cambodia 2004 ('The Constitution', unofficial English translation supervised by the Constitutional Council, March 2010), <www.wipo.int/edocs/lexdocs/laws/en/kh/kh009en.pdf>, visited on 1 April 2019.

Once laws are passed by the legislature, they are promulgated by the King through a type of Royal Decree – a ‘Preach Reach Kram’ – which is a procedural mechanism that grants the law legal force. The Constitution is the highest order law, and legislation passed by the legislature as promulgated by Preach Reach Kram is the second-highest-ranking law.³¹



Staff at M'lop Tapang, a non-profit organisation that works with thousands of vulnerable children and adults in the province, sort through the damage left by the flooding. Photo by M'lop Tapang.
Source kimedia.blogspot.com

The Constitution provides for equality and non-discrimination, as well as protection from violence. Chapter 3 stipulates that “Khmer citizens ... [are] entitled to fundamental rights and freedoms, including right to life, liberty, security, freedom of association, right to participate and protection of the law, right to land ownership”.³² The constitutional protection provisions of civil and political human rights as part of the supreme law indicates a commitment by the state to the protection of these rights. Notably, the Constitution does not directly address economic and social rights, such as the right to shelter and the highest attainable standard of health, although it enshrines the state’s duty to preserve and protect the environment³³.

While the Cambodian legal system is a statutory law system, predominantly based on written laws, Cambodia is still influenced by customary laws and norms. One example is the constitutionally recognised equality between men and women. This is contradicted by the ‘Chabab Srey’ – the traditional code of conduct for women taught in schools. Another contradiction concerns land titles: the *Land Law, 2001* provides for joint land titles for husbands and wives, but in practice women are considered subordinate and often need

31 Humayun & Picard, *supra* note 29, p. 20.

32 The Constitution, *supra* note 31, Chapter 3, Arts. 31–50.

33 *Ibid.*, Art. 59.

their husband's permission to include their names on land titles³⁴. However, customary law has on very few occasions had legal standing, and is only referenced on issues which lack formal legislations.³⁵ Customary law is, therefore, beyond the scope of this review, but could be a highly relevant dimension to consider when addressing displacement in the context of disasters and climate change, not least in light of the significant land tenure issues.³⁶

The National Committee for Disaster Management (NCDM) is the main authority of the Royal Government of Cambodia on disaster management, mandated by the *Law on Disaster Management 2015* (DM Law) – the authoritative legislation on disaster management – to “lead, administer and coordinate all disaster management activities”.³⁷ The DM Law also formalised the expenditure mechanism for NCDM's operations, which is allocated by the national budget, and the RGC is required to maintain enough funds to resource NCDM's disaster management operations.

The NCDM is supported by Sub-national Committees for Disaster Management whose role is to conduct risk identification and risk analysis, and to integrate disaster risk reduction into development planning, 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, which in turn triggers national mobilisation.³⁸

The following legal and policy documents were considered as part of the review.

These documents were systematically reviewed using the RWI's human rights-based legal and policy analysis tool. The detailed results of this review are found at Annex 1 of this report, which is available at <rwi.lu.se/disaster-displacement/>. Key insights relating to each of the four elements of the human rights-based approach adopted for this study are set out briefly below.

Overall, Cambodia's national legal and policy framework reflects key elements of the *governance* element of a human rights-based approach. Key strengths of the country's law and policy framework include the promulgation of the DM Law, which confers an authoritative legislative mandate on disaster management. The Law assigns legally binding roles and responsibilities, establishes institutions, and ensures allocation of resources and mechanisms for coordination covering prevention, emergency response and recovery.

Cambodia's legal and policy framework provides a clear commitment to gender equality, combined with elements of a rights-based approach – including both substantive and procedural rights – for addressing climate change adaptation and disaster risk reduction and

34 Sources: Food and Agriculture Organization of the United Nations (FAO), 'Cambodia: Customary Norms, Religious Beliefs And Social Practices That Influence Gender-Differentiated Land Rights' (Fao.org, 2020), <www.fao.org/gender-landrights-database/country-profiles/countries-list/customary-law/en/?country_iso3=KHM>, visited on 30 January 2020; UNIFEM, The World Bank, ADB, UNDP and DFID/UK, 'Cambodia Gender Assessment' (Phnom Penh, 2004), p. 167, <www.adb.org/sites/default/files/institutional-document/32228/cga-cambodia.pdf>; K. Phallack, 'Overview Of The Cambodian Legal System And Recent Efforts At Legal And Judicial Reform', Introduction to Cambodian Law, 2012 (1st edn, Konrad-Adenauer-Stiftung, 2012) pp. 8–10.

35 Phallack, *supra* note 35, p. 9.

36 FAO, *supra* note 35.

37 The NCDM was created in 1995 under Sub-Decree No. 35 of 27 June 1995 and modified by Sub-Decree No. 54 ANKR-BK of June 14 1999; Humayun & Picard, *supra* note 29, p. 6; Royal Government of Cambodia, *Law on Disaster Management 2015* (DM Law), <www.ifrc.org/Global/Publications/IDRL/DM%20acts/Cambodia%20DM%20Law_English.pdf> Arts. 1–3.

38 *Ibid.*, DM Law, Art. 9.

management generally, setting a solid foundation for a rights-based approach to addressing displacement. Incorporation of regional guidelines, such as the ASEAN Agreement on Disaster Management and Emergency Response (AADMER) and Sendai Framework, further boost both the rights-based approach and the overall efficiency of the Cambodian legal framework.

However, two points are clear from this review. First, displacement in the context of disasters and climate change does not emerge as a priority, with scant references to aspects of displacement – including evacuation, camp management and durable solutions – in the documents. Second, although human rights principles are reflected across the legal and policy framework, responsible actors are not directed towards key international standards and guidelines. Consequently, when implementing measures to enhance participation, raise the level of inclusion of persons with disabilities, address gender inequality, or undertake the complex process of planned relocation, responsible actors must either rely on their own tools, expertise and ingenuity, or independently seek out and digest the key standards and guidelines referred to in the Background Brief.

The *procedural* element is partially reflected, with consistent references to participation and access to information. However, the principle of free, prior and informed consent was not identified in the review.

The *substantive* element is only partially reflected. Prevention programmes are featured prominently across Cambodia's laws and policies on disaster management and climate change adaptation, with emphasis on risk and needs assessments and early warning systems. The frameworks also indirectly include the root causes of displacement, such as climate-related pressures on infrastructure (roads, irrigation, wells and culverts), water availability, health care, livestock and animal health and so forth, in line with the SFDRR. Although some measures were identified that relate to preparing for displacement, such as the pre-identification of shelters using a gender-sensitive and multi-stakeholder approach, the legal and policy framework does not place significant attention on measures to prevent displacement in the first place.

Despite the progress in enshrining disaster management and climate change adaptation into law with a solid human rights and gender-sensitive lens, alignment with most of the principles related to displacement, highlighted in the Background Brief, have chiefly been partial and indirect. Displacement, planned relocation, resettlement and reintegration are not thoroughly addressed in the law and policy documents.

Whereas pre-identification of shelters is featured specifically in the National Action Plan for Disaster Risk Reduction 2014-2018 (NAP-DRR) and DM Law, with a solid gender-based approach, these law and policy documents are silent on protection during evacuation. There is a dearth of provision on planning, communication and administrative guidelines relating to evacuation in line with the IASC and clarification of roles, resource implications and timeframes for evacuation pursuant to the MEND guide. Further, the law and policy documents lack safeguards against forced evacuations, and frameworks on planned relocation.

Finally, besides the rights-based approach to recovery activities, the Cambodian law and policies on climate change and disaster risk reduction and management do not include durable solutions, including return, local integration and resettlement. It is well established that failure to safeguard the rights of displaced persons in the long term often exacerbates vulnerabilities that contributed to the initial displacement. Accordingly, without durable solutions, people who are displaced often end up living in areas that are more prone to hazards, and are therefore at risk being displaced again. In this regard, a concerted policy approach or legal framework on durable solutions can provide some helpful tools for addressing this issue.

The *non-discrimination and equality* element is evident in a number of documents, although more detail could be included relating to the practical measures that can be taken to promote non-discrimination and equality across disaster risk reduction and management and climate change adaptation more generally, and displacement more specifically.

Displacement in the context of disasters and climate change is a recurrent phenomenon in Cambodia, with numbers of displaced persons regularly exceeding 100,000 per year. As the adverse impacts of climate change increase the exposure and vulnerability of the population, and particularly people already at risk, displacement is unlikely to disappear as a policy challenge. Taking steps to further integrate both awareness of, and guidelines relating to, displacement into disaster risk reduction and climate change adaptation law and policy would represent an important step towards adapting to climate change and reducing disaster risk in a manner that leaves no one behind.



www.rwi.lu.se
Jakarta Office: KMO Building
6th Floor, Suite 610
Jl. Kyai Maya No. 1, Jakarta Selatan
Indonesia 12120