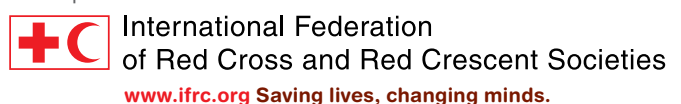


International Disaster Response Law (IDRL) in Nepal

A study on strengthening legal preparedness for international disaster response



In cooperation with





Strategy 2020 voices the collective determination of the International Federation of Red Cross and Red Crescent Societies (IFRC) to move forward in tackling the major challenges that confront humanity in the next decade. Informed by the needs and vulnerabilities of the diverse communities with whom we work, as well as the basic rights and freedoms to which all are entitled, this strategy seeks to benefit all who look to Red Cross Red Crescent to help to build a more humane, dignified, and peaceful world.

Over the next ten years, the collective focus of the IFRC will be on achieving the following strategic aims:

- 1. Save lives, protect livelihoods, and strengthen recovery from disasters and crises**
- 2. Enable healthy and safe living**
- 3. Promote social inclusion and a culture of non-violence and peace**

© Nepal Red Cross Society and the International Federation of Red Cross and Red Crescent Societies, Geneva, 2011

Copies of all or part of this study may be made for noncommercial use, providing the source is acknowledged. The IFRC would appreciate receiving details of its use. Requests for commercial reproduction should be directed to the IFRC at idrl@ifrc.org.

The opinions and recommendations expressed in this study do not necessarily represent the official policy of the IFRC or of individual National Red Cross or Red Crescent Societies. The designations and maps used do not imply the expression of any opinion on the part of the International Federation or National Societies concerning the legal

status of a territory or of its authorities. All photos used in this study are copyright of the IFRC unless otherwise indicated. Cover photo: IFRC.

P.O. Box 372
CH-1211 Geneva 19
Switzerland
Telephone: +41 22 730 4222
Telefax: +41 22 733 0395
E-mail: secretariat@ifrc.org
Web site: <http://www.ifrc.org>

**International Disaster Response Law (IDRL) in Nepal
1213100 E 12/2011**

Contents

Acknowledgements	5
.....	
Abbreviations and acronyms	6
.....	
Acronyms	6
Abbreviations	6
Executive summary	8
.....	
Chapter 1	
Country background	12
.....	
Background	13
Social and political context	13
Disasters in Nepal	13
Government and legislative structure	14
Government structure in disaster management	15
National and international organizations working in disaster management	16
Chapter 2	
Existing legal framework in Nepal for receiving international assistance	19
.....	
Part I: Core responsibilities	20
Part II: Early warning and preparedness	25
Part III: Initiation and termination of international disaster relief and initial recovery assistance	29
Part IV: Eligibility for legal facilities	31
Part V: Legal facilities for entry and operation	33

Chapter 3	
Summary, key findings and recommendations	45
<hr/>	
Summary	46
Recommendations as per the IDRL Guidelines	46
Bibliography	51
<hr/>	
Annex 1	54
<hr/>	
International treaties and agreements	54
Annex 2	56
<hr/>	
Regional instruments	56
Annex 3	58
<hr/>	
Bilateral treaties	58
Annex 4	59
<hr/>	
National frameworks	59

Acknowledgements

The Nepal Red Cross Society (NRCS) would like to thank the following:

- Ministry of Home Affairs for providing valuable information and technical assistance for the report.
- The Nepal Army for their valuable comments on the draft report.
- Other governmental and humanitarian agencies for reviewing the document and providing valuable feedback.
- UN OCHA for providing UN related information and practices on the response mechanism in Nepal, such as the Inter-Agency Plan and Customs Agreement.
- Victoria Bannon, David Fisher, Olav Ofstad, Tessa Kelly, Aishah Amin and Lucia Cipullo of the International Federation of Red Cross and Red Crescent Societies (IFRC) for technical input and back up support.
- Dev Ratna Dhakhwa, Umesh Dhakal, Pitambar Aryal and Indra Adhikari of Nepal Red Cross Society for valuable inputs and updates on the practice of disaster management.

Research team

- Bijay Dahal, Nirmal Adhikari and Sudha Kafle of Nepal Red Cross Society.

Funding



Australian Government
AusAID

Australian Government/AusAID, through the IFRC
Copyright © 2011 NRCS/IFRC
All rights reserved.

All comments on this report should be directed to:

Nepal Red Cross Society

Kalimati, Kathmandu, Nepal

Phone: +977-1-4270167, 4270650

Fax: +977-1-4271915

E-mail: bijay@nrsc.org

Web site: www.nrsc.org

Abbreviations and acronyms

Acronyms

ADB	Asian Development Bank
CPN	Communist Party of Nepal
DM	Disaster Management
DM Act	Disaster Management Act
DP	Disaster Preparedness
DP-Net	Disaster Preparedness Network
DRR	Disaster Risk Reduction
FAO	United Nations Food and Agriculture Organization
ICRC	International Committee of the Red Cross
IFRC	International Federation of Red Cross and Red Crescent Societies
INGO	International Non-Governmental Organizations
IDRL	International Disaster Response Laws, Rules and Principles
ISDR	International Strategy for Disaster Reduction
MOHA	Ministry of Home Affairs
MOU	Memorandum of Understanding
NGO	Non-Governmental Organizations
NRCS	Nepal Red Cross Society
NSDRM	National Strategy for Disaster Risk Management
SAARC	South Asian Association for Regional Cooperation
UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations Children's Fund
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNISDR	United Nations International Strategy for Disaster Reduction
WFP	World Food Programme
WHO	World Health Organization

Abbreviations

- IDRL Guidelines** Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance.
-
- Model Agreement** Model Agreement between the United Nations and the Government of Nepal concerning measures to expedite the import, export and transit of relief consignments and possession of relief personnel in the event of disasters and emergencies.
-

Executive summary

Introduction

This report reviews Nepal's legal and policy framework for disaster response with a focus on large-scale emergencies that exceed national coping capacities. It analyses Nepal's legal preparedness for disasters by assessing its legal framework against key international standards.

The study aims to:

- Identify gaps and areas of good practice in addressing legal issues and implementing the key regional and international instruments relevant to disasters in Nepal.
- Recommend measures to minimize legal barriers and encourage effective national and international responses to disasters in Nepal.

Research methodology

The research undertaken for this report builds on previous studies, including the International Federation of Red Cross and Red Crescent Societies (IFRC) 2005 report on "Laws, policies, planning and practices on international disaster response in Nepal." It is also largely based on a desk review of existing legal instruments and policies for disaster response. Provisions regarding the deployment of international aid workers, transportation of relief materials, legal status of assisting actors and related issues have been reviewed. In addition, consultations have been undertaken with national authorities, in particular with the Ministry of Home Affairs (the focal point for disaster management), security agencies, UN Agencies and other responders. Likewise, similar legal studies of Australia, Bolivia, Indonesia and Thailand have been reviewed as a guide.

The Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (also known as the IDRL Guidelines), as adopted by the 30th International Conference of the Red Cross and Red Crescent in 2007, have been drawn upon as the key reference document for this research report. The IDRL Guidelines¹ provide recommendations to governments on developing legal and policy frameworks to facilitate and regulate international assistance in a disaster.

About the report

This report was prepared by the Nepal Red Cross Society (NRCS) with support from the IFRC. It examines national laws and policies, international treaties, regional and bilateral agreements, and other international instruments in order to identify the key

¹ In November 2007, states and Red Cross Red Crescent actors unanimously adopted the Guidelines at the 30th International Conference of the Red Cross Red Crescent. The Guidelines are a set of recommendations to governments on how to prepare their disaster response laws and plans for the common regulatory problems in international disaster relief operations. They advise them as to the minimal quality standards they should insist upon in humanitarian assistance, as well as the kinds of legal facilities aid providers need to do their work effectively.

legal issues, and analyze their impact on international disaster response in Nepal in the case of large scale disasters. In particular, it recommends how these laws and policies should incorporate the recommendations of the IDRL Guidelines. This report supports the efforts of the Government, UN and other humanitarian actors in disaster management, and reflects on how the proposed Disaster Management (DM) Act and its regulations could minimize legal barriers to disaster response operations.

Provision for international assistance in legal instruments

Receiving and managing international assistance is both complex and challenging in Nepal. There are a number of relevant provisions contained in national laws, yet none of them are specifically directed at receiving international assistance in the case of large-scale disasters. Instead, ad hoc decisions made at the time of a disaster have broken down legal barriers to provide relief to the people affected by disasters. This study finds that the Government of Nepal has shown flexibility in large scale relief operations in terms of providing visas, employing foreign medical and other technical experts, and facilitating entry of relief goods. No restrictions have been placed on international agencies to purchase relief supplies internally and distribute them. The Government has generally supported all relief actors without distinguishing between them. There are also some good practices in the field and at the central level, distributing lead roles and responsibilities among humanitarian actors according to their capacity.

Although the general practices in Nepal have been accommodating, the legal regime needs to be more supportive of international assistance. There is currently no defined procedure for making international appeals. Decisions are often made on an ad hoc basis, through cabinet decisions. If several states or humanitarian actors intended to provide assistance in Nepal in a large scale relief operation, the situation is likely to be complicated due to the absence of a comprehensive legal framework.

Key findings

The Natural Calamity Relief Act is the core legal instrument governing disaster management in Nepal, with the National Strategy for Disaster Risk Management serving as the key policy document. The Government of Nepal is responsible for disaster management activities, both by law and practice, and humanitarian actors in Nepal have been supporting the government's efforts.

To date, appeals for international assistance after disasters have been made through ad hoc decisions on a needs basis. However, the existing law currently offers little direction for initiating and terminating international relief operations. Existing laws do not envisage the physical presence of international agencies in times of disasters, though there is a provision for receiving cash and in-kind support from abroad.

There is a strong presence of aid agencies in the development sector in Nepal, which should bode well for a well-coordinated international disaster relief operation. Although they have been providing approximately ten per cent of their program funds in emergency and relief assistance, there is still an absence of laws which control the quality standards of disaster relief goods and services. These actors have been working, even in emergencies, under the aegis of laws and policies designed for 'normal' (i.e. non-disaster) periods. Hence there is a need for dialogue with humanitarian actors and potential assisting actors in the case of large scale disasters. Efforts to establish mechanisms

for inter-state cooperation at the regional level, such as those undertaken by the South Asian Association for Regional Cooperation (SAARC) are also welcomed.

In assessing the legal framework in Nepal, this study found that:

- There are currently strong legal mechanisms for controlling corruption, fraud and unlawful diversion of international relief and initial recovery assistance.
- Information sharing mechanisms for early warning within the country and between neighboring countries are yet to be properly established.
- Improving the access to the sea and ensuring cooperation with transit states is essential for Nepal, a country which is landlocked and disaster prone.
- The roles of domestic actors need further clarification, and attention needs to be paid to increase their capacity and resources in order to meet their mandates.
- The existing legal provisions for obtaining temporary legal status, obtaining working visas, recognizing professional qualifications, importing telecommunication equipment and medicines are too time-consuming for the disaster context.
- While the Government of Nepal is seen as being liberal in the implementation of current laws in the disaster context, no mechanism has been established so far to ensure the speedy registration of assisting humanitarian organizations and the coordinated provision of legal facilities.

Key recommendations

This report contains a number of recommendations for provisions which should be included in a new disaster management (DM) law in Nepal. At the time of writing, a new law was being drafted. Considering the time it may take for this to be passed by Parliament, this report recommends the development of national “Guidelines” on the facilitation and regulation of international disaster relief and initial recovery assistance as an interim measure. These Guidelines may then be incorporated into the new DM Law and associated rules and regulations.

The core recommendations arising from this report are that the Guidelines and (when adopted) the new DM Law should:

- define conditions and procedures for appealing for and accepting international assistance;
- include minimum standards for the delivery of relief and recovery assistance based on international codes of conduct and standards;
- contain provisions on early warning as an important component of disaster risk reduction. Reference may also be made to bilateral sharing of information with neighboring countries and regional arrangements through the SAARC;
- describe conditions and procedures for terminating international assistance.
- Clearly describe the roles and responsibilities of domestic actors in disaster response, ensuring that such duties are commensurate with their authority and resources;
- establish mechanisms for cooperation between assisting actors and government authorities (to be developed in consultation with humanitarian actors);
- establish a fast track system for the registration of humanitarian organizations that addresses visa arrangements, recognition of professional qualifications, provision of temporary legal status and the importation of relief and early recovery goods (the provision of such facilities should be conditional upon organizations meeting certain eligibility requirements based on paragraph 4 of the IDRL Guidelines and, where possible, the registration of these organizations should be made in advance of a disaster);

- provide for permission to be granted quickly for transportation, exemption of taxes, authorization of the use of telecommunication equipment and radio frequencies, and the lifting of restrictions on the importation of relief and recovery related goods and equipment;
- establish minimum standards for relief goods and their packaging, as well as methods for the disposal of unused or unwanted goods.

At the domestic policy level, strengthening the capacity of all domestic authorities in disaster risk management should also be a priority for the Government of Nepal.

International Disaster Response Law (IDRL) in Nepal
A study on strengthening legal preparedness for international disaster response

Chapter 1

Country background

Background

Nepal is a mountainous country located in South Asia, covering an area of 147,181 square kilometres. The country borders India and China, and spreads 145 to 241 kilometres from north to south and 885 kilometres from east to west. Nepal is divided into three geographical regions: the Himalayan, hill and plain regions. The Himalayan region covers 15 per cent, the hills 68 per cent and the plain (Terai) covers 17 per cent of the total area of Nepal. The Terai is the food basket of Nepal and is home to 48.4% of the population. The total population of Nepal is approximately 27 million.

Social and political context

For development and management purposes, Nepal is divided into 5 regions, 14 zones, and 75 districts. There are 3,913 Village Development Committees and 58 municipalities. Agriculture provides about 33 per cent of the gross domestic product, industries 10 per cent and service sectors like trading, construction and tourism share 57 per cent (Central Bureau of Statistics 2009). Altogether, 14.2 per cent of the total population lives in urban areas. Migration from villages to urban areas has been increasing every year. The Human Development Report points out that Nepal is among the poorest countries in the world, with one third of the population living below the poverty line.

The country's rugged geographical terrain, poor economic status, high illiteracy rates, malnutrition, unemployment, infant mortality, and public health problems have increased the country's overall vulnerability.

A decade-long internal armed conflict claimed more than 13,000 lives (Informal Sector Service Centre 2005, 2007) and displaced several thousand people, affecting almost all of the population. The conflict ended with the Comprehensive Peace Accord of 2006, signed by the government and the Communist Party of Nepal (CPN) Maoists. However, issues like the integration and management of Maoist armed forces, and of missing people are yet to be settled. Currently, the United CPN Maoist party is the largest in the Constituent Assembly. The Constituent Assembly was given a two-year time frame for promulgating a new federal republic constitution by May 28, 2010. The process has now been extended for one-and-a-half years. Progress has been significantly delayed due to contradictory agendas of the major political parties, which has had an impact on the overall socio-economic situation of the lives of the Nepalese people, as well as on legislation and governance processes.

Disasters in Nepal

Nepal faces different types of recurrent disasters, such as environmental degradation, deforestation, soil erosion, landslides and floods. Floods are quite common in the plains, while landslides occur in hills and mountains, and avalanches in the Himalayan region. Fires have caused deforestation and health epidemics can cause a great threat to communities. The numbers of deaths, injuries and displacements are increasing every year. In addition, there are reported cases of earthquakes in different parts of the country.

Floods and landslides

Floods and landslides are regular phenomena in Nepal. The monsoon rainfall tends to wash away top-soil and rivers flow with mud and other solid materials. Landslides from the hills and mountains also affect the physical environment, while rivers swell

and cause water logging in the plains. Landslides are mainly caused due to weak topographical structure, deforestation, and traditional practices of cultivation such as “slash and burn” procedures in small forests. All these natural phenomena have a serious affect on the safety and livelihoods of people living in and around these areas.

Earthquakes

Nepal has experienced various earthquakes with different magnitudes since 1223, with recurring earthquakes claiming more than 23,000 lives (DP-Net 2010). Strong earthquakes hit Kathmandu Valley in 1934 and eastern Nepal in 1988, causing significant destruction.² The Kathmandu Valley is considered the 11th most earthquake prone area in the world. The effects of these disasters are compounded by poor infrastructure, unplanned settlements and low levels of public awareness and preparedness.

Fires

Fire incidents have been a regular occurrence in Nepal due to unplanned cluster settlements with thatched roofs. Fire incidents occurred in 23 districts in 2010, affecting 608 families, claiming 14 lives, and destroying a total of 569 houses.³ In both rural and urban areas, there are very few fire brigades, narrow lanes, and weak levels of preparedness and response capacity. Forest fires are also prevalent in late spring.

Epidemics

Epidemics, sometimes caused by natural disasters, affect a large number of people every year. Most epidemics are related to water-borne and vector-borne diseases. For instance, in 2009, an outbreak of acute watery diarrhea led to a health emergency leaving 342 persons dead and over 60,000 persons sick in 17 districts in the mid-west and far western regions. (NRCS Disaster Report 2010) The threat of H1N1 has also created a burden on public health services.

Drought and avalanches

Nepal has suffered from serious impacts of climate change and global warming, including both heavy rainfall and drought. In time of drought, some people migrate to new places in search of enough food, while the threat of flood waters from lakes and the melting of glaciers is also a challenge brought about by climate change.

Government and legislative structure

Nepal is still in transition from protracted conflict to peace; monarchy to republic, and from a unitary to a federal state. The country is being governed through the Interim Constitution of 2007, which came into force after the Peace Accord in 2006. According to the Interim Constitution, Nepal is a federal democratic republic headed by a president. However, the federal system is yet to be established. The government was formed on a majority basis from the Constituent Assembly which also works as a parliament, with 601 members. The Constituent Assembly had to present a new constitution within two years (by May 2010), which has been extended three times for one-and-a-half years

² Nepal Disaster Report 2009

³ Nepal Red Cross Society Situation Report 2010

so far. The cabinet is formed by the President, on the recommendation of the Prime Minister, who is accountable to the legislative parliament. The President takes the constitutional role whereas the Prime Minister has an executive role. There are four security agencies, namely the Nepal Army, Nepal Police, Nepal Armed Police, and the National Investigation Department.

There is a Supreme Court as the apex body of the judiciary, with three levels of courts, namely district courts, appeal courts and the Supreme Court. The Interim Constitution of 2007 has upgraded the National Human Rights Commission from a statutory watchdog to a constitutional body. The Authority Abuse Investigation Commission and an Auditor-General are constitutional entities that observe the government's activities and make recommendations if norms are violated. Fundamental rights are guaranteed by the Constitution and protected by the judiciary. Article 33(m) of the Interim Constitution of Nepal of 2007 has a provision for implementing international treaties and agreements, to which the state is a party. Article 9 of the Nepal Treaty Act of 1991 states that, "if any provision of the treaty to which Nepal is a party is inconsistent with any law in force in Nepal, the law to the extent of that inconsistency shall be void and the provisions of the Treaty shall prevail as law of Nepal." All treaties to which Nepal is a party and has ratified are, in theory, directly enforceable. It should be noted here that customary international law is not part of Nepalese law unless it is transformed into domestic law.

Government structure in disaster management

The Natural Calamity Relief Act of 1982 outlines the establishment of various bodies and their duties, roles and responsibilities at different levels – central, regional and local – for disaster response. The National Strategy for Disaster Risk Management (NSDRM) of 2009 mentions a council under the chairmanship of the Prime Minister with a wider role and responsibilities, ranging from preparedness, to relief and recovery for disaster management. There is a Central Natural Disaster Relief Committee, headed by the Home Minister, which includes members from various ministries, security forces and relief agencies. Similarly, there are Regional Disaster Relief Committees in five development regions and District Disaster Relief Committees in all 75 districts. The District Disaster Relief Committee assesses the situation, assigns roles to partners and stakeholders at the field level, coordinates them, and asks the Central Relief Committee for further assistance. There is a provision for Local Disaster Response Committees to provide assistance at ground level. The government may publicly appeal to the international community in the case of a large disaster that is beyond national coping capacity.

There is also a provision for an Emergency Fund, in Article 98 of the Interim Constitution, to utilize in any kind of emergency. In addition, Article 13 of the Natural Calamity Relief Act provides for Disaster Relief Funds for purposes of disaster response. Furthermore, there is a Prime Minister's Relief Fund for the purpose of rescue, assistance and medical treatments. Article 4.C of the Prime Minister's Relief Fund Regulation of 2002 outlines how the fund may be used for the rescue and cremation of victims of disasters and accidents, and also to provide assistance to the relatives of the deceased. Besides that, there is a provision for disaster rescue funds at municipal level under the authority of municipalities. A new Disaster Management (DM) Act has been drafted and is being shared among the authorities and other key stakeholders. The draft Act addresses the whole disaster cycle and activates government and non-governmental organizations according to their roles and capacities. Currently, an initiative is

underway to make district disaster preparedness plans in all districts. Sixty out of 75 districts have developed plans so far.

National Strategy for Disaster Risk Management (2009)⁴

The National Strategy for Disaster Risk Management (NSDRM) “is a National Framework with commitment of the Government of Nepal for protection, growth, and promotion of national heritage and physical infrastructure” (NSDRM 2009-1).

The Strategy has a long term vision to change Nepal into a disaster-resilient country, and outlines both disaster preparedness and response management. It includes the following priority actions and strategic activities (echoing the Hyogo Framework of Action of 2005):

- Ensure that disaster risk reduction is a national and local priority with a strong institutional basis for implementation;
- Identify, assess and monitor disaster risks and strengthen early warning systems;
- Develop better knowledge management for building a culture of safety and resilience;
- Reduce the underlying risk factors;
- Enhance preparedness for effective response.

The Strategy has set a provision for establishing a National Council for Disaster Management with a wider role and responsibility for disaster management, under the chairmanship of the Prime Minister. It endorsed the cluster approach for defining roles and responsibilities of the government and other humanitarian actors.

National and international organizations working in disaster management

National organizations in disaster management

NGOs and civil society support District Disaster Relief Committees in managing small-scale disasters at the district level, whereas large-scale disasters need support from national agencies. Large numbers of humanitarian actors collaborated with the authorities, both at national and district level, to respond to the Koshi Flood of 2008, which displaced over 60,000 people.⁵ They played a supportive role to the government’s efforts. Humanitarian actors have been working with different vulnerable communities to empower them so that they could be active at the local level to reduce the risk of disasters. This has been adding extra strength to the national disaster response capacity of the government. The Disaster Preparedness-Network (DP-Net) is a forum for non-governmental organizations to supplement the Government’s efforts in addressing the challenges posed by disasters in Nepal. There are now 76 national organizations affiliated with the DP-Network.

The NSDRM also makes it clear that disaster management is only possible through collective efforts. Therefore, governmental and non-governmental agencies, local bodies, academic institutions, private sector, UN agencies, international development partners, civil society and communities are all recognized with specific roles and responsibilities.

⁴ The Strategy appears to be the first major document ever developed by the Government for disaster management. Different sectors participated in the drafting of the document and share the sense of responsibility for its implementation.

⁵ NRCS assessment reports.

Inter-Agency Standing Committee/Cluster System

The Inter-Agency Standing Committee (IASC) has been established in Nepal for a number of years and involves key UN agencies as well as selected representative bodies of INGOs and the IFRC and the International Committee of the Red Cross (ICRC) as standing invitees. The “IASC Principals” meeting, comprising the country heads of the represented agencies, meets every two months to discuss developments in the humanitarian sector regarding disaster preparedness and response. The IASC is also complemented by the cluster system, which has been in place since the Koshi floods of 2008. Eleven clusters are currently active in Nepal (for example, on health, food security, shelter and logistics) and are led by the respective global cluster leads at the country level. Each cluster meets on a monthly basis, bringing together government and non-governmental partners to discuss key issues of concern.

Each cluster is also tasked with developing a contingency plan based on a large-scale disaster scenario, such as a Kathmandu Valley earthquake, which are then summarized and combined into an “IASC Contingency Plan.” The cluster leads then meet on a monthly basis at an “IASC Operations” meeting to discuss current disaster response/preparedness efforts and to share information.

Nepal Risk Reduction Consortium

An international consortium of the Asian Development Bank (ADB), IFRC, United Nations Development Programme (UNDP), the Office for the Coordination of Humanitarian Affairs (UNOCHA), the UN International Strategy for Disaster Reduction (UNISDR), and the World Bank, as well as newly joined members, United States Agency for International Development (USAID), United Kingdom Department for International Development (DFID), the European Commission Humanitarian Aid Office (ECHO) and the Australian Agency of International Development (AusAID), was formed in May 2009 to support the Government of Nepal in taking forward a number of key priorities in the National Strategy for Disaster Risk Management. The consortium identified five flagship areas of immediate intervention for disaster risk management in Nepal. They are:

1. School and hospital safety – structural and non-structural aspects of making schools and hospitals earthquake resilient;
2. Emergency preparedness and response capacity;
3. Flood management in the Koshi river basin;
4. Integrated community based disaster risk reduction/management;
5. Policy/institutional support for disaster risk management.

In particular, Flagship #5 on policy and institutional support identifies the upgrading, harmonization and streamlining of the NSDRM legislation (including the DM Act), DM policies and regulations, by-laws and implementation plans as one of its key activities. This work also aims at ensuring that the (yet to be finalized) Constitution is the umbrella document for disaster management in Nepal, and that emergency and disaster powers and mechanisms for the declaration of a disaster are codified in the law.

South Asian Association of Regional Cooperation (SAARC)

The SAARC Secretariat is based in Kathmandu, Nepal. At the time of writing, SAARC was in the process of finalizing a treaty on rapid response to natural disasters, pursuant to its Disaster Management Framework. The treaty, once signed and ratified, may provide the means for addressing some of the issues raised in this report. However, the

text of the draft treaty had not been made publicly available, so this report is unable to provide any analysis of it.

SAARC also has an existing agreement establishing the SAARC Food Bank, where member states may contribute wheat and/or rice reserves which can then be drawn upon by a member states in the event of an emergency.

The Red Cross and Red Crescent Movement

The components of the Red Cross and Red Crescent Movement – the ICRC, IFRC and NRCS – are all present in Nepal. They have been working to reduce the risk of disasters, and provide relief during emergencies. The NRCS, in its auxiliary role to the government, provides relief and assists with building safer and more resilient communities. The IFRC has been supporting the NRCS in capacity building activities and coordinates with other actors on an international level during large scale disasters. The ICRC has been working in Nepal to protect and assist conflict-affected persons and to promote international humanitarian law (IHL).

NRCS contingency plan for a major earthquake in Kathmandu Valley of 2008⁶

The Plan has been developed within potential national disaster risk parameters and risk assumptions made by different studies, which envisage 8.3 Richter scale earthquakes centred on the Kathmandu Valley. It is designed to ensure a rapid, appropriate, and effective NRCS response. Accordingly, the NRCS expects to make optimum use of all available Red Cross resources both within Nepal and beyond. The Kathmandu Valley covers the city area of Kathmandu, Lalitpur and Bhaktapur Districts.

Projected impacts of an 8.3 Richter scale earthquake in the Kathmandu Valley

Death	22,000
Injury	25,000
Homeless	600,000 to 900,000
Buildings destroyed	60%
Disruption of water supplies	95% of water pipes and 50% of pumping stations and treatment plants
Electric lines and sub-stations unusable	40%
Bridges and narrow roads unusable	50%
Kathmandu International Airport	Isolated by collapse of access roads and bridges

Source: *The Earthquake Risk Management Action Plan implemented by NSET Nepal and GEO Hazard International (USA), 1999.*

⁶ The NRCS leadership, staff and Red Cross Red Crescent Movement partners were oriented on the Plan on 22 and 23 May 2008, through a simulation exercise to gain a perspective as to whether the plan reflects the NRCS capacity and means to respond to a major earthquake emergency situation, and to understand the level of preparedness during a large scale disaster in Kathmandu Valley.

International Disaster Response Law (IDRL) in Nepal
A study on strengthening legal preparedness for international disaster response

Chapter 2

Existing legal framework in Nepal for receiving international assistance

The *Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance* (also known as the “IDRL Guidelines”) are recommendations to governments on how to prepare their national disaster laws to deal efficiently and effectively with the common regulatory problems in international disaster relief operations. They advise them as to the minimum quality standards they should insist upon in humanitarian assistance. The IDRL Guidelines draw upon existing laws, principles and practices that provide guidance for dealing with common legal issues in international disaster relief operations, without impinging on the sovereign rights and responsibilities of states. The Guidelines were unanimously adopted by states and Red Cross Red Crescent actors at the 30th International Conference of the Red Cross Red Crescent in November 2007.

Part I: Core responsibilities

IDRL Guideline 3: Responsibilities of affected States

1. *Affected States have the primary responsibility to ensure disaster risk reduction, relief and recovery assistance in their territory. National Red Cross and Red Crescent Societies, as auxiliaries to the public authorities in the humanitarian field and domestic civil society actors, play a key role in supporting these efforts at the domestic level.*
2. *If an affected State determines that a disaster situation exceeds national coping capacities, it should seek international and/or regional assistance to address the needs of affected persons.*
3. *Affected States have the sovereign right to coordinate, regulate and monitor disaster relief and recovery assistance provided by assisting actors on their territory, consistent with international law.*

Law and policies

The Nepal Government has the overall responsibility for national disaster management, as reflected in the Interim Constitution (2007), Natural Calamity Relief Act (1982), NSDRM (2009), and the Three Year Interim Plan 2010- 2012.

The NRCS is a statutory member of the central and district level disaster relief committees. It is also a member of district, regional and central level sub-committees for response, preparedness, relief and recovery.⁷ The NSDRM outlines the auxiliary role of the NRCS. As an auxiliary to the authorities in the humanitarian field, the NRCS has been actively involved in disaster management. Other organizations and persons from civil society are also included in different committees and capacities.

At present, there is no clear legal provision which relates to seeking international, regional and/or bilateral assistance if a disaster exceeds the national coping capacity.

The Nepal Government reserves every right to coordinate, regulate and monitor disaster relief and recovery assistance provided by assisting actors. Article 4.A of the Natural Calamity Relief Act (1982)⁸ mentions controlling the entrance of foreigners and foreign agencies in disaster-affected areas, and, likewise, articles 6.E, 7.A.B and 9.A describe the coordinating roles of the committees at the central, regional and district

⁷ National Strategy for Disaster Risk Management, 2009

⁸ It is stated in the Act that the Government of Nepal has the authority to block the entrance of any foreigners to the place where the emergency has been declared.

levels. However, it does not explain the modalities of coordination. For this reason, various divisions of the government, as well as national and district level disaster relief committees, are responsible for managing all assistance, including international assistance. Some of the regulating roles, such as ensuring health standards, recognition of professional qualifications, and tax and customs clearance are distributed among the Ministry of Health, the Nepal Medical Council,⁹ and Ministry of Finance, respectively. The Ministry of Women, Children and Social Welfare, along with the Social Welfare Council,¹⁰ monitor the work of non-governmental organizations.

Practices

The Ministry of Home Affairs is the central agency for disaster management in Nepal. The Ministry coordinates with governmental and non-governmental agencies, security forces and humanitarian agencies. Likewise, the UN Humanitarian Coordinator coordinates among UN and other international agencies to support the government and ensure an effective humanitarian response in the country.

The government can appeal for national and international assistance in the case of a large-scale disaster that exceeds national coping capacity. In practice, there are three different types of coordination modalities applied in the field: a one-door distribution system of all humanitarian relief, the distribution of roles and responsibilities of assisting actors in comprehensive relief and recovery packages, and the distribution to affected areas of relief and recovery services among the service providers.

Recommendations

The DM Law and, pending its adoption, the recommended national guidelines should:

- clearly describe the roles and responsibilities of domestic actors in disaster response, ensuring that such duties are commensurate with their authority and resources.
- define conditions and procedures for appealing for and accepting international assistance.
- establish mechanisms for cooperation between assisting actors and government authorities. Such mechanisms should be developed in consultation with humanitarian actors.

It should also be ensured that the new DM Law contains a broad definition of a disaster, similar to the definition in the IDRL Guidelines.

IDRL Guideline 4: Responsibilities of assisting actors

1. *Assisting actors and their personnel should abide by the laws of the affected State and applicable international law, coordinate with domestic authorities, and respect the human dignity of disaster-affected persons at all times.*

2. *Assisting actors should ensure that their disaster relief and initial recovery assistance is provided in accordance with the principles of humanity, neutrality and impartiality, and in particular:*

(a) *Aid priorities are calculated on the basis of need alone;*

⁹ Nepal Medical Council Act 1997.

¹⁰ The Social Welfare Act 1992 clearly defines the role of the Social Welfare Council for monitoring the work of non-governmental organizations.

(b) Provided without any adverse distinction (such as in regards to nationality, race, ethnicity, religious beliefs, class, gender, disability, age and political opinions) to disaster-affected persons;

(c) Provided without seeking to further a particular political or religious standpoint, intervene in the internal affairs of the affected State, or obtain commercial gain from charitable assistance;

(d) Not used as a means to gather sensitive information of a political, economic or military nature that is irrelevant to disaster relief or initial recovery assistance.

3. To the greatest extent practicable, their disaster relief and initial recovery assistance should also be:

(a) Responsive to the special needs, if any, of women and particularly vulnerable groups, which may include children, displaced persons, the elderly, persons with disabilities, and persons living with HIV and other debilitating illnesses;

(b) Adequate for the needs of affected persons and consistent with any applicable international standards of quality;

(c) Coordinated with other relevant domestic and assisting actors;

(d) Provided and conducted in a manner that is sensitive to cultural, social and religious customs and traditions;

(e) Carried out with adequate involvement of affected persons, including women, youth and the elderly, in their design, implementation, monitoring and evaluation;

(f) Provided by competent and adequately trained personnel;

(g) Commensurate with their organizational capacities;

(h) Building upon and conducted in a manner that strengthens local disaster risk reduction, relief and recovery capacities and reduces future vulnerabilities to disasters;

(i) Carried out so as to minimize negative impacts on the local community, economy, job markets, development objectives and the environment; and

(j) Provided in a transparent manner, sharing appropriate information on activities and funding.

Law and policies

The Natural Calamity Relief Act¹¹ contains provisions for committees at different levels to have authority to coordinate all assisting actors. The dignity of people is protected by the Civil Code (*Muluki Ain*) and the Abuse and Defame Act (1959). These are general protection measures applicable also for a disaster situation. The Natural Calamity Relief Act and the NSDRM do not mention ethics or code of conduct for assisting actors during relief and initial recovery. There is no special legal instrument that ensures ethics and standards are enforced in times of disaster.

Practices

Assisting actors are guided by their own ethics and international codes of conduct, and should comply with the law of the land, coordinate with authorities, provide aid of a suitable quality and respect cultural sensitivity. The affected population should also speak out in case of unsuitable relief assistance being provided. International actors like the Red Cross and Red Crescent Movement, United Nations and INGOs are bound

¹¹ Natural Calamity Relief Act 1982 provides the full authority of disaster management to the Government.

by their own ethics and codes of conduct. The NRCS, as a national relief agency, has its own policy and code of conduct, which applies while delivering services in times of disasters. By and large, the disaster management actors have tried their best to adopt the Sphere Project Humanitarian Charter and Minimum Standards in Disaster Response in their operations.

Treaties/international instruments

UN General Assembly Resolution 57/150 of 27 February 2003 endorses a set of international guidelines for urban search and rescue cooperation, known as the International Search and Rescue Advisory Group (INSARAG) Guidelines. These guidelines highlight the obligations of international search and rescue responders.¹² Likewise, the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief guides many humanitarian actors.¹³ Similarly, the Meeting on Good Humanitarian Donorship, held on the 16th-17th June 2003 in Stockholm, identified the key challenges and developed objectives to overcome them.¹⁴

Recommendations

The DM Law and, pending its adoption, the recommended Guidelines should:

- provide that disaster affected people are entitled to minimum standards of relief and recovery assistance.
- require all permitted assisting actors to provide assistance according to the requirements of paragraph 4 of the Guidelines. In particular, their assistance must be guided by the principles of humanity, neutrality and impartiality.

A supporting legal instrument should:

- establish the minimum standards of assistance based on relevant international codes of conduct and standards. Most of the provisions should be applicable to both the international and national actors. In addition, Nepal should advocate the responsibilities of assisting actors in appropriate international forums.

¹² To strengthen the effectiveness and coordination of international urban search and rescue assistance, the General Assembly Resolution developed guidelines, with the assistance of the International Search and Rescue Advisory Group, as a flexible and helpful reference tool for disaster preparedness and response efforts.

¹³ The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief commits participating organizations to be guided by the humanitarian imperative first, to provide aid regardless of the race, creed or nationality of the recipients and without adverse distinction of any kind, not to use aid to further a particular political or religious standpoint, to endeavour not to act as instruments of government foreign policy, to respect culture and custom, to attempt to build disaster response on local capacities, to find ways to involve programme beneficiaries in the management of relief aid, to strive to use relief aid to reduce future vulnerabilities to disaster as well as meeting basic needs, to hold oneself accountable to both those seeking to assist and those from whom resources are accepted, and to recognize disaster victims as dignified humans, not hopeless objects.

¹⁴ In the International Meeting on Good Humanitarian Donorship in Stockholm, representatives of government and multilateral donors, United Nations institutions, the International Red Cross and Red Crescent Movement and other organizations involved in humanitarian action, reviewed past achievements as well as current challenges in global humanitarian action. Donors underlined their concern at the large number of people that continue to be affected by humanitarian crises. They established 23 points / objectives for principles and practices of Good Humanitarian Donorship.

IDRL Guideline 5: Additional responsibilities of all States

1. States providing funding to other assisting actors should encourage them to act in a manner consistent with the provisions of paragraph 4.
2. All States should actively encourage members of the public interested in contributing to international disaster relief or initial recovery assistance to make financial donations where possible or otherwise donate only those types of relief goods expressly requested by the affected State.

Law and policies

No disaster-specific law exists that addresses the responsibilities of assisting states in Nepal, or the responsibilities of Nepal as an assisting state with regard to the quality of relief provided.

Practices

In practice, the Nepal Government encourages financial donations and specific goods according to needs.

Recommendations

The DM Law and, pending its adoption, the recommended national guidelines should:

- specify that, when responding to requests for assistance from other states, Nepal will seek to ensure that assistance is provided in accordance with the requirements of paragraph 4 of the Guidelines and the specific requests of the affected state.

IDRL Guideline 6: Responsibilities concerning diversion and the intended use of resources

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

Law and policies

The Commission for Investigation of Abuse of Authority (CIAA)¹⁵ is a constitutional body established to control corruption in the country. Article 120 of the Interim Constitution of Nepal has given full authority to the CIAA to inquire and investigate improper conduct and corruption by persons holding public office. The Corruption Control Act (2002) is in force to control corruption in the public sector. Furthermore, there are special provisions in the Constitution and law for controlling corruption and misconduct of judges, officials of constitutional bodies and military personnel. The Commission for

¹⁵ The CIAA is a constitutional body established according to the Constitution which closely monitors the misuse of authority by anyone in power and files cases in the special court if persons are found guilty.

Investigation of Abuse of Authority Act (1991), Corruption Control Act (2002),¹⁶ Civil Service Act (1992)¹⁷ and their regulations contain provisions for ensuring proper use of authority, resources and materials. These mechanisms and instruments control misappropriation, fraud and unlawful diversion in general, as well as during disaster response operations.

The Foreign Aid Policy (2002) reflects the trend of foreign aid in Nepal and spells out both the donor and national perspectives as well as guiding principles, priorities, policies and strategies. However, they are mainly related to development sectors. In article 8.2 of the policy, transparency and accountability are described as priorities to enhance aid-supported activities, reduce inefficiencies and distortions, combat corruption, and assist in sound decision and policy making processes.

Treaties/international instruments

Nepal signed the United Nations Convention against Corruption (UNCAC) (2003) on the 10th December 2003, and the Parliament ratified it in February 2011.¹⁸

Practices

No major cases of misappropriation and corruption of disaster relief activities have been revealed in recent years.

Recommendations

While there are existing laws covering this subject, in order to safeguard against corruption and misappropriation, the DM Law and, pending its adoption, the recommended national guidelines should:

- reinforce that disaster relief funds are to be allocated and used according to the expressed intent in which they were given.
- establish a monitoring mechanism for the distribution and use of funds in a disaster relief operation.

Part II: Early warning and preparedness

IDRL Guideline 7: Early warning

1. *In order to minimize trans-boundary impacts and maximize the effectiveness of any international assistance that might be required, all States should have procedures in place to facilitate the expeditious sharing of information about disasters, including emerging hazards that are likely to cause disasters, with other States and assisting humanitarian organizations as appropriate, including the United Nations' Emergency Relief Coordinator.*

¹⁶ This Act provided additional powers to combat corruption.

¹⁷ The Act aims to make the operation and conditions of the civil service more competent, vigorous, service-oriented and responsible.

¹⁸ The UNCAC is the only legally binding universal anti-corruption instrument. It covers different forms of corruption covering five main areas - prevention, crime and law enforcement measures, international cooperation, asset recovery, and technical assistance and information exchange. Countries are bound by the Convention to render specific forms of mutual assistance in gathering and transferring evidence for use in court to extradite offenders.

Law and policies

There is no law in existence concerning how to share information about disasters and hazards between Nepal and other states. A national strategy on early warning has been drafted, which is under discussion among the concerned authorities.

Treaties/international instruments

The Nepal Government has agreements with India related to the Koshi Project and Gandaki Irrigation and Power Project. There is an emergency provision for communications contained in both the agreements, for the use of internal telephones and telegraphs, provided that they do not interfere with the construction and operation of the projects.¹⁹

Practice

There is a practice of early warning between Nepal and India. For example, in the Koshi River flood of 2008, the communities were informed about the flood via red flags used to signal danger. As the water level in the Koshi River rises above normal and reaches danger levels, a red flag is hung over the bridge.

Recommendations

Nepal should look into more possibilities of bilateral information sharing and regional arrangements, and more specifically, the SAARC initiatives in this regard should also be supported. The draft strategy for early warning should be finalized as soon as possible.

Additionally, the DM Law and, pending its adoption, the recommended national guidelines should:

- identify the responsible authorities and channels for communicating early warning information to both the public and the international community.

The early warning strategy should:

- ensure that emerging hazard information is shared with neighbouring states and regional organizations as appropriate.

IDRL Guideline 8: Legal, policy and institutional frameworks

1. *As an essential element of a larger disaster risk reduction programme, States should adopt comprehensive legal, policy, and institutional frameworks and planning for disaster prevention, mitigation, preparedness, relief and recovery which take full account of the auxiliary role of their National Red Cross or Red Crescent Society, are inclusive of domestic civil society, and empower communities to enhance their own safety and resilience. States,*

¹⁹ Agreement between His Majesty's Government of Nepal and the Government of India on the Gandak Irrigation and Power Project, 1959, 5 (v) - The Government of India shall permit the use of internal telegraph, telephone and radio communications as indicated in the plan to the authorized servants of His Majesty's Government in emergencies, provided such use does not interfere with construction, maintenance and operation.
Revised Agreement between the Government of India and His Majesty's Government of Nepal concerning the Koshi Project, 1966, 9 (v) - Further provided that the Union agrees to permit the use of internal telephone and telegraphs in the Project area to authorize servants of HMG for business in emergencies provided such use does not interfere with the construction and operation of the project.

with the support, as appropriate, of relevant regional and international organizations should devote adequate resources to ensure the effectiveness of these frameworks.

- 2. These frameworks should also adequately address the initiation, facilitation, transit and regulation of international disaster relief and initial recovery assistance consistent with these Guidelines. They should allow for effective coordination of international disaster relief and initial recovery assistance, taking into account the role of the United Nations Emergency Relief Coordinator as the central focal point with States and assisting humanitarian organizations concerning United Nations emergency relief operations. They should also clearly designate domestic governmental entities with responsibility and authority in these areas. Consideration should be given to establishing a national focal point to liaise between international and government actors at all levels.*
- 3. Where necessary and appropriate, national governments should encourage other domestic actors with authority over areas of law or policy pertinent to international disaster relief or initial recovery assistance, such as provincial or local governments and private regulatory bodies, to take the necessary steps at their level to implement the Guidelines.*

Law and policies

The Natural Calamity Relief Act (1982) is focused (but not limited) to disaster response, whereas the NSDRM 2009 is developed in line with the Hyogo Framework for Action, incorporating disaster prevention, mitigation, preparedness, response and community resilience. The Strategy further defines the roles and responsibilities of the government, non-governmental actors, civil society and the NRCS in different phases of the disaster management cycle. Similarly, the Interim Development Plan (2007-2009) is comprehensive and has adopted public-private partnership in disaster response.

The NSDRM 2009 addresses some aspects of the IDRL Guidelines regarding international disaster relief and initial recovery assistance. The NSDRM does not spell out who initiates, and how to initiate, international assistance. It recognizes international assistance, but does not include provisions for facilitating or regulating international assistance. The proposed DM Act incorporates some provisions on the facilitation of assisting international agencies, personnel and goods through the provision of visas, customs and taxes. However, these provisions do not cover all the facilities mentioned in the IDRL Guidelines.

The Natural Calamity Relief Act, through article 6.E, designates responsibility to the Central Disaster Relief Committee to include and coordinate social organizations in relief work. However, it does not clearly explain whether that includes international organizations or not. There is no explicit provision on coordination with assisting states and with the UN Emergency Relief Coordinator. However, article 6.D and 13.2.B include provisions for receiving material and cash donations from abroad.

As previously mentioned, the government has made significant efforts to draft a new DM Act. Likewise, efforts have been undertaken to develop disaster preparedness plans in all the districts (see government structure in disaster management in Chapter 1).

Treaties/international instruments

Although it is not a legally binding treaty, Nepal has been actively implementing the Hyogo Framework for Action on disaster risk reduction.

Practices

The Ministry of Home Affairs, as a national focal point, coordinates with all assisting actors and establishes close contact with the UN Resident Coordinator. The system implies that none of the assisting actors can operate relief activities independent of the national mechanism. The national and district level committees coordinate both the national and international assisting actors.

Recommendations

Efforts undertaken to develop legal, policy and institutional frameworks should be expedited and broadened to cover all relevant aspects of the IDRL Guidelines. The DM Law and, pending its adoption, the recommended national guidelines should:

- clearly outline the role and responsibility of the Central Disaster Relief Committee and other government departments and agencies in the coordination of international disaster relief;
- reinforce the Ministry of Home Affairs as a focal point for liaising between international and government actors; and
- where relevant, outline the responsibilities of local level authorities in international disaster relief.

IDRL Guideline 9: Regional and international support for domestic capacity

1. *With a view to increasing resilience and reducing the need for international disaster relief and initial recovery assistance, the international community, including donors, regional and other relevant actors, should support developing States, domestic civil society actors and National Red Cross and Red Crescent Societies to build their capacities to prevent, mitigate, prepare for and respond to disasters domestically.*
2. *The international community should also support developing States to build their capacity to adequately implement legal, policy and institutional frameworks to facilitate international relief and initial recovery assistance. This support should be provided to States in a coordinated manner by the relevant actors.*

Law and policies

There is no legal provision for capacity building of national institutions. However, the NSDRM (2009) establishes strategies for increasing community resilience, building capacity of national institutions, and developing a legal, policy and institutional framework.

Practices

A number of capacity building efforts have been instituted. UN agencies and other international agencies have also occasionally organized simulation exercises for representatives of governmental and humanitarian actors in the country, including the NRCS.

Recommendations

The implementation of the NSDRM should be accelerated and a separate plan should be developed for capacity building of national institutions.

Part III: Initiation and termination of international disaster relief and initial recovery assistance

IDRL Guideline 10: Initiation

1. Disaster relief or initial recovery assistance should be initiated only with the consent of the affected State and, in principle, on the basis of an appeal. The affected State should decide in a timely manner whether or not to request disaster relief or initial recovery assistance and communicate its decision promptly. In order to make this decision, the affected State should promptly assess needs. Consideration should be given to undertaking joint needs assessments with the United Nations and other assisting humanitarian organizations.
2. Requests and offers for assistance should be as specific as possible as to the types and amounts of goods as well as the services and expertise available or required, respectively. Affected States may also wish to indicate particular types of goods and services likely to be offered that are not needed.
3. Affected States should make available to assisting actors adequate information about domestic laws and regulations of particular relevance to the entry and operation of disaster relief or initial recovery assistance.

Law and policies

There is no law or policy in existence on how to initiate and terminate international disaster relief and initial recovery assistance.

Practices

The Nepal Government usually appeals for international assistance based on an immediate contextual decision. In practice, the government consults the UN agencies, the Red Cross and Red Crescent Movement and other assisting organizations for needs assessments and preparation for relief. As a national relief agency, auxiliary to the authorities in humanitarian field, the NRCS has a system of launching international emergency appeals through the IFRC. The UN also has also a system of emergency appeals in consultation with the government.

Recommendations

The DM Law and, pending its adoption, the recommended national guidelines should:

- include a provision about the necessary conditions and procedures for making international appeals and receiving assistance.
- provide that international appeals will be based on needs and capacity assessments. The law (or associated legal instrument) may also provide guidance on undertaking these assessments in cooperation with the UN and/or other relevant organizations.

IDRL Guideline 11: Initiation of military relief

Military assets should be deployed for disaster relief or initial recovery assistance only at the request or with the express consent of the affected State, after comparable civilian alternatives have been considered. Prior to any such deployment, terms and conditions (including such issues as the duration of deployment, whether they must be unarmed or may be armed, the use of their

national uniforms, and mechanisms for cooperation with civilian actors) are to be agreed by the affected and assisting States.

Law and policies

There is no provision in the law or policies of Nepal for receiving international military support for disaster relief or initial recovery assistance. The Interim Constitution of Nepal contains a provision requiring approval from a special committee of the legislative parliament within one month after the mobilization of the Nepalese Army, except regarding mobilization due to a natural disaster (Article 145.5). Further, the Agreement on Monitoring of the Management of Arms and Armies reached between the Government of Nepal and the Communist Party of Nepal Maoist on 8 December 2006, which is recognized by article 147 of the Interim Constitution of Nepal, has a provision in article 4.2.4.7 permitting the Nepalese Army to undertake relief work in times of natural and other disasters, as directed by the Government of Nepal.

Treaties/international instruments

Nepal is not a party to any treaties in this matter. However, the Oslo Guidelines²⁰ provide guidance for determining the conditions for international military relief.

Practices

Nepal has limited experience in international military relief. Nepal received an engineering team from the British army to fix bridges after the devastating floods in 1993. Likewise, the Nepal Army transported relief materials to Pakistan to assist earthquake affected people. Furthermore, the Nepalese Army, deployed as a UN peacekeeping force in Haiti in 2010 and was involved in earthquake relief as well. Nepal, as one of the major troop contributing countries to the UN for peacekeeping missions, provides training to its force on humanitarian assistance as a training component. The Nepal Army sometimes distributes medicine and food to needy populations as humanitarian relief during peacekeeping missions abroad. The Nepal Army has been involved in multi-national trainings and simulation exercises for large scale disaster relief operations.

Recommendations

The DM Law and, pending its adoption, the recommended national guidelines should:

- clearly stipulate the procedure for requesting and coordinating international military relief based on the principles outlined in both the IDRL Guidelines and Oslo Guidelines.

IDRL Guideline 12: Termination

When an affected State or an assisting actor wishes to terminate disaster relief or initial recovery assistance, it should provide appropriate notification. Upon such notification, the affected State and the assisting actor should consult with each other, bearing in mind the impact of such termination on disaster affected communities.

²⁰ Guidelines On The Use of Foreign Military and Civil Defence Assets In Disaster Relief - "Oslo Guidelines" Updated November 2006 (Revision 1.1 November 2007)

Law and policies

There are no clear provisions on the termination of international assistance in Nepalese laws or policies.

Practices

Agreements between the government and assisting actors normally include a provision for the termination of relief assistance as well. Relief actors are rarely forced to cease assistance and leave the field. The Government of Nepal has never terminated any international assistance before completion of an agreement.

Recommendations

The DM Law and, pending its adoption, the recommended national guidelines should:

- establish the conditions and procedures for terminating international assistance, either at the instigation of the Nepal Government or the assisting actor.

Part IV: Eligibility for legal facilities

IDRL Guideline 13: Facilities for assisting States

It is recommended that transit and affected States grant, at a minimum, the legal facilities described in Part V to assisting States with respect to their disaster relief or initial recovery assistance.

Law and policies

There are no specific provisions in Nepalese laws to grant legal facilities to assisting states in times of disaster.

Treaties/international instruments

The India-Nepal Transit Treaty provides access to Nepal to certain sea ports of India for bringing and delivering relief goods. Existing diplomatic relationships between Nepal and other states also facilitate such processes.

Practices

In practice, states offer their support through diplomatic channels and get diplomatic privileges and facilities as per existing bilateral treaties. However, existing treaties are not enough to serve in large scale disasters.

Recommendations

Facilitating assistance by assisting states should be addressed by law, as discussed below under Guideline 14. Nepal may also pre-negotiate for transit facilities with India in case of large disasters.

IDRL Guideline 14: Facilities for assisting humanitarian organizations

1. Subject to existing international law, it is the prerogative of originating, transit and affected States to determine which assisting humanitarian organizations will be eligible

to receive the legal facilities described in Part V with respect to their disaster relief or initial recovery assistance.

2. It is recommended that States establish criteria for assisting humanitarian organizations seeking eligibility for legal facilities. These criteria should include a showing by the organization of its willingness and capacity to act in accordance with the responsibilities described in paragraph 4 of these Guidelines.
3. Any additional requirements imposed on assisting humanitarian organizations should not unduly burden the provision of appropriate disaster relief and initial recovery assistance.
4. Determination of eligibility by the State granting the facilities should be possible in advance of a disaster, or as soon as possible after its onset. Applicable procedures and mechanisms should be as simple and expeditious as possible. They should be clearly described and information about them should be made freely available. They might include the use of a national roster, bilateral agreements or reliance upon international or regional systems of accreditation, if available.
5. Retention of the legal facilities in Part V should be made dependent on ongoing compliance with the provisions of subsection 2 of this paragraph. However, entitlement to legal facilities should not be changed arbitrarily, retroactively or without notice appropriate to the circumstances.

Law and policies

INGOs have to register with the Social Welfare Council to work in Nepal, and this would apply in disaster situations as well. However, there is generally a relaxation of the pre-approval procedures for institutions constituted under international agreements. The Social Welfare Act (1992), Article 16. 4 states that, “notwithstanding anything stated in subsection (1), no permission shall be required to those international institutions established under international agreements in which Nepal Government is a party for assistance that relates to emergency relief services.” In the case of government agencies, there are no special laws, as the process is decided through bilateral agreements. There are no laws or policies on the legal status for international organizations, as it is usually decided through bilateral agreements.

Treaties/international instruments

The Model Agreement between the government and UN provides space for assistance channeled through the UN system in times of declared emergencies.

Practice

In practice, the Nepal Government is highly cooperative in giving practical facilities to humanitarian organizations in times of disaster.

Recommendations

Legal facilities and standard service requirements for international assisting actors should be developed in consultation with humanitarian communities and included in the DM regulations. The DM Law and, pending its adoption, the recommended national guidelines should:

- establish a system for registering assisting organizations to receive legal facilities. The provision of such facilities should be conditional upon organizations meeting certain eligibility requirements based on paragraph 4 of the IDRL Guidelines. Where possible, the registration of these organizations should be made in advance of a disaster.

IDRL Guideline 15: Facilities for other assisting actors

Affected States may also wish to extend, upon request, some of the legal facilities in Part V to assisting actors other than those covered by paragraphs 13 and 14, such as private companies providing charitable relief, provided this does not negatively affect operations of assisting humanitarian organizations or assisting States. Any actor receiving such facilities should be required to abide, at a minimum, by the same conditions described in paragraph 14.

Law and policies

There is no provision in law for providing facilities for any non-state or non-humanitarian actors. The organizations do not get specific privileges. They are fully subject to the existing national laws.

Practices

Such assisting actors work through bilateral agreements with the Government or Social Welfare Council or donate funds or goods to national agencies.

Recommendations

The DM Law and, pending its adoption, the recommended national guidelines should include a specific provision for providing facilities even to non-humanitarian actors.

Part V: Legal facilities for entry and operation

It is recommended that States provide the legal facilities described in paragraphs 16-24 to assisting States and eligible assisting humanitarian organizations. It is understood that the granting of these facilities will be subject to the interests of national security, public order, public and environmental health, and public morals of the concerned affected, originating and transit States. Measures to protect such interests should be tailored to the exigencies of the specific disaster and be consistent with the humanitarian imperative of addressing the needs of affected communities. Where specific facilities recommended here are within the competence of authorities other than the national government, the national government should, where possible and appropriate, encourage those authorities to provide the relevant facilities to assisting States and eligible assisting humanitarian organizations.

IDRL Guideline 16: Personnel

1. With regard to disaster relief and initial recovery personnel of assisting States and eligible assisting humanitarian organizations, affected States should:
 - a. Grant visas and any necessary work permits, ideally without cost, renewable within their territory, for the time necessary to carry out disaster relief or initial recovery activities;
 - b. In disaster relief operations, waive or significantly expedite the provision of such visas and work permits;
 - c. Establish expedited procedures for temporary recognition of professional qualifications of foreign medical personnel, architects, and engineers, drivers licenses and other types of licenses and certificates that are necessary for the performance of disaster relief or initial recovery functions and that have been certified as genuine

- by the concerned assisting State or eligible assisting humanitarian organization, for the time necessary to carry out disaster relief or initial recovery activities;*
- d. *Facilitate freedom of access to and freedom of movement in and from the disaster-affected area, bearing in mind the safety of disaster relief and initial recovery personnel;*
 2. *Upon request, originating and transit States should likewise waive or promptly issue, ideally without cost, exit or transit visas, as appropriate, for the disaster relief and initial recovery personnel of eligible assisting humanitarian organizations;*
 3. *Assisting States and eligible assisting humanitarian organizations should consider to what degree disaster relief and initial recovery objectives can be met through hiring local staff.*

Law and policies

There is no fast track provision in Nepalese law for granting visas to foreign aid workers. Nepal accepts applications for tourist visas on arrival (except for nationals of Afghanistan, Cameroon, Ethiopia, Ghana, Iraq, Zimbabwe, Liberia, Nigeria, Palestine, Somalia and Swaziland) at the international airport in Kathmandu and other entry points bordering with India and China. All SAARC member countries except Afghanistan can obtain a one month's single-entry gratis visa. All nationals of India can visit Nepal without visas, if they are in possession of their identity cards. Individuals coming with tourist visas are allowed to stay a maximum of 150 days, but they are not allowed to work. In times of disaster, foreign relief personnel can be granted a non-tourist visa under section 8 of *Immigration Rule (1994)*, for a period not exceeding one year at a time, which can be extended if necessary. A recommendation from the concerned ministry related to the relief activity is a pre-requisite for a non-tourist visa application. The Ministry of Home Affairs is the concerned ministry for disaster management, and is also the authority which manages immigration and visas.

There is a provision for recognizing medical professional qualifications under certain conditions. However, there is no fast track provision for recognizing them in times of disaster and emergencies. In normal situations, the process of acquiring recognition takes at least a week if all required documents are complete and the professional appears for an interview. It takes a long time to prepare all the supportive documents, such as a recommendation of the Nepalese employer, recommendation of the relevant ministry, valid working visa, and to get copies of those documents attested by a doctor authorized by the Medical Council, which is required pursuant to Article 22 of the Nepal Medical Council Regulation 1968. Consultation with the Medical Council revealed that the process for registering foreign medical professional can be shortened in an emergency, provided that the person appears for an interview with all the required documents.

According to the Nepal Nursing Council Act 1995 and Nepal Health Professional Council Act 1996, nurses and paramedics must obtain permission from the Nepal Nursing Council and Nepal Paramedics Council, respectively, to practice in Nepal.

International Driving Licenses are valid in Nepal. Those who do not have one are required to follow the Nepalese process which includes filling in an application, and passing written examinations as well as a practical driving test.

Unless it is explicitly mentioned in the visa that access to a particular place has been restricted for foreigners, s/he is able to have free movement within the county. The Natural Calamity Relief Act mentions that the Government may restrict the movement of foreigners in areas declared under emergency.

Treaties/international instruments

Indian nationals do not require visas to enter Nepal due to the bilateral Indo-Nepal Treaty 1954. There is a SAARC visa exemption arrangement for high officials of SAARC countries, which may not be of much benefit in the case of a disaster.

Practice

Some organizations have been obtaining tourist visas for their personnel, but this does not legally allow them to “work” in the country. In practice, working visas are often issued immediately to foreigners if they are deployed by any organizations/institutions following official procedures. However, law enforcement agencies are not very strict in inquiring about the type of visa and recognition of professional qualification in times of disaster. Though foreigners may be restricted entry to declared emergency areas, the Nepal Government does not generally restrict access unless there are strong reasons. There are only a few rare cases of imposing additional conditions for granting a visa.

Recommendations

The DM Law and, pending its adoption, the recommended national guidelines should:

- include, in the system described above under Guideline 14, a fast track system for humanitarian organizations to receive legal facilities. It should address visa arrangements and recognition of professional qualifications, among other things, as discussed below.

The Government of Nepal should initiate a dialogue with the Indian Government, to discuss issuing transit visas for relief personnel coming to Nepal via India, in times of large disasters.

IDRL Guideline 17: Goods and equipment

1. *With regard to disaster relief and initial recovery goods and equipment exported or imported by, or on behalf of, assisting States and eligible assisting humanitarian organizations, originating, transit and affected States should:*
 - a. *Exempt them from all customs duties, taxes, tariffs or governmental fees;*
 - b. *Exempt them from all export, transit, and import restrictions;*
 - c. *Simplify and minimize documentation requirements for export, transit and import;*
 - d. *Permit re-exportation of any equipment or unused goods which the assisting State or assisting humanitarian organization owns and wishes to retain.*
2. *With regard to disaster relief goods and equipment only, originating, transit and affected States should additionally:*
 - a. *Waive or reduce inspection requirements. Where a waiver is not possible, clear relief goods and equipment rapidly and as a matter of priority, through a “preclearance” process where feasible; and*
 - b. *Arrange for inspection and release outside business hours and/or at a place other than a customs office as necessary to minimize delay, in accordance with the safety regulations of the affected State. Assisting States and eligible assisting humanitarian organizations should respect any routes and delivery points prescribed by the affected State.*

3. *In order to benefit from the facilities above, assisting States and assisting humanitarian organizations should, in accordance with agreed international standards, appropriately pack, classify and mark disaster relief and initial recovery goods and equipment, and include detailed manifests with each shipment. They should additionally inspect all such goods and equipment to ensure their quality, appropriateness for the needs in the affected State, and conformity with the national law of the affected State and international standards.*
4. *Assisting States and eligible assisting humanitarian organizations should assume responsibility for removing or disposing of any unwanted and unused relief and initial recovery goods, particularly if they may pose a threat to human health or safety, or the environment.*

Law and policies

The existing Natural Calamity Relief Act recognizes international material support. Article 6.D of the Act states that the Central Disaster Relief Committee shall properly store and dispatch material received from both inside and outside the country. However, it does not further elaborate on categories of goods or the management and coordination of the process.

Treaties/international instruments

A Model Customs Agreement was signed on the 27th May 2007 by the Nepal Government and the UN providing for measures to expedite the import, export and transit of relief consignments and relief personnel in the event of disasters and emergencies. According to the Agreement, in an emergency, relief goods may be brought in and exempted of all taxes and duties, so long as they are imported by organizations who are part of the UN relief operations.²¹ This may not include humanitarian organizations that do not work under a UN mandate due to the principles of independence and neutrality, such as the International Red Cross Red Crescent Movement. The Agreement minimizes procedural times for importing relief goods into the country and waives restrictions on quantity and value. The UN, through nine trainings at nine different customs points, trained 300 customs officials in the country about the Agreement.

The ICRC, IFRC and the UN agencies also have status agreements with the Government of Nepal which contain provisions on diplomatic privileges for importing goods for their own consumption.²² The Foreign States and Diplomatic Personnel's Privileges and Immunities Act (1970) also contains similar provisions for diplomatic missions and representatives. However, it is not explicit in the law or bilateral agreements as to whether these provisions can be extended to relief goods.

Practices

In practice, administrative requirements are relaxed and the process for importing relief materials and goods relating to relief operations expedited. Almost all relief goods are tax-exempt and free from import restrictions on a case by case basis. The relief goods distributed by relief agencies are normally well packed and contain logos;

²¹ The Model Customs Agreement was approved by the Permanent Technical Committee of the World Customs Organization in April 1996. Article 2 defines which organizations are involved in United Nations Relief Operations. It includes government (GOV), intergovernmental (IGO) and NGOs certified by the UN as bona fide participants within the framework of a United Nations relief operation and transport carriers contracted by the UN, a UN agency or a UN certified GOV/IGO/NGO for transportation of relief consignment(s) and/or possessions of disaster relief personnel.

²² Foreign States and Diplomatic Personnel's Privileges and Immunities Act 1970

however other actors that seek to become involved in relief activities do not necessarily follow standard procedures. Fortunately, there have been no reported cases of relief distribution posing a threat to human health, safety or the environment. However, there have been a few cases of distributing culturally unacceptable goods.

Recommendations

The good practices described above should be promoted by clarifying procedures in the relevant laws. The DM Law and, pending its adoption, the recommended national guidelines should:

- include, in the system described above under Guideline 14, a fast track system for humanitarian organizations to expedite the importation and transport of relief goods.
- establish minimum standards for relief goods, packaging, and methods for disposal of unused or unwanted relief and recovery goods.

IDRL Guideline 18: Special goods and equipment

In addition to the facilities described in paragraph 17:

1. *Affected States should grant temporary recognition to foreign registration and plates with regard to vehicles imported by assisting States and eligible assisting humanitarian organizations or on their behalf in disaster relief and initial recovery assistance.*
2. *Affected States should waive or expedite the granting of any applicable licenses and reduce any other barriers to the use, import or export of telecommunications and information technology equipment by assisting States and assisting humanitarian organizations or on their behalf in disaster relief and initial recovery assistance. Without discrimination against or negative impact to domestic relief actors, affected States should also grant (or where appropriate, encourage other domestic actors to grant) assisting States and eligible assisting humanitarian organizations priority access to bandwidth, frequencies and satellite use for telecommunications and data transfer associated with disaster relief operations.*
3. *Originating, transit and affected States should reduce legal and administrative barriers to the exportation, transit, importation and re-exportation of medications and medical equipment by assisting States and eligible assisting humanitarian organizations or on their behalf in disaster relief and initial recovery assistance, to the extent consistent with public safety and international law. Assisting States and eligible assisting humanitarian organizations should take all reasonable steps to ensure the quality, appropriateness and safety of any such medications and equipment and in particular:*
 - a. *Any medications they import should be approved for use in the originating and affected State;*
 - b. *Medications they use in their own operations should be:*
 - i. *transported and maintained in appropriate conditions to ensure their quality and;*
 - ii. *guarded against misappropriation and abuse.*
 - c. *Any medications they donate for use by others in the affected State should be:*
 - i. *at least twelve months from their expiration date upon arrival, unless otherwise agreed by receiving authorities;*
 - ii. *transported and maintained in appropriate conditions to ensure their quality until they reach the affected State; and*

- iii. *appropriately labelled in a language understood in the affected State with the International Non-proprietary Name or generic name, batch number, dosage form, strength, name of manufacturer, quantity in the container, storage conditions and expiry date.*
4. *Originating, transit and affected States should consider whether normal requirements regarding fumigation and prohibitions and restrictions on food imports and exports by assisting States and eligible assisting humanitarian organizations in disaster relief operations can be modified or reduced.*

Law and policies

Medicine and medical equipment

According to Article 9 of the Drug Act (1978), a drug import recommendation letter from the Drug Administration Department is required for importing medicines into Nepal. Further, Drug Registration Regulation 1981 describes details of required documents and the format to be submitted for drug import registration. The following documents are required:

- A copy of the certificate from the relevant authority stating that good manufacturing practice is followed;
- Product specification;
- Laboratory test certificate from a designated laboratory and procedures of analysis;
- Level of pharmacopeias;
- Sample of the drug;
- Other descriptions as specified by the Drug Administration Department.

However, drugs that are received as grants by governmental and non-governmental organizations may be permitted on the recommendation of the Drug Advisory Committee, which is headed by the Secretary of the Ministry of Health and Population.

Telecommunications facilities

The Ministry for Communications gives permission to import telecommunications equipment and provide radio frequencies. Likewise, permission for a satellite telephone can also be obtained from the Ministry. These permissions are subject to initial, monthly or annual tariffs. There is no special (fast track) provision for getting such permission in times of a disaster.²³

Treaties/international instruments

Food

The Model Customs Agreement, described above, supports the importation of food in the event of a large-scale disaster, provided that it is a declared emergency or the Government seeks external assistance. Under the SAARC Food Bank Agreement 2007, there is also a provision for stocking rice and wheat in member countries. A member country can request these food grains in times of disaster and food shortages through

²³ With the support of Nepal Telecommunications, the NRCS provided free telephone services in the affected region to link families separated in the Koshi River flood of 2008, to enable them to make contact with their family members living across the country and abroad.

the SAARC Secretariat.²⁴ The amount and costs of those grains are decided through an agreement between receiving and supplying countries at a preferential rate.

Telecommunications

Nepal signed the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations on 23 April 1999. However, it is yet to be ratified by Parliament.²⁵

Practices

Although there are laws regarding medicines and medical personnel, there is no specific law for regulating medical equipment. The normal system for importing goods is to obtain a recommendation letter from the relevant ministry. In the case of medical equipment, the Ministry of Health and Population is the concerned ministry. If it is for commercial purposes, permission has to be obtained from the Department of Commerce. For all humanitarian and non-profit purposes, the Ministry of Health and Population issues recommendation letters for importing medical equipment and to ensure they receive a tax exemption.

The Government of Nepal has been extending a range of support to international relief actors such as tax exemptions, speedy permission, in order to facilitate disaster relief and initial recovery related goods, equipment and services.

Recommendations

The DM Law and, pending its adoption, the recommended national guidelines should:

- provide for the speedy permission, exemptions of taxes, and the lifting of certain restrictions for special goods and equipment necessary for disaster relief. Relevant laws relating to food and telecommunications may need to be amended accordingly.

Consideration should be given to developing the law in relation medical equipment and amending the law concerning medications. While the law should still set out some procedural requirements to ensure the quality, appropriateness and safety of medications and equipment, legal barriers in disaster relief and initial recovery assistance should be kept at a minimum.

Further, Nepal should advocate for the obligations of assisting states as well. Nepal should also consider ratifying the Tampere Convention (1998).

²⁴ The SAARC member states established a regional food reserve by establishing a SAARC Food Bank to improve their food security and to provide regional support to national food security efforts.

²⁵ The Tampere Convention 1998, which came into force from 8 January 2005, calls on States to facilitate the provision of prompt telecommunication assistance to mitigate the impact of a disaster, and covers both the installation and operation of reliable, flexible telecommunication services. Regulatory barriers that impede the use of telecommunication resources for disasters are waived. These barriers include the licensing requirements to use allocated frequencies, restrictions on the import of telecommunication equipment, as well as limitations on the movement of humanitarian teams.

IDRL Guideline 19: Transport

1. *Originating, transit and affected States should grant, without undue delay, permission for the speedy passage of land, marine and air vehicles operated by an assisting State or eligible assisting humanitarian organization, or on its behalf, for the purpose of transporting disaster relief or initial recovery assistance and, ideally, waive applicable fees.*
2. *In particular, permission should be granted for over flight, landing and departure of aircraft. Such aircraft should also be authorized to operate within the territory of the affected State as required for the delivery of assistance.*
3. *Any applicable exit, transit and entry visas for the operating personnel of such transport vehicles should be promptly issued.*

Law and policies

According to Article 29 of the Vehicle and Transportation Management Act, vehicles registered in a foreign country are not allowed to move within Nepal without permission. They may get permission for up to one month for operation of vehicles, by paying a specified fee. International driving licenses are recognized in Nepal. Article 53 of the Act states that a person possessing an international driving license is allowed to drive those types of vehicles mentioned in the license. There is tax free provision for vehicles of all diplomatic missions.

There is not any special provision in the Civil Aviation Act for planes carrying relief from across the border to enter the country at short notice. It is mentioned that the Government of Nepal can offer free landing and waiver tariffs, according to need. It can assist by transporting persons and goods through Nepal Airlines in times of disaster, according to Article 15.1.C of Nepal Airlines Corporation Act 1969.

Visa provision for the transport operating personnel is mentioned in Guideline 16.

Treaties /international instruments

Nepal is a party to the Chicago Convention on Civil Aviation and its Annex 9, which proposes that contracting States shall ensure that personnel and articles arriving on relief flights are cleared without delay.

Nepal also has bilateral agreements with many countries for civil aviation. However, they do not address disaster relief transport adequately.

Practices

Nepal has facilitated air flights carrying disaster relief goods. However, there is no regulation which allows for airlines to carry relief items without tariffs.

As there is only one international airport in the country, the Government is expanding the domestic airport of Bhairahawa into an international one, and planning to construct new airports at Nijgadh and Pokhara.

Recommendations

The DM Law and, pending its adoption, the recommended national guidelines should:

- contain provisions which provide for the speedy passage of air and land vehicles in times of disasters.

IDRL Guideline 20: Temporary domestic legal status

1. Affected States should grant relevant entities of assisting States and eligible assisting humanitarian organizations, upon entry or as soon as possible thereafter, at least a temporary authorization to legally operate on their territory so as to enjoy the rights, inter alia, to open bank accounts, enter into contracts and leases, acquire and dispose of property and instigate legal proceedings, for the purpose of providing disaster relief and initial recovery assistance.
2. Assisting States and eligible assisting humanitarian organizations should also be granted the right to freely bring the necessary funds and currencies in or out of the country through legal means and to obtain legal exchange rates in connection with their disaster relief or initial recovery assistance.
3. Affected States should allow assisting States and eligible assisting humanitarian organizations to legally hire and terminate the contracts of local personnel.

Law and policies

Subject to an agreement with the Government of Nepal, assisting organizations receive legal status to use all facilities, including the opening of bank accounts, undertaking financial/ monetary transactions, entering into contracts and leases, acquiring and disposing of property, recruiting local personnel and registering vehicles. This legal status provides similar facilities for local organizations.²⁶ In the case of States, an agreement is undertaken with the Ministry of Foreign Affairs. INGOs would make an agreement with the Social Welfare Council.

Practices

After discussions undertaken with relevant officials during the research stages of this report, it became apparent that there are more than 230 INGOs operating in Nepal in agreement with the Social Welfare Council. They have been receiving privileges as mentioned in their agreements. They have to allocate at least 80 percent of their budgets towards development and up to 20 percent at most for administrative costs. The INGOs obtain approval from the Council to undertake relief work during disasters, if they can manage resources separately. However, INGOs are not allowed to directly implement programmes; they have to work through national organizations.

Recommendations

The DM Law and, pending its adoption, the recommended national guidelines should:

- include, in the system described above under Guideline 14, a fast track system for humanitarian organizations to receive temporary legal status.

IDRL Guideline 21: Taxation

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

²⁶ Social Welfare Act 1992

Law and policies

According to the Foreign States and Diplomatic Personnel's Privilege and Immunity Act (1970),²⁷ embassies and diplomatic missions and diplomats are entitled to tax exemptions. For relief operations, unless it is in the agreement, the assisting states or organizations are subject to taxation such as income tax, VAT, property tax, house rent tax, vehicle tax and so on.

The Vehicle Tax Act (1974) in its article 11, mentions tax exemptions for the vehicles of diplomatic missions and non-profit organizations. Foreign citizens and foreign projects that have tax exemption provision in their agreements with the Government of Nepal are also not liable to pay these taxes.

Treaties/international instruments

In case of relief items, the Model Custom Agreement between the UN and Nepal Government provides exemption from taxes and duties for those items imported for assistance.

Practice

For those who are not covered by law or agreement, in many cases the Government of Nepal has provided exemption of taxes by ad-hoc decisions to facilitate disaster relief services.

Recommendations

The DM Law and, pending its adoption, the recommended national guidelines should:

- include, in the system described above under Guideline 14, a fast track system for humanitarian organizations to receive exemptions on taxes, duties and fees incurred in the conduct of disaster relief activities.

IDRL Guideline 22: Security

Affected States should take appropriate measures to address the safety and security of disaster relief and initial recovery personnel of assisting States and eligible assisting humanitarian organizations and of the premises, facilities, means of transport, equipment and goods used in connection with their disaster relief or initial recovery assistance. Assisting States and assisting humanitarian organizations should also take appropriate steps in their own planning and operations to mitigate security risks.

Law and policies

Securities conferred by the Constitution and laws of Nepal are equally applicable to all who reside in Nepal whether they are Nepali citizens or foreigners. Unless it is mentioned in the agreement between the assisting state/organization and the Government of Nepal, they receive the same security which national actors and citizens of Nepal receive. However, there is no specific provision in the law for the security of relief organizations.

²⁷ The Act makes a provision on diplomatic privileges and immunities to the foreign state, their representatives and officials in accordance with International Law and Usages.

Practice

The local administration provides special security if there is any threat or if it is requested.

Recommendations

To strengthen already existing good practice, the DM Law and, pending its adoption, the recommended national guidelines should:

- confirm that the personnel of assisting actors in disaster relief will receive safety and security protection from relevant national and local authorities.

IDRL Guideline 23: Extended hours

Affected States should endeavour to ensure, when necessary, that State-operated offices and services essential to the timely delivery of international disaster relief function outside of normal business hours.

Law and policies

The office heads of the Government offices reserve the authority to open public offices early in the morning and close at a later than normal hour. The authorities reserve the right as mentioned in the Civil Service Act and its regulations to keep all staff within their control at all times. They can be deployed anywhere, at any time, when necessary. As mentioned in the Act and regulation, leave is not a right but a facility. Civil servants get annual leave of 54 days, but they can be required to stay at the office or in the field during times of emergency or in other cases of need.

Practice

The authorities of Nepal are available whenever needed and they are flexible in working hours in times of disaster.

Recommendations

To strengthen already existing good practice, the DM Law and, pending its adoption, the recommended national guidelines should:

- provide that essential services may have their operating hours extended as necessary to ensure the delivery of international disaster relief.

IDRL Guideline 24: Costs

1. *The costs of providing international disaster relief or initial recovery assistance pursuant to these Guidelines should normally be borne by the assisting State or assisting humanitarian organization. However, assisting States may agree in advance with the affected State for the reimbursement of certain costs and fees, or for the temporary loan of equipment.*
2. *Affected States should consider, when it is in their power and to the extent possible under the circumstances, providing certain services at reduced or no cost to assisting States and eligible assisting humanitarian organizations, which may include:*

- a. *In-country transport, including by national airlines;*
- b. *Use of buildings and land for office and warehouse space; and*
- c. *Use of cargo handling equipment and logistic support.*

Law and policies

There is no law or policy in this regard.

Practices

Although there are no laws or policies on topic, foreign agencies have been covering the costs of providing international disaster relief. The Government of Nepal, in practice, provides buildings and land to use as offices and warehouses to store equipment, and offers logistic support free of charge (subject to availability) for disaster relief.

The Nepal Government mobilizes military air and vehicle services for rescue and relief operations free of charge. Nepal Airlines assists in disaster relief by transporting persons and goods in times of disaster, mandated by the Nepal Airlines Corporation Act (1963). However, Nepal Airlines only has a couple of aircraft, and there are only limited destinations within the country. The airline sometimes provides free transport but sometimes charges a tariff in times of disaster. Most air services are operated in country by private airline companies, with fees and charges being subject to negotiation. According to the Natural Calamity Relief Act, the Government, in case of an emergency, can mobilize all private and public resources, but the use of private resources must be compensated for after the emergency.

Recommendations

The DM Law and, pending its adoption, the recommended national guidelines should:

- provide scope for the negotiation of agreements between the Government of Nepal and assisting actors regarding the costs of international disaster relief or initial recovery assistance.

International Disaster Response Law (IDRL) in Nepal
A study on strengthening legal preparedness for international disaster response

Chapter 3

Summary and Recommendations

Summary

Nepal continues to experience the damaging impacts of disasters every year. In spite of having several good practices in responding to disasters, this study found that there are a number of gaps in the legal framework for facilitating and regulating international assistance in large scale disasters. To better facilitate and regulate assistance, an effective legal framework is needed. Considering lengthy law-making processes and the potential risks of large scale disasters, a practical guideline, as an immediate measure, should be developed for the facilitation and regulation of international disaster relief and initial recovery assistance.

Recommendations as per the IDRL Guidelines

Part I: Core responsibilities

Guideline 3

The DM Law and, pending its adoption, the recommended national guidelines should:

- clearly describe the roles and responsibilities of domestic actors in disaster response, ensuring that such duties are commensurate with their authority and resources.
- define conditions and procedures for appealing for and accepting international assistance.
- establish mechanisms for cooperation between assisting actors and government authorities. Such mechanisms should be developed in consultation with humanitarian actors.

It should also be ensured that the new DM Law contains a broad definition of disaster similar to the IDRL definition.

Guideline 4

The DM Law and, pending its adoption, the recommended national guidelines should:

- provide that disaster affected people are entitled to minimum standards of relief and recovery assistance.
- require all permitted assisting actors to provide assistance according to the requirements of paragraph 4 of the Guidelines. In particular, their assistance must be guided by the principles of humanity, neutrality and impartiality.

A supporting legal instrument should:

- establish the minimum standards of assistance based on relevant international codes of conduct and standards. Most of the provisions should be applicable to both the international and national actors.

In addition, Nepal should advocate the responsibilities of assisting actors in international forums.

Guideline 5

The DM Law and, pending its adoption, the recommended national guidelines should:

- Specify that, when responding to requests for assistance from other states, Nepal will seek to ensure that assistance is provided in accordance with the requirements of paragraph 4 of the IDRL Guidelines and the specific requests of the affected state.

Guideline 6

While there are existing laws covering this subject, to safeguard against corruption and misappropriation The DM Law and, pending its adoption, the recommended national guidelines should:

- reinforce that disaster relief funds are to be allocated and used according to the expressed intent in which they were given.
- establish a monitoring mechanism for the distribution and use of funds in a disaster relief operation.

Part II: Early warning and preparedness

Guideline 7

Nepal should look into possibilities of such bilateral information sharing and regional arrangements, and more specifically the SAARC initiatives in this regard should also be supported. The draft strategy for early warning should be finalized as soon as possible.

Additionally, the DM Law and, pending its adoption, the recommended national guidelines should:

- identify the responsible authorities and channels for communicating early warning information to both the public and the international community.

The early warning strategy should:

- ensure that emerging hazard information is shared with neighboring states and regional organizations as appropriate.

Guideline 8

Efforts undertaken for appropriate legal, policy and institutional frameworks should be expedited and broadened to cover all relevant aspects of IDRL Guidelines. The DM Law and, pending its adoption, the recommended national guidelines should:

- clearly outline the role and responsibility of the Central Disaster Relief Committee and other Government departments and agencies in the coordination of international disaster relief.
- reinforce the Ministry of Home Affairs as a focal point for liaising between international and government actors.
- where relevant, outline the responsibilities of local level authorities in international disaster relief.

Guideline 9

Implementation of the NSDRM should be accelerated and a separate plan should be developed for capacity building of national institutions.

Part III: Initiation and termination of international disaster relief and initial recovery assistance

Guideline 10

The DM Law and, pending its adoption, the recommended national guidelines should:

- include a provision about the necessary conditions and procedures for making international appeals and receiving assistance.
- provide that international appeals will be based on needs and capacity assessments. The law (or associated legal instrument) may also provide guidance on undertaking these assessments in cooperation with the UN and/or other relevant organizations.

Guideline 11

The DM Law and, pending its adoption, the recommended national guidelines should:

- clearly stipulate the procedure for requesting and coordinating international military relief based on the principles outlined in both the IDRL Guidelines and Oslo Guidelines.

Guideline 12

The DM Law and, pending its adoption, the recommended national guidelines should:

- establish the conditions and procedures for terminating international assistance, either at the instigation of the Nepal Government or the assisting actor.

Part IV: Eligibility for Legal Facilities

Guideline 13

Facilitating assistance by assisting states should be addressed by the law, as discussed below under Guideline 14. Nepal may also pre-negotiate for transit facilities with India in case of large disasters.

Guideline 14

Legal facilities and standard service requirements for international assisting actors should be developed in consultation with humanitarian communities and included in the DM regulations. The DM Law and, pending its adoption, the recommended national guidelines should:

- establish a system for registering assisting organizations to receive legal facilities. The provision of such facilities should be conditional upon organizations meeting certain eligibility requirements based on paragraph 4 of the IDRL Guidelines. Where possible, the registration of these organizations should be made in advance of a disaster.

Guideline 15

The DM Law and, pending its adoption, the recommended national guidelines should:

- include a specific provision for providing facilities even to non-humanitarian actors.

Part V: Legal facilities for entry and operations

Guideline 16

The DM Law and, pending its adoption, the recommended national guidelines should:

- include, in the system described above under Guideline 14, a fast track system for humanitarian organizations to receive legal facilities. It should address visa

arrangements and recognition of professional qualifications, among other things, as discussed below.

The Government of Nepal should also initiate a dialogue with the Indian Government, for issuing transit visas for relief personnel coming to Nepal via India, in times of large disasters.

Guidelines 17

The good practices described above should be promoted by clarifying the procedures in relevant laws. The DM Law and, pending its adoption, the recommended national guidelines should:

- include, in the system described above under Guideline 14, a fast track system for humanitarian organizations to expedite the importation and transport of relief goods.
- establish minimum standards for relief goods, packaging, and methods for disposal of unused or unwanted relief and recovery goods.

Guideline 18

The DM Law and, pending its adoption, the recommended national guidelines should:

- provide for the speedy permission, exemptions of taxes, and the lifting of certain restrictions for special goods and equipment necessary for disaster relief. Relevant laws relating to food and telecommunications may need to be amended accordingly.

Consideration should be given to developing the law in relation to medications and medical equipment. Any legal barriers should be kept at a minimum in disaster relief and initial recovery assistance while still ensuring the quality, appropriateness and safety of medications and equipment.

Further, Nepal should advocate for the obligations of assisting states as well.

Guideline 19

The DM Law and, pending its adoption, the recommended national guidelines should:

- contain provisions which provide for the speedy passage of air, marine and land vehicles in times of disasters.

Nepal should consider ratifying the Tampere Convention 1998.

Guideline 20

The DM Law and, pending its adoption, the recommended national guidelines should:

- include, in the system described above under Guideline 14, a fast track system for humanitarian organizations to receive temporary legal status.

Guideline 21

The DM Law and, pending its adoption, the recommended national guidelines should:

- include, in the system described above under Guideline 14, a fast track system for humanitarian organizations to receive exemptions on taxes, duties and fees incurred in the conduct of disaster relief activities.

Guideline 22

To strengthen already existing good practice, the DM Law and, pending its adoption, the recommended national guidelines should:

- confirm that the personnel of assisting actors in disaster relief will receive safety and security protection from relevant national and local authorities.

Guideline 23

To strengthen already existing good practice, the DM Law and, pending its adoption, the recommended national guidelines should:

- provide that essential services may have their operating hours extended as necessary to ensure the delivery of international disaster relief.

Guideline 24

The DM Law and, pending its adoption, the recommended national guidelines should:

- provide scope for the negotiation of agreements between the Government of Nepal and assisting actors regarding the costs of international disaster relief or initial recovery assistance.

Bibliography

International treaties

Agreement Concerning Technical Assistance, 14 February 1963.

Agreement for the Provision of Operational, Administrative and Executive Personnel, 18 August 1958.

Basic Agreement for the Provision of Technical Advisory Assistance, 10 May 1954.

Basic Cooperation Agreement, 21 February 1996.

Basic Agreement Concerning Assistance from the World Food Programme, 30 August 1967.

Framework Convention on Civil Defence Assistance 22 May 2000.

Regional instruments

Agreement on Establishing the SAARC Food Bank

SAARC Visa Exemption Scheme

SAARC Regional Study on the Causes and Consequences of Natural Disaster and the Protection and Preservation of the Environment

SAARC Bilateral Agreements and MOUs with other organizations

National level framework

Armed Police Force Act 2001 [B.S 2064]

Civil Aviation Act 1958 [B.S 2015]

Customs Act 2007 [B.S 2064]

Drug Act 1978 and its Regulations

Emergency Fund Act 1959 [B.S 2016]

Financial Act 2010 [B.S 2067]

Immigration Act 1992 [B.S 2049] and its Regulations

Income Tax Act 2002 [B.S 2058]

Infectious Disease Act 1964 [B.S 2020]

Interim Constitution of Nepal 2007 (B.S 2063)

Local Administration Act 1971 [B.S 2028]

Local Bodies Financial Administration Regulation 2007 (B.S.2064)

Local Self –Governance Act 1999 [B.S 2055]
Natural Calamity Relief Act 1982 [B.S 2039]
Nepal Airline Act 1963 [B.S 2019]
Nepal Broadcasting Act 1992 [B.S 2049]
Nepal Civil Aviation Authority Act 1996 [B.S 2053]
Nepal Medical Council Act 1964 [B.S 2020] and its Regulations
Nepal Treaty Act 1990 [B.S 2047]
Plant Conservation Act 2007 [B.S 2064]
Police Regulation 1992 [B.S 2049]
Prime Minister Relief Fund Regulation 2002 (B. S.2059)
Social Welfare Act 1992 [B.S 2049]
Telecommunication Act 1992 [B.S 2049]
Three Years Interim Plan 2007-2010
Vehicle and Transportation Management Act 1993 (B. S. 2049)
Vehicle Tax Act 1974 [B.S 2031]

Books and reports

- ASEAN Agreement on Disaster Management and Emergency Response, Vientiane (26 July 2005).
- CBS (2009). *Statistical Pocket Book of Nepal*. Kathmandu: Central Bureau of Statistics.
- Guidelines on the Use of Foreign Military and Civil Defense Assets in Disaster Relief – “Oslo Guidelines” Updated November 2006 (Revision 1.1 November 2007).
- UNOCHA / WCO (1994) Model Customs Facilitation Agreement.
- IFRC. (2005). IDRL Asia-Pacific Study Nepal: Laws, Policies, Planning and Practices on International Disaster Response.
- IFRC. (2006). *Legal Issues from the International Response to the Tsunami in Indonesia*.
- IFRC. (2006). *Legal Issues from the International Response to the Tsunami in Thailand*.
- IFRC. (2010). *Legal Preparedness for International Disaster Response in Australia: Laws, Policies, Planning and Practices*.
- IFRC. (2008). *Floods in Bolivia*.
- IFRC. (2008). *Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*.
- INSEC Nepal. (2005). *Human Rights Year Book. (Issue 2005, 2007)*. Kathmandu.
- Ministry of External Affairs, Government of India. *India: Bilateral Treaties and Agreements*. Vol. 3 (1958-1960), Vol. 5 (1964-1966).
- Ministry of Home Affairs and DP-Net. (2010). *Nepal Disaster Report 2009*.
- Nepal Government, Ministry of Home Affairs. (2009). *National Strategy for Disaster Risk Management*.
- Nepal Red Cross Society. (2009/2010). *Annual Report*.
- Nepal Red Cross Society. (2010). *Disaster Management Policy*.

Annex 1

International treaties and agreements

Nepal has entered into a number of agreements since 1950 with the United Nations and other humanitarian organizations which are of relevance to relief operations. *The Convention on the Privileges and Immunities to Specialized Agencies 1947* and the *Convention on the Privileges and Immunities of the United Nations 1946*, which Nepal has acceded to in 1954 and 1965, respectively, are the bases for such agreements.

For example, the *Legal Status of the International Federation of Red Cross and Red Crescent Societies and its Delegation in Nepal (1997)* recognizes the international legal personality of the International Federation and grants the organization a number of facilities, privileges and immunities to enable it to carry out its humanitarian functions within the territory of Nepal:

- Freedom of movement, except as restricted by the Government;
- Inviolability of premises, assets and archives;
- Freedom of financial transactions;
- Exemptions from tax, customs duties, prohibitions and restrictions on imports and exports for official use and use in relief operations and development cooperation;
- Freedom of communications;
- Immunities and tax exemptions for members of the delegation and officials of the International Federation for the conduct of their official duties;

The agreement also contains a list of goods which may need to be imported and exported to support humanitarian programs, and thereby benefit from the designated tax and customs exemptions. This includes a list of items which may be needed to support emergency programs such as vehicles, medical supplies and equipment, food supplies, emergency shelter, blankets and clothing, household utensils and emergency communications equipment.

Likewise a *Headquarters Agreement on the Establishment of a Delegation in Kathmandu, Nepal*, 20 January 2003, was established with the ICRC, which contains similar types of provisions.

Nepal has also entered a number of agreements with the United Nations and its agencies:

1. *Basic Agreement for the Provision of Technical Advisory Assistance*, 10 May 1954, Nepal – World Health Organization, 204 UNTS 311 (entered into force 13 May 1954).
2. *Agreement for the Provision of Operational, Administrative and Executive Personnel*, 18 August 1958, Nepal – United Nations, 508 UNTS 4 (entered into force 18 August 1958).
3. *Agreement Concerning the Activities of UNICEF in Nepal*, 12 December 1960, Nepal – United Nations Children's Fund, 382 UNTS 273 (entered into force 12 December 1960).
4. *Agreement Concerning Technical Assistance*, 14 February 1963, Nepal – United Nations, International Labour Organization, Food and Agriculture Organization, Educational Scientific and Cultural Organization, International Civil Aviation Organization, World Health Organization, International Telecommunication

- Union, World Meteorological Organization, International Atomic Energy Agency and Universal Postal Union, 453 UNTS 169 (entered into force 14 February 1963).
5. *Standard Agreement on Operational Assistance*, 25 May 1965, Nepal – United Nations, International Labour Organization, Food and Agriculture Organization, Educational Scientific and Cultural Organization, International Civil Aviation Organization, World Health Organization, International Telecommunication Union, World Meteorological Organization, International Atomic Energy Agency and Universal Postal Union, 535 UNTS 375 (entered into force 25 May 1965).
 6. *Basic Agreement Concerning Assistance from the World Food Programme*, 30 August 1967, Nepal – United Nations and Food and Agriculture Organization on behalf of the World Food Programme, 779 UNTS 379 (entered into force 30 August 1967).
 7. *Agreement Concerning Assistance by the United Nations Development Programme to the Government of Nepal*, 23 February 1984, Nepal – United Nations Development Programme, 1349 UNTS 231 (entered into force 23 February 1984).
 8. *Basic Cooperation Agreement*, 21 February 1996, Nepal – United Nations Children’s Fund, 1912 UNTS 131 (entered into force 21 February 1996).
 9. *Model Agreement between United Nations and the Government of Nepal concerning measures to expedite the import, export and transit of relief consignments and possessions of relief personnel in event of disasters and emergencies* 31 May 2007.

Annex 2

Regional instruments

Agreement on Establishing the SAARC Food Bank

On 4 April 2007, the member countries signed an agreement to establish the SAARC Food Bank. There is total of 241,580 metric tons of food grains (wheat and rice) in reserve, out of which Nepal has to store 4,000 metric tons. This agreement is directly relevant to international disaster response. It establishes a process whereby member states contribute wheat and/or rice to a permanent reserve. The member states may withdraw their reserves in the event of an emergency and further, states may ask for more grain from other member countries as per the agreement.

SAARC Visa Exemption Scheme

This scheme intends to facilitate greater 'people to people' interaction and cooperation between SAARC member states. Under the scheme, visa requirements are waived for certain categories of people. Those entitled to benefit from the scheme include Supreme Court judges, members of the national parliaments, heads of national academic institutions, Foreign/Permanent Secretaries dealing with foreign affairs, SAARC Secretary-General and Directors of the SAARC Secretariat, Presidents of National Chambers of Commerce and Industry and their dependents. Recently, a liberalized scheme has been agreed under which selected journalists, business persons and sportspersons can be given long-term multi-entry visas after prior clearance. However, it remains unclear as to whether government or humanitarian relief workers are included within the categories and whether this scheme has been used to facilitate the entry of relief workers into Nepal.

SAARC Disaster Management Centre (SDMC)

The SAARC Disaster Management Centre (SDMC) was set up in October 2006, at the premises of the National Institute of Disaster Management in New Delhi. The Centre has the mandate to serve eight member countries of the SAARC- Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka – by providing policy advice and facilitating capacity building services including strategic learning, research, training, system development and exchange of information for effective disaster risk reduction and management in South Asia.

The Centre conducts studies and research, organizes workshops and training programs, publishes reports and documents, and provides various policy advisory services to the member countries. The Centre has as its vision, to be recognized as a vibrant centre of excellence for knowledge, research and capacity building on disaster management in South Asia and in the rest of the world.

SAARC Disaster Management Framework

In the aftermath of the Indian Ocean Tsunami of December 2004, a special session of the SAARC Environment Ministers was held in Male on 25 June 2005. The Ministers had concluded the meeting by adopting the Male Declaration, which decided inter-alia that an Expert Group of the member countries would meet in Dhaka, Bangladesh, to formulate a Comprehensive Framework on Early Warning, Disaster Management and Disaster Prevention, prior to the Seventh Ministerial Meeting on Environment in Bangladesh.

The Expert Group met on 7-9 February, 2006 in Dhaka and developed a comprehensive framework on disaster management in South Asia. The framework is aligned with the implementation of the Hyogo Framework for Action (HFA) 2005-2015: Building the Resilience of Nations and Communities to Disasters. The Framework was approved by the SAARC Council of Ministers on 30 July 2006 and by the Fourteenth SAARC Summit in New Delhi, 3-4 April 2007.

The Framework provides a platform for South Asian countries to:

- Establish and strengthen the regional disaster management system to reduce risks and to improve response and recovery management at all levels;
- Identify and elaborate country and regional priorities for action;
- Share best practices and lessons learnt from disaster risk reduction efforts at national levels;
- Establish a regional system to develop and implement regional programs and projects for early warning;
- Establish a regional system of exchanging information on prevention, preparedness and management of natural disasters;
- Create a regional response mechanism dedicated to disaster preparedness, emergency relief and rehabilitation to ensure immediate response;
- Create a regional mechanism to facilitate monitoring and evaluation of achievements towards goals and strategies.

Annex 3

Bilateral treaties

Nepal is a landlocked country and borders India in the south, east and west. China borders the north. Because of its geographical location, Nepal's only facility for sea transport is via Indian ports.

India-Nepal Treaty of Peace and Friendship

The India-Nepal Treaty of Peace and Friendship (1950) allows for the free movement of people and goods between the two nations.

India-Nepal Transit Treaty

The India-Nepal Transit Treaty recognizes the need to facilitate the traffic-in-transit through their territories, and provides freedom of transit across their respective territories through routes mutually agreed upon. There is no distinction made on flags of vessels, the places of origin, departure, entry, exit, destination and ownership of goods or vessels.



Annex 4

National frameworks

Interim Constitution of Nepal 2007 (B.S 2063)

Fundamental Rights: Part 3 of the Interim Constitution of Nepal ensures rights of individuals. Articles 16, 17 and 18 mention rights for basic health, education and food respectively.

Army Mobilization: The cabinet has to take approval from a special committee of the legislative parliament within one month after the mobilization of the Nepalese Army, except for the mobilization of the Nepalese Army due to a natural disaster (Article 145, (5)).

Emergency Fund: An Emergency Fund may be established according to Article 98. An amount shall be deposited as per law. The Fund shall be controlled by the Government. The Government may use the Fund for emergency purposes, but the expenses shall be reimbursed as per law.

Agreement on Monitoring of the Management of Arms and Armies annexed with Article 147: Agreement on Monitoring of the Management of Arms and Armies reached between the Government of Nepal and Communist Party of Nepal Maoist on 8 December 2006, which is recognized by Article 147 of the Interim Constitution of Nepal, has a provision in its Article 4.2.4.7 permitting the Nepalese Army to undertake relief work in times of natural and other disasters, as directed by the Government of Nepal.

Armed Police Force Act 2001 [B.S 2064]

The Armed Police Force was formed in 2001 and works under the Nepal Government, having one of its aims as rescue during disasters. Article 6.E of the Armed Police Force Act mentions one of the grounds for mobilization of the force is for the assistance in rescuing the victims of disaster and epidemics. Recently, the force has established a disaster school in Kurintar.

Civil Aviation Act 1958 [B.S 2015]

The Government of Nepal may make rules to control the spread of epidemics or communicable diseases through planes or passengers according to article 7 of the Act. According to Article 8.a, the Government may issue necessary orders if it feels that the existing law is not enough to control the threat of an epidemic in public health entered or spread through planes. Both the rules and orders are enforceable after notification in the National Gazette.

Customs Act 2007 [B.S 2064]

Article 9 states that:

- Customs facilities and diplomatic facilities shall be provided to all agencies or their personnel by recommendation of the Ministry of Foreign Affairs, if it is agreed in bilateral and multilateral treaties and agreements for providing such facilities.
- The Nepal Government may exempt custom duties fully or partially for certain goods by publishing a list in the National Gazette.
- The Nepal Government may exempt custom duties of goods fully or partially for projects run with foreign aid or grants.

Drug Act 1978 and its regulations

A drug import recommendation letter from the Drug Administration Department is required for importing medicines into Nepal. Further, the Drug Registration Regulation 1981 describes details of required documents, as follows:

- A copy of the certificate from the authority stating that good manufacturing practice is followed;
- Product specification;
- Lab test certificate from a designated laboratory and procedures of analysis;
- Level of pharmacopeias;
- Sample of the drug;
- Other descriptions as specified by the Drug Administration Department.

However, drugs received as grants by governmental and non-governmental organizations may be permitted on the recommendation of the Drug Advisory Committee, which is headed by the Secretary of the Ministry of Health and Population.

Emergency Fund Act 1959 [B.S 2016]

As mentioned in the Constitution, the Fund has been established through the Act. According to Article 3.B, the amount of the Fund shall be spent with the permission of the Cabinet for Disaster Management and Other Emergencies. Article 3 outlines that there is 2.5 million rupee in the Fund, which may be increased by issuing a notice in the Gazette. The amount shall be reimbursed if spent.

Financial Act 2010 [B.S 2067]

According to article 18 of the Financial Act 2010, the Government of Nepal reserves the right to reduce or increase rates of taxes and provide exemption fully or partially from any taxes by notifying in the National Gazette.

According to annex 1, group 5, the following medical and health services are tax free:

- Health services (except those registered in VAT);
- Human blood, blood products, blood bags, reagents, chemicals and equipment for the blood transfusion service imported by Nepal Red Cross Society;
- Human and animal organs and tissues used in medical research;
- Instruments used in animal and human treatment, contraceptives;
- Medicines used in the treatment of heart and human organs, valve, and tools used by people with disabilities;
- X-ray film, oxygen gas used in treatment, and bandages.

There is provision for exemption from custom duty for disaster service related goods:

- Goods received in grants for disaster response and welfare approved by the Ministry of Finance, (17);
- Goods for use in disaster rescue imported by the Nepalese Army on recommendation of the Ministry of Defense, by the Nepal Armed Police Force and Nepal Police on recommendation of the Ministry of Home Affairs, are exempted from custom duty (15, A, B, C).

Immigration Act 1992 [B.S 2049] and its regulations

No foreigners can enter or stay in Nepal without a passport and visa. The type and fee for the visa is determined by the Nepal Government. The officers or director general of the Department of Immigration can check the individuals and documents at any place and any time. They can also seize the documents. If found without a valid visa, or involved in illegal activities, the person can be sent out of the country. Article 8 of the Immigration Regulation Act (1994) stipulates that foreigners, who come to Nepal to work in socio-economic development programs, as approved by the Government, may receive non-tourist visas. Likewise, those who come to work as per agreement reached at governmental or non-governmental level may also get non-tourist visas on the recommendation of the concerned ministry.

Income Tax Act 2002 [B.S 2058]

This Act specifies that personnel of foreign states or international organizations with which the Government has entered into special arrangements, may be exempt from income tax.

Infectious Disease Act 1964 [B.S 2020]

According to Article 2, the Nepal Government may take necessary action, issue necessary orders to any individual or particular group or to all people, in case of the breakout of infectious diseases. The Government may issue orders to check and control travels and travelers, in case of need. The Government may authorize any official to request a particular person to take necessary action to control and prevent infectious diseases. However, the Act does not mention about international cooperation if the threat is beyond national capacity.

Local Administration Act 1971 [B.S 2028]

Article 4.b defines roles and responsibilities of the regional administrator, one of which is to take appropriate actions to control and manage extreme situations, such as disaster, epidemics and starvation.

Local Bodies Financial Administration Regulation 2007 (B.S.2064)

The Regulation in Article 33 has a provision for establishing seven special funds in municipalities, one of which shall be the Disaster Rescue Special Fund. The Municipal Council may allocate the necessary amount out of its revenue.

Local Self –Governance Act 1999 [B.S 2055]

The Act aims to reduce the impact of disasters by mobilizing local bodies – village development committees, municipalities and district development committees, for

conservation of local resources, plantation in open lands and river control. Taking necessary measures for controlling disaster is one of the tasks of all local bodies according to article 28, 96 189 that describes roles and responsibilities of village development committees, district development committees and municipalities respectively.

Natural Calamity Relief Act 1982 [B.S 2039]

The Act is the major legal instrument in Nepal for disaster management and was revised in 1989 and 1992, respectively. The Plan envisages the establishment of various bodies and their duties, roles and responsibilities at various levels – central, regional and local, for disaster response.

The following articles of the Act define the following arrangements:

- Article 2: defines what the disaster and disaster rescue work are
- Article 3: declaring a place as a disaster zone by the government
- Article 4: authority of the Government to issue orders for disaster relief in a disaster zone
- Article 4.A: controlling the entrance of foreigners
- Article 5: formation of a central disaster response committee
- Article 5.B: formation of a relief and treatment sub-committee
- Article 5.C: formation of a supply, shelter and rehabilitation sub-committee
- Article 6: duties and responsibilities of the central disaster response committee
- Article 7: formation of other disaster response committees
- Article 7.A: duties and responsibilities of the regional disaster response committee
- Article 9: duties and responsibilities of the district disaster response committee
- Article 9: duties and responsibilities of the local disaster response committee

Government of Nepal

The Government of Nepal has overall responsibility for disaster management in Nepal. It holds the authority to declare emergency zones in certain areas which are, or are likely to be, affected by disaster. Declaration shall be notified in the Nepal Gazette and valid for a specified period of time, which can be extended by another notification as needed. In such areas, the Government holds the power to issue any orders or conduct any activities prescribed in Article 4 of the Act, such as closing down of offices or institutions for a certain period, banning activities that have or may have adverse effect on rescue work, mobilizing personnel and resources of any governmental or non-governmental agencies, evacuation of people and goods, requisition of property of any organizations or individuals for a certain period, taking preventive actions to protect people and property, control and distribution of private or non-governmental relief items, deployment of aid groups, and the use of government resources.

When the Government utilizes private or non-governmental resources, the rent or cost of those goods and facilities shall be compensated at prevailing rates.

Central Disaster Relief Committee

The Committee, known as the Central Committee, is chaired by the Minister of Home Affairs. The Committee consists of 24 members from various ministries, departments, National Planning Commission, Social Welfare Council, Nepal Red Cross Society, Nepal Scouts and two “reputed persons” nominated by the Government. Members of Parliament representing the district affected by the disaster shall also be invited to attend meetings.

The Central Committee is essentially the nerve centre for disaster management. It is tasked with developing national prevention, preparedness, relief and rehabilitation policies for submission to the Government, and is also responsible for their implementation, once approved.

The Central Committee coordinates all the rescue, relief and assistance of social organizations, manages funds and materials received within and from outside of the country, and gives directions to the district and local committees on relief matters.

Regional and District Disaster Relief Committees

The Regional and District Committees form the next two tiers of the disaster management structure. Their functions are primarily to coordinate between the next tiers of Committees below them, and to develop policy on disaster relief relevant to their own level. In the case of Regional Committees, they work in accordance with directives from the Central Committee but can also give suggestions or provide information to the Central Committee. Similarly, the District Committee coordinates between the Local Committees and works in accordance with the Central and Regional Committees, providing information to them from time to time.

Local Disaster Relief Committees

The Local Committees are at the operational end of the disaster management structure. They prepare descriptions of the loss/damage caused by the disaster and estimates of the means and resources required for relief and rehabilitation. This information is then submitted to the District Committee. The Local Committee has also to mobilize volunteers for rescue work, arrange first aid services and evacuations, distribute relief in cash and kind, and raise awareness for disaster prevention and preparedness.

Nepal Airline Act 1963 [B.S 2019]

Article 15.1.iii of the Act allows for transporting passengers and goods during disasters.

Nepal Broadcasting Act 1992 [B.S 2049]

Nepal Broadcasting Act (1993) does not allow anyone to broadcast any programmes without permission. The Nepal Government may permit broadcasting certain programmers under prescribed conditions. Any individual or agency may apply to get permission for broadcasting. There is similar provision for application and getting permission under certain conditions to establish a satellite station. Foreign broadcasting agencies may get permission for broadcasting educational, recreational and news programmes, if they are not against the national interest.

Nepal Civil Aviation Authority Act 1996 [B.S 2053]

The Act in article 5 mentions that the Nepal Civil Aviation Authority shall regulate civil aviation including entrance, landing and flying above the territory of Nepal. According to Article 29.3, the Government of Nepal may waive full or partial fees of individuals or flying agencies by notifying in the National Gazette.

Nepal Medical Council Act 1964 [B.S 2020] and its regulations

Nepal, as in many countries of the world, has specific provisions for addressing the recognition of medical qualifications including those from foreign institutions and foreign workers. According to the Act, medical doctors of foreign countries must register in the Medical Council to practice in Nepal. Article 22 of Nepal Medical Council Regulation 1968 specifies that:

- Foreign doctors should register their names in the Medical Council to practice in hospitals and medical colleges in Nepal.
- They must have a certificate from the Medical Council.
- They must submit their certificate identifying them as medical practitioners in their own countries and a reference letter from the hospital or medical college in Nepal in which they intend to work.
- They must mention where s/he intends to practice in Nepal.
- If all requirements are fulfilled, the Medical Council can permit work for a year. If the Council feels it necessary, the year can be extended for a maximum of one year.

Getting a certificate to work from the Medical Council is a time-consuming process. There is no specific provision in the Act and regulation for medical professionals who are waiting to enter the country at short notice to provide emergency medical services during disasters. However, it is mentioned that the Government can certify medical practitioners by special agreement. Consultation with the Medical Council revealed that the process for registering foreign medical professional personnel can be shortened in an emergency provided that the person appears for an interview with all required documents.

Nepal Treaty Act 1990 [B.S 2047]

This Act prohibits anyone except the President, Prime Minister, Foreign Minister or fully authorized representative, from signing a treaty or signing on the final draft of a treaty on behalf of the Government of Nepal. Article 9 of the Act mentions “if any provision of the treaty to which Nepal is a party is inconsistent with any law in force in Nepal, the law to the extent of that inconsistency shall be void and the provisions of the Treaty shall prevail as law of Nepal”. All treaties to which Nepal is a party, in theory, are directly enforceable.

Plant Conservation Act 2007 [B.S 2064]

Article 7 mentions that import permission are required to import plants, plant products and biological control agents. According to Article 6.C, the authority reserves the right to establish quarantine processes for the protection of plants and plant products in disaster prone areas.

Police Regulation 1992 [B.S 2049]

The regulation mentions specific roles and responsibilities of different level police officers, one of which is to take prompt action for rescue in times of disaster. The role for disaster rescue is explicitly mentioned under the roles of Inspector General, Regional Head of Police, Head of Riot Control Police Unit, District Police Officer, Area Police Officer, and Ward Police Officer in the regulation.

Prime Minister Relief Fund Regulation 2002 (B. S.2059)

There is a Prime Minister Relief Fund for the purpose of funding for rescue, assistance, medical treatment, aid to poor people, and aid for charity projects. Article 4.C of the Prime Minister Relief Fund Regulation (2002) mentions that the Fund may be spent for rescue and cremation of victims of disasters and accidents. The Fund is also set up to provide assistance to the relatives of deceased.

Social Welfare Act 1992 [B.S 2049]

The Act (Article 9, J, and K) enables the Social Welfare Council to initiate and manage international assistance and to enter into agreements with foreign states and international institutions for social welfare activities. The Act aims to improve lives of vulnerable people through social services.

Article 12 mentions that INGOs intending to work in Nepal should apply to get permission from the Social Welfare Council. The Council shall give a decision on the application within three months. Once approved, the international organization should come for an agreement with the Council before starting operations in Nepal. According to article 16, Nepalese NGOs intending to receive international assistance shall apply along with project descriptions before the Council. The Council shall decide on the application within 45 days, after consultation with the concerned ministry and agency. However, no pre- approval of the Council shall be required for urgent work valued up to Rs. 200,000 per year. Likewise no pre-permission shall be required to the institutions established under international agreements in which the Nepal Government is a party for assistance related to emergency relief services.

Telecommunication Act 1992 [B.S 2049]

The Act mentions that no one is allowed to run telecommunication services without permission. However, Article 24.a mentions that no permission is required for having telecommunications within one's own home premises without networking it to the telecommunication system. Likewise, diplomatic missions do not require permission for establishing networks for their own use. The telecommunication services may be disconnected according to Article 43.d, in situations beyond control such as disaster, strike or riot.

Three Years Interim Plan 2007-2010

The Plan envisages that preventive and curative measures are needed for the reduction of natural disasters. It points out that the challenges to disaster management include a lack of proper coordination among agencies, that efforts are curative rather than preventive, a lack of early warning and preparedness, lack of mapping of disaster prone areas and lack of awareness etc. Realizing these challenges, the Plan has set the following policies:

- Provisions relating to Environmental Impact Assessment and natural disaster assessment will be strengthened prior to the implementation of infrastructure construction.
- Timely reforms will be made on policy and institutional mechanisms in relation to the mitigation of risk of natural disasters.

- Appropriate mechanisms will be developed to strengthen collaborative work among the government, non-governmental agencies and the private sector in order to provide relief and rescue, and rehabilitation for those affected by disasters.
- Awareness programmes will be run to enhance the participation of community organizations and the general public in order to mitigate the risks of natural disasters.
- Emphasis will be given to pre-disaster preparedness by advancing the process of identifying areas with high risk from disasters and their mapping work.
- To strengthen the Ministry of Home Affairs as a competent central coordinator for disaster management by enhancing the capacity of agencies and human resources associated with disaster management.
- Technology for making weather and climatic forecasts more robust will be used.
- Soil erosion, landslides, flood and river control works will be implemented in an effective way.

Vehicle and Transportation Management Act 1993 (B. S. 2049)

- There shall be no registration fee for vehicles registered under diplomatic facilities.
- According to article 25, any vehicles of the Government and its corporations and vehicles under diplomatic facilities may move in any part of the country regardless of their registration zone.
- According to article 29, any vehicles registered in foreign countries shall not be permitted to move in the country without permission.
- According to article 30, if asked for permission, vehicles registered in foreign countries may be permitted to move in the country for maximum of one month, by charging a prescribed fee.
- According to article 31, there is no fee for renewing vehicles which are under diplomatic missions.
- According to article 52, if a person has a driving license from a foreign country, the authority may provide the driving license by charging a prescribed fee.
- Article 53 mentions that International Driving Licenses are valid in Nepal.

Vehicle Tax Act 1974 [B.S 2031]

There is a provision in Article 11 of the Vehicle Tax Act that vehicles registered in the names of diplomats and diplomatic missions, or social, religious and educational institutions registered with the approval of the Government, may get exempted from vehicle tax. Similarly, vehicles registered in the names of foreign citizens, projects or organizations that have an agreement with the Government for tax exemption, do not have to pay vehicle tax.

The Fundamental Principles of the International Red Cross and Red Crescent Movement

Humanity The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

Impartiality It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

Neutrality In order to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

Independence The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

Voluntary service It is a voluntary relief movement not prompted in any manner by desire for gain.

Unity There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

Universality The International Red Cross and Red Crescent Movement, in which all societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.

For more information on this publication, please contact:

Nepal Red Cross Society

Kalimati, Kathmandu, Nepal

Phone: +977 -1-4270167, 4270650

Fax: +977 -1-4271915

Web site: www.nrcs.org