

A man wearing a tan cap, a blue and white striped shirt over a red t-shirt, and dark pants is working with a shovel. He is looking down at his work. In the background, another person in a white cap and green shirt is visible, also working. The background is a bright, outdoor setting with a blue sky and some distant hills.

LITERATURE REVIEW ON
**LAW AND DISASTER
RECOVERY AND
RECONSTRUCTION**

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RECOVERY AND RECONSTRUCTION**

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Acronyms and abbreviations of organisations

ADB	Asian Development Bank
AIDR	Australian Institute of Disaster Resilience
ALNAP	Active Learning for Network and Accountability & Performance
CESCR	UN Committee on Economic, Social and Cultural Rights
COAG	Coalition of Australian Governments
CWGER	The Cluster Working Group on Early Recovery is a UNDP inter-agency standing committee comprised of 30 agencies, namely: UNDP, FAO, ICRC, IFRC, IOM, UNOCHA, OHCHR, UNFP, UNHCR, UNICEF, WFP, WHO, UNISDR, UN-HABITAT, UNDGO, UNEP, UNITAR Operational Satellite UNV, UNESCO, Mercy Corps, the World Society for the Protection of Animals, ActionAid, ProAct Network, Groupe URD, Shelter Centre, The Women’s Commission, DRC, Helpage International, and the IEE. InterAction, Caritas Internationalis and Terre des Hommes Internationale are the CWGER’s official observers.
DRC	Danish Refugee Council
EC	European Council
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
GSDRC	Governance and Social Development Resource Centre, UK
GFDRR	Global Facility for Disaster Reduction and Recovery, World Bank
HEP	Humanitarian Evidence Programme – a United Kingdom Department for International Development (‘UFID’) funded partnership between Oxfam and the Feinstein International Center (‘FIC’) at the Friedman School of Nutrition Science and Policy at Tufts University, United Kingdom
IASC	Inter-Agency Standing Committee, established UNGA resolution 46/182
ICRC	International Committee of the Red Cross
IFRC	International Federation of Red Cross and Red Crescent Societies
IFRC-DLP	IFRC Disaster Law Programme
IHRL	International Human Rights Law
ILC	International Law Commission
IOM	International Organization for Migration
IRP	International Recovery Platform

OPSI	Operationalising Psychosocial Support in Crisis. OPSIC is a consortium of ten partners: (1) Danish Red Cross, IFRC Reference Centre for Psychosocial Support, Denmark; (2) University of Innsbruck, Dept. of Psychology, Austria; (3) Nederlandse organisatie voor toegepast-natuurwetenschappelijk onderzoek; (4) Stichting Impact, The Netherlands (5) Academisch Medisch Centrum bij de Universiteit van Amsterdam, The Netherlands; (6) Faculty of Humanities and Social Sciences, University of Zagreb, Croatia; (7) Magen David Adom, Israel; (8) General Directorate of Emergencies and Civil Protection of Madrid, Spain; (9) Tahzoo, The Netherlands; (10) Crismart, Försvarshögskolan, Swedish National Defence College, Sweden
PICG	Australia: State Emergency Services (SES) Public Information Coordination Group consisting of the following stakeholders: SES Assistant Director Operations and Resources (TFS and SES Executive Leadership Team Sponsor); TFS Coordinator Community Development (Chair); Department of Police, Fire and Emergency Management Media and Communications Officer; TFS and SES Triple Zero Call Dispatch Centre (FireComm) Supervisor; TFS State Operations Stations Officer; SES Regional Manager (Northern Tasmania)
SEEP	The Small Enterprise Education and Promotion Network
SKAT	Swiss Resource Centre and Consultancies for Development
SOGI	Sexual Orientation and Gender Identity
Sphere	The Sphere Project (now Sphere Association)
UN	United Nations
UNDP	United Nations Development Programme
UNDGO	Office of the United Nations Development Group
UNDRR	United Nations Office for Disaster Risk Reduction (formerly the UN International Strategy for Disaster Risk Reduction – UNISDR)
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFP	United Nations Population Fund
UNGA	United Nations General Assembly
UN-HABITAT	United Nations Human Settlements Program
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children’s Fund
UNISDR	UN International Strategy for Disaster Risk Reduction, now the United Nations Office for Disaster Risk Reduction (UNDRR)
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNOHCHR	Office of the United Nations High Commissioner for Human Rights
WHO	World Health Organisation



Rouseau, the capital of Dominica, was badly shaken by Hurricane Maria. Parts of the downtown were covered in mud and debris as a nearby river overflowed. Residents worked hard to clean up their homes and businesses.

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1 | INTRODUCTION

The International Federation of Red Cross and Red Crescent Societies ('IFRC') has been providing technical support to governments on the development of disaster risk management law for over 10 years as part of the overall strategic focus of the Secretariat and its members. In 2009, the IFRC General Assembly adopted Strategy 2020 which notes that '[a]ppropriate laws are crucial to ensure the speed and effectiveness of humanitarian assistance. Therefore, we emphasize the importance of national legal preparedness and international legal coordination through the development and promotion of disaster law, principles and rules'.¹

More recently, IFRC's Strategy 2030 emphasises the need to 'continue to invest in promoting and defending critical areas such as international humanitarian law and disaster law, leveraging the unique auxiliary status of National Societies with Governments'.²

This literature review contributes to the work of the IFRC Disaster Law Program ('IFRC-DLP') to support governments in strengthening their domestic legal frameworks to enable more effective disaster recovery. Specifically, it is part of the preparatory analysis, research and evidence base to develop a set of recommendations for law and policy makers in the area of law and disaster recovery and reconstruction. The recommendations will fill a gap in the following set of tools, which currently inform the IFRC-DLP's technical advice, each of which was informed by extensive research, consultation and comparative analysis:

- the Guidelines for the domestic facilitation and regulation of international disaster assistance and initial recovery assistance and its accompanying Model Act and Model Emergency Decree (see [section 3.2.2](#) below);³ the Checklist on the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance;⁴
- the Checklist on Law and Disaster Risk Reduction, and its accompanying Handbook;⁵ and
- the Checklist on Law and Disaster Preparedness and Response.⁶

1.1 Methodology

This literature review was undertaken between November 2019 and February 2020. There was no pre-defined scope given for this research, other than the general topic of 'law and disaster recovery and reconstruction'. The list of topics included in this literature review is not considered complete or comprehensive, but a representation of a range of the most salient issues addressed by recent literature.

Additionally, due to the timing of the research, it does not include literature on recovery with respect to the COVID-19 pandemic. That said, the ultimate purpose of the review (i.e., the development of recommendations for domestic legislation) influenced the type and kind of literature reviewed and the ultimate selection of topics and issues presented in the review.

For the purposes of this review, 'literature' was taken to include a wide range of sources from international treaties and resolutions, to academic and legal analyses, to operational guidance and tools, but with a focus on international literature (as opposed to country/operation specific literature). The literature generally spanned documents published between 1999–2020, with a focus on the most recent resources to ensure the most up-to-date information and understandings were reflected.

The approach taken was to examine the current body of literature in relation to:

- key concepts associated with disaster-related 'recovery' and 'reconstruction' as understood by governments, practitioners, scholars and international organisations;
- the state of international laws, rules and principles with respect to recovery and reconstruction; and
- key legal and operational issues arising in recovery and reconstruction, which may be relevant to domestic law and policy making.

The topics discussed in the review were identified and developed through:

- an initial brainstorm of all potential themes and topics, based on the prior knowledge and expertise of the researchers;
- an initial review of core texts on disaster risk management and post-disaster recovery and reconstruction, as well as the areas of international human rights law, disaster law, humanitarian action, environment and shelter and settlements, key international standards, guidance and authoritative texts;
- consideration of the scope of other disaster law checklists to ensure coherence;
- using key search terms through university and public libraries and databases such as HeinOnline, Taylor & Francis, and Google Scholar, to identify relevant academic literature; and
- snowball sampling to identify further themes and build the body of relevant literature.

1.2 Structure

The literature review is structured as follows.

1. [Section 1](#) establishes the rationale, purpose and methodology of the literature review and provides an overview of the types of literature examined.
2. [Section 2](#) discusses the various approaches to defining recovery and reconstruction across the literature surveyed.
3. [Section 3](#) discusses the international multilateral legal frameworks, bilateral agreements, regional legal frameworks and national legal frameworks relevant to recovery and reconstruction.
4. [Section 4](#) and [Section 5](#) identify the key legal and operational issues and themes of recovery and reconstruction relevant to domestic law and policy, many of which are inter-linked.
5. [Section 6](#) provides a summary of the findings on the various topics and identifies some areas for further research. A more detailed analysis of specific gaps and further research is provided separately to the IFRC-DLP.



A skilled worker ties the bamboo walls on a new home in Praia Nova. Skilled workers build and repair homes in Praia Nova in teams of 3 or 4 with both male and female workers.

© IFRC / Jenn Houtby

2 | DEFINING DISASTER RECOVERY AND RECONSTRUCTION

This section provides an overview of the content of the literature regarding the definitions and scope of the concepts of recovery and reconstruction, highlighting areas of congruence and divergence.

There is no single or uniform definition of disaster recovery across the literature. However, most definitions are generally concordant with the well-accepted⁷ UNDRR definition of recovery which is:

the restoring or improving of livelihoods and health, as well as economic, physical, social, cultural and environmental assets, systems and activities, of a disaster-affected community or society, aligning with the principles of sustainable development and “build back better”, to avoid or reduce future disaster risk.⁸

The concept of ‘building back better’, as included in the above definition, is viewed by the literature as fundamental to a successful recovery process. The literature also demonstrates that an understanding of the scope and definition disaster recovery requires consideration of the intersection and linkages between recovery and the concepts of:

- 1. reconstruction;**
- 2. disaster response and ‘early’ recovery;**
- 3. development;** and
- 4. resilience.**

These issues are explored in turn below.

2.1 Disaster recovery and 'build back better'

The term 'build back better' (BBB) refers to

[t]he use of the recovery, rehabilitation and reconstruction phases after a disaster to increase the resilience of nations and communities through integrating disaster risk reduction measures into the restoration of physical infrastructure and societal⁹ systems, and into the revitalization of livelihoods, economies and the environment.¹⁰

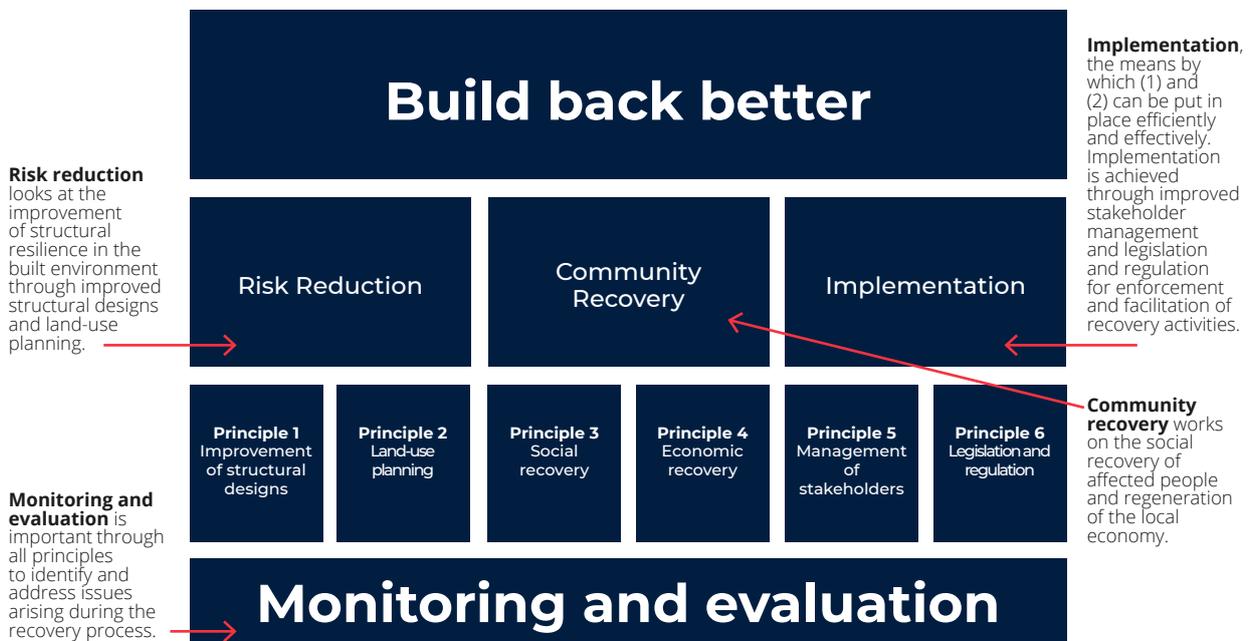
The term was first formulated in 2006 in the Report by the UN Secretary-General's Special Envoy for Tsunami Recovery, listing ten key propositions for BBB. Although the report does not define recovery, there are specific mentions of aspects of recovery that can be interpreted as including reconstruction, as well as a recognition that 'rebuilding the physical, social, and human capital of shattered communities takes years'.¹¹

The term 'building back safer' has appeared in more recent literature. It refers to the same principles and concepts as BBB but is preferred by some academics and proponents of the shelter-sector largely on the basis that the word 'better' gives rise to multiple interpretations, whereas 'safer' provides a clearer goal on which to focus for post-disaster settlement and shelter'.¹²

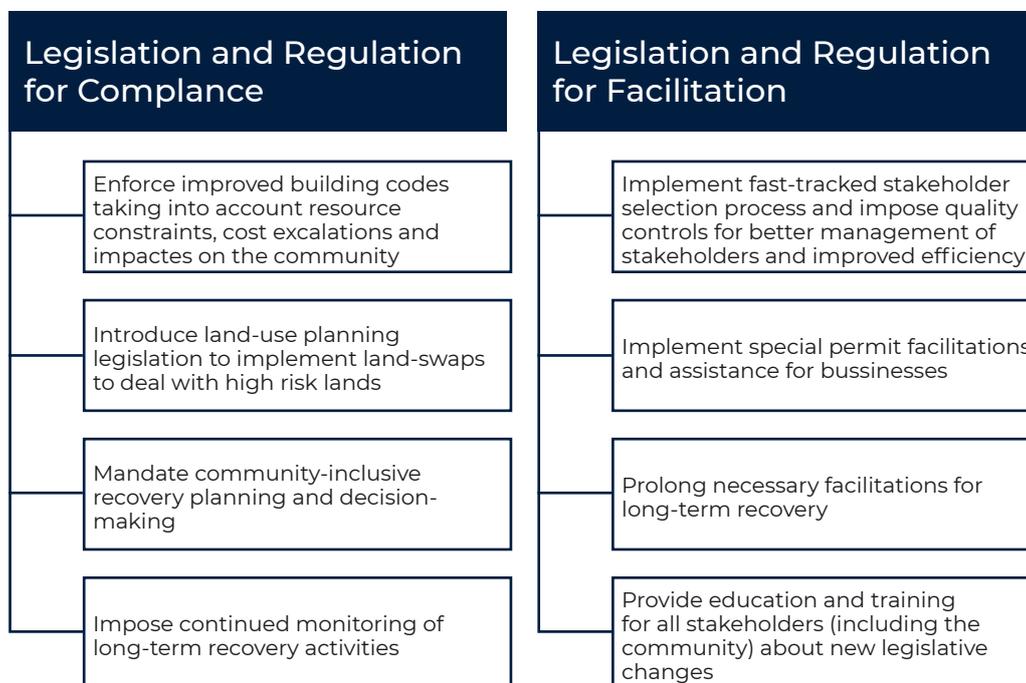
The concept of disaster risk reduction ('DRR') is a core element of BBB. DRR 'is aimed at preventing new and reducing existing disaster risk and managing residual risk, all of which contribute to strengthening resilience and therefore to the achievement of sustainable development'.¹³

The number of technical publications discussing or referring to BBB have steadily increased over the past ten years.¹⁴ A 2019 article authored by Fernandez and Ahmed summarises a broad range of research on BBB produced since 2006. Amongst other things, their article showcases the difficulties in the practical application of BBB, with the authors positing that reconstructing the built environment and the economy often overshadows social, cultural and psychological recovery in recovery projects. The authors also highlight the lack of a widely-accepted set of indicators for assessing BBB, noting that although standards and research have continuously emphasised the importance of community-led/people-centred approaches, this is rarely delivered in practice.¹⁵

Mannakkara and Wilkinson, who have conducted a number of studies on BBB,¹⁶ have developed a BBB framework aimed at improving resilience at the community and sector levels,¹⁷ presented here in diagram format.



Mannakkara and Wilkinson argue that in ensuring the effective implementation of BBB, legislation must address: (1) compliance; and (2) facilitation (see diagram below).¹⁸ With respect to compliance, the authors emphasise the need to enforce regulatory requirements for safe and good quality reconstruction (e.g., hazard-related laws, land-use planning legislation building codes, construction standards) and increasing awareness of these regulatory requirements. With respect to facilitation, the authors refer to legislation to ‘remove unnecessary red tape to facilitate recovery activities’, including expedited processes for building permits and fast-tracked tender processes.¹⁹



A 2018 GFDRR report also presents three strategies for BBB: (1) rebuilding stronger, (2) rebuilding faster and (3) rebuilding more inclusively. The report provides good practice examples of the development and/or reinforcement of resilient building standards and accompanying capacity building programmes (Dominican Republic, Fiji and Nepal); streamlined processes for rapid reconstruction and recovery (including Colombia, Indonesia, and Turkey); and adaptive social safety nets for more inclusive recovery approaches (Fiji).²⁰ These three strategies align with the guidance for effective BBB legislation as offered by Mannakkara and Wilkinson, as discussed above.

The role of law and policy in supporting BBB is recommended for further exploration.

2.2 Risk-informed recovery

There has been recent traction in the international community with respect to the concepts of risk-informed decision making, risk-informed development, and risk-informed programming.

The notion of risk-informed decision making arises in the Sendai Framework (see [section 3.2.5](#) below).²¹ One of the Framework's guiding principles is that: ‘Disaster risk reduction requires a multi-hazard approach in inclusive risk informed decision making based on the open exchange and dissemination of disaggregated data, including by sex, age and disability.’²² Further, under Priority 2 (Strengthening disaster risk governance to manage disaster risk - Global & Regional levels) one of the actions listed is: (emphasis added)

*actively engage in the Global Platform for Disaster Risk Reduction, the regional and subregional platforms for disaster risk reduction and the thematic platforms in order to forge partnerships, periodically assess progress on implementation and share practice and knowledge on disaster **risk-informed policies, programmes and investments, including on development and climate issues.***²³



Rebuilding homes after activity from Manaro Vouï, the volcano that forms the island of Ambae in Vanuatu, killed crops, polluted the air and displaced people.

© Australian Red Cross / Dilini Perera

In May 2019, the UNDP published a report on **risk informed development**.²⁴ According to the Report, ‘risk-informed development’ is development which takes into account multiple threats and complex risks.²⁵ It argues that ‘[c]urrent approaches to global threat and risk management within development often look only at one threat at a time (usually a natural hazard), rather than acknowledging multiple, concurrent threats or emerging global threats’ and that this, amongst other things, ‘misses opportunities for coordinated implementation of development objectives that could deliver resilience to a wider range of threats’.²⁶ The report further emphasises that:

*Risk-informed development allows for development to become a vehicle to reduce risk, avoid creating risks and build resilience. Only resilient development can become sustainable development; sustainable development initiatives will fail unless they are risk-informed. Risk, resilience and sustainability knowledge and actions need to go hand-in-hand.*²⁷

In April 2018, UNICEF published a guidance note, primarily for UNICEF country office staff and collaborators, on **risk informed programming**.²⁸ This note focuses on child rights programming and is part of UNICEF’s commitment to ‘risk-informed programming that promotes resilient development’, a commitment which it announced at the 2017 World Humanitarian Summit.²⁹ According to the note:

*Risk-informed programming aims to strengthen resilience to shocks and stresses by identifying and addressing the root causes and drivers of risk, including vulnerabilities, lack of capacity, and exposure to various shocks and stresses. It necessitates a robust risk analysis of the multiple hazards faced by households and communities, and requires government and other partners to be involved in the design or adjustment of programmes to ensure that they make a proactive commitment to reducing risk.*³⁰

While the literature on these concepts does not directly refer to recovery, it raises the question as to whether a risk-informed approach to the recovery process could be helpful in the process of building back better. This topic could be explored further.

2.3 Disaster recovery and reconstruction

The most common definition of reconstruction is the UNDDR’s definition:

*The medium- and long-term rebuilding and sustainable restoration of resilient critical infrastructures, services, housing, facilities and livelihoods required for the full functioning of a community or a society affected by a disaster, aligning with the principles of sustainable development and “build back better”, to avoid or reduce future disaster risk.*³¹

A key issue for consideration within the context of this review is whether reconstruction is separate and distinct from recovery, or is a part of recovery. The 2016 guide on effective post-disaster reconstruction programmes produced by Evidence on Demand directly addresses this issue stating that: ‘Disaster reconstruction sits within a wider process of recovery’.³²

The UNDRR definition of recovery (above) does not explicitly refer to ‘reconstruction’. However, this can be contrasted with the International Recovery Platform (‘IRP’) definition of recovery: (emphasis added)

*The restoration, and improvement where appropriate, of facilities, livelihoods and living conditions of **disaster-affected communities**, including efforts to reduce disaster risk factors.*

*The **recovery task of rehabilitation and reconstruction** begins soon after the emergency phase has ended, and should be based on pre-existing strategies and policies that facilitate clear institutional responsibilities for recovery action and enable public participation. Recovery programmes, coupled with the heightened public awareness and engagement after a disaster, afford a valuable opportunity to develop and implement disaster risk reduction measures and to apply the “build back better” principle.³³*

Much of the literature on recovery and reconstruction implicitly treats reconstruction as a component of recovery. For example, the IFRC’s conceptualisation of recovery includes both rehabilitation and reconstruction.³⁴

Therefore, for the purposes of this review, although considered as a distinct part of the recovery process, reconstruction is understood as an element of recovery.

2.4 Disaster recovery and response/early recovery

Distinguishing post-disaster interventions as either ‘response’ (sometimes also called ‘relief’) or ‘recovery’ is by no means clear cut, with some literature presenting these aspects as a continuum, while others describe them as concurrent processes. The concept of ‘early recovery’ is particularly relevant, and has often been considered part of the immediate response. The UNDP describes early recovery as ‘an approach that addresses recovery needs that arise during the humanitarian phase of an emergency; using humanitarian mechanisms that align with development principles’.³⁵ The IFRC similarly defines early recovery as ‘the process of people’s lives returning to normal in the immediate aftermath of a disaster’,³⁶ which takes place ‘alongside’ disaster relief as demonstrated in the figure below.³⁷



In contrast, the *Guide to Developing Disaster Recovery Frameworks*, published in 2015 by the GFDRR, EU, World Bank Group, and UNDP, expressly conceptualises the humanitarian response and recovery phases of disaster response as being separate based on periods of time, with the former taking place for up to three months after a disaster, and the latter lasting between three to six months.³⁸ However, this timeline includes the caveats that: (a) it 'i[s] not comprehensive, but rather intended as a map of the essential information'; and (b) 'the order in which the[-] recovery planning and implementation functions take place may be tailored to the country and the disaster context'.³⁹

2.5 Disaster recovery and development

The UNDRR definition of disaster recovery (as above) positions recovery within the context of development, through 'aligning with the principles of sustainable development'.⁴⁰ However, few guidelines and standards expressly address the question of when recovery ends and development begins.

The IFRC addresses this question to some extent in its Recovery Programming Guidance, noting that 'recovery starts alongside relief and spans into development that includes preparedness and mitigation',⁴¹ but not 'long-term development'.⁴² As to when 'recovery programming becomes long-term development', the IFRC advises that 'it is useful to remember that recovery...is unlikely to address long-term behaviour or social change'.⁴³

The position taken by UNESCO and the World Bank Group in a 2018 publication on recovery and reconstruction is that: 'in today's context, these periods may expand over decades, overlap, or intertwine, and therefore can no longer be seen as separate silos'.⁴⁴

2.6 Disaster recovery and resilience

Resilience is a recurring theme across a number of the international standards and guidelines in the context of defining the core purpose(s) and/or desired outcomes of disaster recovery.⁴⁵

The IFRC's concept of resilience has 'evolved over time' and is considered to reflect global trends identified in key international instruments' including the Sustainable Development Goals (see further [section 3.2.7](#) below), Hyogo Framework for Action and the Sendai Framework (see further [section 3.2.5](#) below).⁴⁶ As such, the IFRC defines resilience as:

the ability of individuals, communities, organizations, or countries exposed to disasters and crises and underlying vulnerabilities to anticipate, reduce the impact of, cope with and recover from the effects of adversity without compromising their long-term prospects'.⁴⁷

In their 2015 *Guide to Developing Disaster Recovery Frameworks*, the GFDRR, EU, World Bank Group, and UNDP also view disaster recovery as an 'opportunity to replace old infrastructure and update service delivery systems with affordable, resilient improvements'.⁴⁸ Similarly, in its 2019 publication on challenges and lessons with respect to disaster recovery, the UNDP opines that the 'post-disaster recovery context presents a short window of opportunity for making the right development decisions through the recovery programmes' where it is possible to 'introduce changes that will build resilience against future disasters and build back better'.⁴⁹



Mosammat Manika and her husband Afzal Hossain bought this auto rickshaw from the money they received from Bangladesh Red Crescent Society under the Flood 2017 Recovery Operation.

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3 | LEGAL FRAMEWORKS FOR DISASTER RECOVERY AND RECONSTRUCTION

This section reviews the different legal frameworks applicable to disaster recovery and reconstruction, with a focus on international hard and soft law. It also briefly explores regional and national legal frameworks, proposing these topics as areas for further research.

3.1 International legal frameworks

3.1.1 International Human Rights Law

International human rights law (IHRL)⁵⁰ applies at all times, save for any derogation provisions contained within IHRL treaties.⁵¹ As such, human rights are fundamental to any disaster recovery process, as well as associated domestic laws and policies. As noted in [section 3.2.3](#) efforts are underway to make more express links between IHRL and disaster situations.

A comprehensive discussion on the application of human rights in disaster situations is provided in the IFRC's Law and Disaster Preparedness and Response Synthesis Report and so is not replicated here.⁵² However, it is noted that the following human rights have been identified by the literature as being particularly relevant in the recovery context:⁵³

- **the right** to life;⁵⁴
- **the right** to adequate food, water, clothing, housing and sanitation;⁵⁵
- **the right** to a livelihood;⁵⁶
- **the right** to health and medical services;⁵⁷
- **the right** to education;⁵⁸

- **the right** to liberty and security of the person;⁵⁹
- **the right** to be protected from exploitation and violence;⁶⁰ and
- **the right** not to non-discrimination.⁶¹

3.1.2 International Refugee Law

International Refugee Law is relevant to recovery in that refugees can be affected by disasters in the country in which they reside.⁶² Under Refugee Law, refugees must be accorded the same rights as nationals in the case of disasters,⁶³ which includes access to recovery assistance.

See [section 3.2.4](#) below with respect to the leading international standards on internally displaced persons.

3.1.3 International Environmental Law

While there are no International Environmental Law (IEL) instruments dealing specifically with recovery, there are a number of IEL instruments which are highly relevant to various aspects of recovery due to their emphasis on environmental protection, climate change and sustainability. A brief overview of these instruments is provided below.

The Rio Declaration⁶⁴

The Rio Declaration on Environment and Development ('the Rio Declaration'), and its accompanying roadmap, Agenda 21,⁶⁵ serve as the core framework for international environmental governance.⁶⁶ Although the Declaration is soft law, it has influenced myriad international treaties and international and domestic policies.⁶⁷ The Declaration sets out 27 Principles for sustainable development. While the Declaration does not expressly define sustainable development,⁶⁸ it arguably presents it as: development which meets the needs of the present without compromising the ability of future generations to meet their needs.⁶⁹ Of particular relevance to recovery and BBB is:

- **Principle 17** which mandates that environmental impact assessments be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority; and
- **Principle 15**, the precautionary approach, which dictates if an action or policy may cause risk of harm to the public or the environment, absent scientific consensus that the action or policy is not harmful, the burden of proving it is not harmful lies with the policy makers or potential actors.⁷⁰

The Convention on Biological Diversity⁷¹

'Biodiversity is defined as variability among living organisms from all sources, and includes diversity within species, between species and of ecosystems' (Article 2); '[i]t plays an important role in sustaining human lives by providing different goods and services, and through its intrinsic, cultural and socio-economic values'.⁷² The Convention on Biological Diversity ('CBD') 'is the first global agreement aimed on conservation and the sustainable use of biological diversity'.⁷³ The CBD is a framework convention and so has general provisions which require operationalisation at the domestic level.⁷⁴ Relevant to recovery, particularly reconstruction, the Convention mandates that states, amongst other things:

- integrate the sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies (Article 6(b));
- introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse impacts on biological diversity (Article 14(1)(a)); and
- promote national arrangements for emergency responses to activities or events which present a grave and imminent danger to biological diversity (Article 14(1)(d)).

United Nations Framework Convention on Climate Change⁷⁵ and the Paris Agreement⁷⁶

The United Nations Framework Convention on Climate Change ('UNFCCC'), is the foundation of the UN Climate Change regime,⁷⁷ with its 'ultimate objective' being the 'stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system'.⁷⁸ It establishes a number of institutions to facilitate its work, including its Conference of the Parties ('COP'),⁷⁹ mandated to 'make the decisions necessary to promote the effective implementation of the Convention'.⁸⁰ Underpinning the Convention are a number of key principles including: inter-generational and intra-generational equity;⁸¹ common but differentiated responsibilities and respective capabilities;⁸² and the precautionary approach.⁸³

At its 17th session in Durban, numerous years of negotiations for a post-2020 climate agreement resulted in the COP agreeing to develop 'a protocol, another legal instrument or an agreed outcome with legal force'.⁸⁴ This ultimately led to the adoption of the Paris Agreement on 12 December 2015, which came into force shortly after on 4 November 2016. The Paris Agreement's core aim is to

*strengthen the global response to the threat of climate change...by [h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.*⁸⁵

Of critical relevance to recovery is the parties' commitment under Article 7 of the Paris Agreement to 'establish the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change'. Climate change adaptation ('CCA') refers to the

*adjustment of natural or human systems as a response to actual or expected climatic stimuli or their effects, which moderates harms or exploits beneficial opportunities. Thereby adaptation can be 'anticipatory', 'autonomous' or 'planned'. Adaptation is anticipatory (or proactive) when it takes place before any impacts are observed.*⁸⁶

Against this background, a recovery approach which is consistent with the BBB principle, especially with respect to DRR, will necessarily include climate adaptation measures (see further [section 4.6](#) below).

3.2 Soft law and other international standards

3.2.1 UNGA Resolution 46/182⁸⁷

The UN General Assembly ('UNGA') has passed a number of resolutions concerning disaster management, although none exclusively on recovery. The 'landmark' UNGA resolution within the disaster management context is Resolution 46/182 (1991), concerning the strengthening of the co-ordination of UN humanitarian emergency assistance, 'establish[ing] the framework within which international disaster relief activities are undertaken'.⁸⁸ The Resolution stipulates that each State has responsibility, first and foremost, towards the victims of natural disasters and emergencies within their jurisdictions (para 4). Relevant to recovery, the Resolution:

- recognises 'a clear relationship between emergency, rehabilitation and development' (para 9);
- emphasises that '[e]mergency assistance must be provided in ways that will be supportive of recovery and long-term development' (para 40); and
- states that 'International cooperation and support for rehabilitation and reconstruction should continue with sustained intensity after the initial relief stage', with rehabilitation being used as 'an opportunity to restructure and improve facilities and services destroyed by emergencies' (para 41).

3.2.2 IDRL Guidelines⁸⁹

The Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance ('IDRL Guidelines') are concerned with the domestic facilitation and regulation of international disaster relief and initial recovery assistance,⁹⁰ and are considered highly persuasive.⁹¹ They are now complemented by:

1. the IDRL Model Act,⁹² which assists states to incorporate the IDRL guidelines into their domestic laws and policies; and
2. a Model Decree⁹³ 'designed for countries that have not been able to incorporate the IDRL Guidelines into law before experiencing a major disaster requiring international assistance'.⁹⁴

While the IDRL Guidelines are intended to apply to 'initial recovery assistance' the application of some or all of their provisions to longer term recovery and reconstruction requires further consideration, as highlighted in [section 4.14](#) below.

3.2.3 Protection of persons in the event of disasters

The express link between disasters and IHRL is not reflected in existing international hard law instruments.⁹⁵ The International Law Commission's ('ILC') Draft Articles seek to remedy this, taking a 'rights-based approach'⁹⁶ to the protection of persons during all stages of disasters.⁹⁷ The Draft Articles were noted by the UNGA in 2016, and states were invited to submit comments on the ILC's recommendation that the Articles form the basis of a legally binding treaty.⁹⁸ At the UNGA's 73rd session in December 2018, despite many states supporting the general subject matter of the Articles, there was limited enthusiasm for the Articles forming the basis of a legally binding treaty.⁹⁹ However, this is still a live issue – the Articles are an item on the UNGA's provisional agenda for its 75th session,¹⁰⁰ scheduled for September 2020.¹⁰¹ Even though they are in still draft form, the Articles are 'considered a core framework for international law regulating disasters, due to the process [in] which they were adopted, as well as the position of the ILC as being responsible for the codifications and progressive development of international law'.¹⁰²

There is nothing in the Articles expressly addressing recovery (or any particular stage of disaster management). However:

- Draft Article 5 relevantly asserts that persons 'affected by disasters are entitled to the respect for and protection of their human rights in accordance with international law'; and
- Draft Article 10, as per IHRL, places states as the primary party responsible for fulfilling human rights.¹⁰³

3.2.4 Operational Guidelines on the Protection of Persons in Situations of Natural Disasters¹⁰⁴

The 2011 IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters are designed for humanitarian actors as well as governments.¹⁰⁵ The Guidelines address human rights during the preparedness, response and recovery phases of disasters.¹⁰⁶ The Guidelines divide rights into four groups and the structure of the Guidelines reflects this. The Guidelines identify rights relating to housing, land and property, and livelihoods (Group B) as being particularly relevant to recovery.¹⁰⁷ They also state that the protection of life, security and physical integrity remain important through each phase of disaster management (Group A).¹⁰⁸ Under each group of rights, the Guidelines provide key priorities and activities. Although the Guidelines make it clear which activities should be undertaken during disaster preparedness, they seldom distinguish priorities and activities for the purposes of response and recovery.

3.2.5 Guiding Principles on Internal Displacement

Disaster situations often result in the internal displacement of affected individuals, sometimes for long periods of time spanning months, years or even decades, placing this issue squarely within the purview of the disaster recovery process.

The UN Guiding Principles on Internal Displacement¹⁰⁹ are the most authoritative international norms on internally displaced persons ('IDPs').¹¹⁰ For the purposes of the Principles, IDPs are defined as:

*Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular, as a result of or in order to avoid the effects of armed conflict, situation of generalized violence, violations or human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.*¹¹¹

The Principles identify the rights and guarantees relevant to protection of the internally displaced in all phases of displacement'.¹¹² Relevantly, the Principles stipulate that national authorities bear the primary responsibility for:

- protecting and providing humanitarian assistance to IDPs within their jurisdiction (Principle 3);¹¹³ and
- establishing the conditions and providing the means to enable IDPs to voluntarily and safely return to their homes or residences, or resettle voluntarily in another part of the country (Principle 28).¹¹⁴

Further literature addressing recovery-specific issues relating to protracted displacement and finding durable solutions for return or resettlement is discussed in [section 4.13](#) below.

3.2.6 Sendai Framework for Disaster Risk Reduction 2015–2030¹¹⁵

The Sendai Framework for Disaster Risk Reduction 2015–2030 ('Sendai Framework') is a 15-year, voluntary, non-binding agreement adopted at the Third UN World Conference on Disaster Risk Reduction, held in March 2015 in Sendai, Miyagi, Japan. It supersedes the Hyogo Framework for Action (HFA) 2005–2015: Building the Resilience of Nations and Communities to Disasters.¹¹⁶

Peel and Fisher in their book, *The Role of International Environmental Law in Disaster Risk Reduction*, take the view that the Sendai Framework is an international disaster law agreement which simultaneously deals with disaster risk reduction, sustainable development and climate change adaptation.¹¹⁷ Peel and Fisher also emphasise the Framework's promotion of environmental protection obligations and transboundary cooperation to protect ecosystems.¹¹⁸

The Framework recognises States as having the primary role in disaster management (including recovery), but also provides that that responsibility be shared with other key stakeholders including local government and the private sector.¹¹⁹ While also including principles of international cooperation, the focus of the Framework is on what actions States should take within their own jurisdictions.¹²⁰

The Framework has four key priority areas,¹²¹ with the fourth priority (enhancing disaster preparedness for effective response and to 'Build Back Better' in recovery, rehabilitation and reconstruction)¹²² being directly relevant to recovery.¹²³ In order to achieve Priority 4, the Framework lists eight actions to be taken at the global and regional levels, and 17 actions to be taken by States at the national and local levels, including:

1. preparing or reviewing and periodically updating disaster preparedness and contingency policies, plans and programmes with the involvement of the relevant institutions, considering climate change scenarios and their impact on disaster risk, and facilitating, as appropriate, the participation of all sectors and relevant stakeholders; (33(a))
2. adopting policies that enable public authorities to establish, strengthen the coordination and funding mechanisms for recovery and reconstruction; (33(e))
3. promoting horizontal and vertical coordination across different institutions and levels of the community; (33(i))
4. integrating disaster risk reduction and sustainable development in recovery efforts, including land-use planning (and possible relocation of public facilities and infrastructure) and structural standard improvements; (33(j))
5. sharing of expertise, knowledge and experiences of recovery programmes, building on the Hyogo Framework experience; and (33(j-k))
6. improving recovery schemes through the inclusion of psychosocial support and mental health services.¹²⁴ (33(o))



Amidst the COVID-19 pandemic, the Philippine Red Cross, with support from the IFRC, is continuing recovery operations to assist communities affected by Typhoon Phanfone in Occidental Mindoro.

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3.2.7 Sphere Handbook¹²⁵

The Sphere Handbook (aka 'Sphere Standards') was first published by Sphere in 1998 to guide humanitarian field work.¹²⁶ The latest edition (2018) is divided into three key sections: (1) foundation chapters, including the Humanitarian Charter which states the ethical and legal principles for humanitarian work; (2) technical chapters covering: water, sanitation and hygiene promotion; food security, nutrition; shelter and settlement; and health; and (3) chapters on vulnerabilities capacities and operational settings.¹²⁷

Sphere has also recognised the following six partner standards, referenced throughout this review where relevant:

1. Minimum Standards for Child Protection in Humanitarian Action;¹²⁸
2. Livestock Emergency Guidelines and Standards;¹²⁹
3. Minimum Economic Recovery Standards by the SEEP Network;¹³⁰
4. Minimum Standards for Education;¹³¹
5. Minimum Standard for Market Analysis;¹³² and
6. Humanitarian inclusion standards for older people and people with disabilities.¹³³

3.2.8 United Nations Sustainable Development Goals 2015 ('SDGs')¹³⁴

The SDGs were adopted in a resolution by the UN Member States in 2015 as part of the 2030 Agenda for Sustainable Development.¹³⁵ These goals are non-binding and are of only general application to disaster management. However, given their prominence and near universal acceptance, they are included here as a key international soft law instrument. The following goals are particularly relevant to recovery:

- **Goal 9:** 'Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation';
- **Goal 11:** 'Make cities and human settlements inclusive, safe, resilient and sustainable'; and
- **Goal 13:** 'Take urgent action to combat climate change and its impacts'.

Robinson, in his article on the SDGs and environmental law, argues that there are opportunities for states to enforce and/or strengthen environmental law in order to mitigate disaster risk and work towards achieving the SDGs.¹³⁶

3.3 Bilateral agreements

While not reviewed in detail for the purposes of this review, it is noted here that there are a number of bilateral agreements/treaties¹³⁷ between States regarding disaster management.¹³⁸ The majority of these agreements 'have been signed between neighbouring States with the aim of establishing effective systems of mutual co-operation between the contracting parties in the event of natural disasters'.¹³⁹ These agreements could be examined in further detail to assess the extent to which they address recovery.

3.4 Regional legal frameworks

While regional legal frameworks were not studied in detail for this review, there are reportedly comprehensive legal frameworks at the regional levels dealing with disaster management.¹⁴⁰ The Hyogo Framework for Action, the Sendai Framework's predecessor (see [section 3.2.6](#) above), adopted by the 168 participating states at the World Conference on Disaster Reduction, was a strong impetus for this.¹⁴¹ Amongst other things, the Hyogo Framework requested regional organisations to foster disaster management frameworks.¹⁴² The Sendai Framework likewise does the same,¹⁴³ and a number of regional and intergovernmental bodies responded positively to this.¹⁴⁴ These regional frameworks could be researched further to assess the extent to which they address recovery.

3.5 National legal frameworks

National legal frameworks were also not examined in detail for the current review. It is noted that while nearly all countries have some kind of legal framework for disaster management, countries have different legal approaches to recovery and reconstruction. For example, in some countries, recovery is encompassed in the overall disaster management framework,¹⁴⁵ other countries include it as a specific component within their disaster management legislation,¹⁴⁶ and others develop a legal framework specifically for recovery, sometimes even in response to specific disasters.¹⁴⁷

The 2016 guide on effective post-disaster reconstruction programmes produced by Evidence on Demand reports that that a key trend in national legislative and policy frameworks is the creation of national disaster management authorities, i.e., ‘autonomous and constitutionally established national authorities mandated to formulate and enforce national disaster policies and to lead and coordinate responses’.¹⁴⁸ An example of this is Indonesia’s National Agency for Disaster Management, otherwise known as the Badan Nasional Penanggulangan Bencana,¹⁴⁹ which was established by Law 24 of 2007 concerning Disaster Management.¹⁵⁰

With respect to national legislation on recovery, the Guide reports that the two main approaches are: (1) creating a dedicated disaster recovery agency, directly responsible to the cabinet office or Prime Minister, as seen in India and Pakistan; (2) managing the recovery operations through existing line departments as is the case in Mozambique and Chile.¹⁵¹ The authors present the two approaches in ‘Figure 2.1’ and the corresponding advantages and disadvantages in ‘Table 2.1’, which are both extracted below.

Figure 2.1 from *Alternative models of government recovery organisation (Davis and Alexander, 2015)*

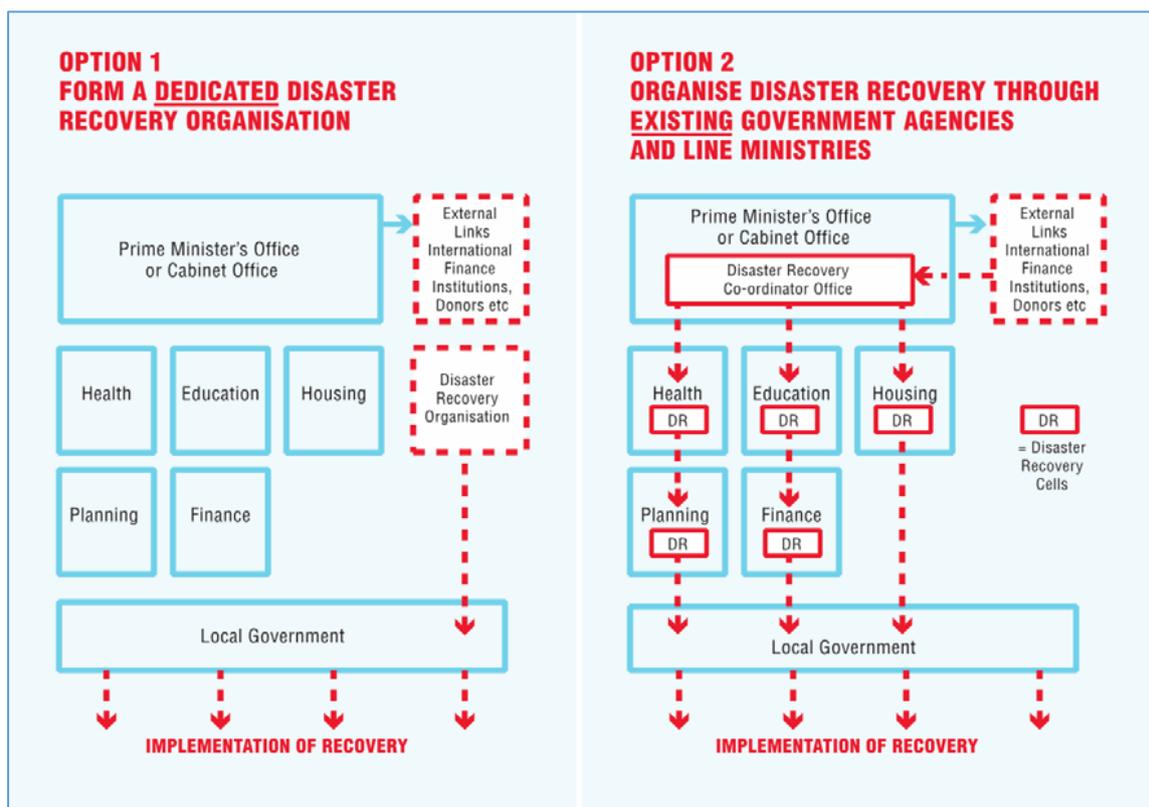


Table 2.1 from *Alternative models of government recovery organisation* (Davis and Alexander, 2015)

Option	Advantages	Disadvantages
1	<ul style="list-style-type: none"> • A single point of entry for foreign donors, international finance institutions, etc. • Clearly defined authority and accountability • The recovery tasks are massive, requiring resources beyond the capacity of existing line departments (Disaster recovery framework, 2014) 	<ul style="list-style-type: none"> • Expensive option requiring dedicated accommodation, vehicles, high salaried staff, etc. over at least 5 to 10 years • The dedicated body will have responsibility for all sectors, and risks removing responsibility from natural 'homes' (i.e. the health ministry would no longer have responsibility for reconstructing safe hospitals, etc.) • The staffing is drawn from existing ministries, reducing their capacity • Experience in certain contexts indicates that such bodies become powerful and take on a life of their own, and when recovery is complete, they are not easily dissolved
2	<ul style="list-style-type: none"> • Responsibility remains within each line department, which is a vital aspect of 'mainstreaming DRR' • Cheaper than creating a new body • Recovery becomes 'normalised' within the established life and culture of government and it is not extracted with special status, thus enabling an easy transition from recovery back into eventual normality • Clearly defined authority and accountability 	<ul style="list-style-type: none"> • External donors and international finance institutions dislike having to deal with multiple ministries • Existing ministries will not be able to cope with the additional demands of recovery over and above their ongoing normal functions unless they are allocated extra resources

A study on the 2010 Maule earthquake and tsunami in Chile provides a useful example of good practice with respect to national legal recovery frameworks. The study compares Chile's recovery from the Maule earthquake and tsunami with nine other earthquake affected countries (USA, Iran, Thailand, Pakistan, China, Italy, New Zealand, Japan and Turkey). It argues that Chile's recovery success was significantly higher than that of the other countries in the study. The study compared the countries using a number of key indicators including: establishment of permanent housing; education and livelihood restoration; improvement in safety; and recovery of the local economy. The study concluded that some of the reasons for Chile's relatively successful recovery were:

- '[a] clear demarcation of responsibility between central and regional government. Central government provided coordination and planning parameters, passed necessary legislation, and allocated resources; regional government devised and implemented the plans'; and
- government minimized bureaucratic hurdles to fund recovery efforts: 20\$bn was allocated for recovery (12\$bn from central government and 8\$bn from the insurance industry).¹⁵²



After years of drought, flash floods in March 2019 caused deaths and damage across many provinces in Afghanistan. The Afghan Red Crescent Society assisted the affected communities by distributing blankets and food.

© Meer Abdullah Rasikh / Afghan Red Crescent Society

4 | RECOVERY – THEMES AND ISSUES

This section identifies a number of key issues and themes arising in the literature relevant to law and recovery. It is important to note this is not a comprehensive list – in some cases, these issues are by their nature ‘legal’ issues, in other cases, they reflect issues of importance which may benefit from recognition or regulation in domestic laws and policies. Many of the issues are also relevant to reconstruction (as a key part of the recovery process).

4.1 Post-disaster needs assessments (‘PDNAs’)

A PDNA ‘is an internationally accepted methodology for determining the physical damages, economic losses, and costs of meeting recovery needs after a natural disaster through a government-led process’.¹⁵³

There are significant international guidance documents which emphasise the importance of conducting PDNAs as part of the recovery process, which may be highly relevant to include in domestic legislation and policy. In particular:

- a comprehensive two volume set of guidelines on PDNAs by the UNDP and GFDRR et al. Volume A covers PDNAs in general, with Volume B focussing specifically on gender and PDNAs (together ‘the PDNA Guidelines’);¹⁵⁴ and
- a report on lessons learned from a decade of experience conducting PDNAs published by the GFDRR and UNDP et al in 2018.¹⁵⁵

According to the PDNA Guidelines, the four assessment elements to a PDNA are:

1. the pre-disaster context and baseline information;
2. the assessment of the disaster effects (including damage to infrastructure and physical assets; disruption of access to goods and services; governance and decision making processes; and increased risks and vulnerabilities);
3. the assessment of disaster impacts comprising of the economic impact and the macro and micro levels and the human development impact; and
4. the recovery determining sector recovery needs, guided by BBB principles.¹⁵⁶
5. A PDNA should produce 'an integrated sector-by-sector report of the damages, losses and needs that is then summarized into a Recovery Strategy', which 'defines the vision for recovery, identifies priority interventions as well as results and costs for recovery within a given time frame'.¹⁵⁷

PDNAs are discussed further in [section 4.3](#) below in the context of vulnerable groups.

4.2 Community/people-centred approaches to recovery

Taking a community/people-centered approach to recovery is an issue of increasing importance within recovery literature and is reflected in a number of recent standards and guidelines. The literature appears to agree that stakeholder participation facilitates 'efficient identification of recovery needs, dynamic exchange of information, and consolidation of diverse perspectives as well as builds long-term trust and social capital between stakeholders', but that practitioners 'often fail to use the full potential of participatory planning when... caught in the fast-paced, uncertain, and complex post-disaster environment'.¹⁵⁸ It is also generally acknowledged in the literature that including stakeholders in the recovery process can be 'a time-consuming process' but ultimately leads to faster recovery which better meets the needs of the intended beneficiaries (compared with more "top-down" approaches).¹⁵⁹ Authors Chandrasekhar, Zhang and Xiao argue that '[t]he obstacle for effective stakeholder participation in recovery planning is not its lack of value but our [i.e., practitioners'] lack of understanding of its dynamics'.¹⁶⁰

In a 2019 publication on challenges and lessons on recovery, the UNDP identified the failure to 'encourage local participation and ownership' as one of the recurring shortcomings of recovery efforts.¹⁶¹ It recommended '[r]ecovery actors and organizations communicat[ing] openly with the public and encourag[ing] participation'.¹⁶² A guide published some years earlier by the GFDRR, EU, World Bank Group, and UNDP on developing disaster recovery frameworks also describes community participation as the 'cornerstone of the recovery process',¹⁶³ with disaster affected peoples being the 'principal source available for recovery' given their 'local knowledge and expertise'.¹⁶⁴ Volume A of the PDNA Guidelines (see [section 4.1](#) above), also advocates for a 'people-centred' approach to recovery which includes focussing on, among other things:

- the distinct needs and priorities of women, girls, boys and men of all ages and sub-groups of the affected populations through stakeholder engagement;
 - the participation of affected stakeholders in their own recovery process;
 - the consideration of social-cultural aspects of disaster recovery in addition to economic imperatives; and
 - the recognition and support to the spontaneous recovery efforts of the affected population.¹⁶⁵
- In its Community Recovery Handbook, the AIDR similarly advocates for a 'community-centred' approach to recovery, i.e., an approach which is 'responsive and flexible, engages with community and supports them to move forward'.¹⁶⁶ In particular, the AIDR states that recovery should:
- assist and enable individuals, families and the community to actively participate in their own recovery;
 - recognise that individuals and the community may need different levels of support at various times;
 - be guided by the communities' priorities;
 - channel effort through pre-identified and existing community assets, including local knowledge, existing community strengths and resilience;

- build collaborative partnerships between the community and those involved in the recovery process;
- recognise that new community leaders often emerge during and after a disaster, who may not hold formal positions of authority; and
- recognise that different communities may choose different paths to recovery.¹⁶⁷

‘Self-recovery’ or ‘shelter self-recovery’¹⁶⁸ is another relevant concept here. ‘Self-recovery’ can be understood as when affected communities ‘rebuild their homes themselves, using their own resources’, with assets including ‘savings, materials (salvaged, donated or owned), social and community assets, local skills and labour’.¹⁶⁹ Alongside this definition, supporting shelter self-recovery can be understood as referring to ‘material, financial and/or technical assistance provided during the relief and/or recovery phase to enable affected households to repair, build or rebuild their own shelters themselves – either alone or with the assistance of local industry’.¹⁷⁰

Shelter practitioners are noted to have used the term ‘self-recovery’ since Cyclone Sidr in Bangladesh (2007) and particularly in humanitarian responses to Cyclone Nargis in Myanmar (2008), earthquakes in Indonesia (2009), armed conflict in Sri Lanka (2011), and flooding in Pakistan (2011).¹⁷¹

The term appears to be used to refer to shelter related activities with respect to ‘emergency, temporary or transitional shelter’, and so would arguably only be used in related to shelter activities during the response and early recovery phases of the disaster management cycle.¹⁷² This can be contrasted with the term ‘owner-driven reconstruction’. While the terms are conceptually very similar, the latter tends to be used in reference to ‘permanent housing after disasters’.¹⁷³ Owner-driven reconstruction is discussed further below in [section 5.4](#) in the context of housing reconstruction.

In their 2014 article, authors Parrack, Flinn and Passey argue that ‘[t]he strongest case for supporting self-recovery is the recognition that it is an inevitable process’.¹⁷⁴ In this article, the authors also posit that there has been limited support for self-recovery from the international community, and ‘argue[-] the case for the humanitarian community to link post-disaster shelter programming with the more developmental approach of communicating building safety to a much wider audience than just the most vulnerable beneficiaries’.¹⁷⁵ The authors ultimately propose that the ‘shelter sector and the donor community direct more resources towards support for this process, which would augment the effectiveness and impact of a shelter response’.¹⁷⁶

In 2017, OXFAM published an evidence synthesis written by Maynard et al and commissioned by the Humanitarian Evidence Programme, which ‘investigates both the process of implementing humanitarian interventions supporting shelter self-recovery and the effects of the interventions’.¹⁷⁷ The synthesis identified the main benefits of shelter-self recovery interventions at the household level as:

- 1. dignity and self-reliance** – this ‘increased as a result of households living in their own homes and taking ownership of the construction process’; and
- 2. perceptions of safety and security** – this ‘increased as a result of reduced overcrowding; integration or reintegration into host communities; household awareness of the material and construction quality of their homes; and the incorporation of safer construction techniques’.¹⁷⁸

However, the synthesis also came to the conclusion that the ‘positive effects on household incomes, livelihoods, assets, debts, physical health, mental health and knowledge of safer construction techniques is either inconsistent or unclear’.¹⁷⁹

4.3 Vulnerable groups

Across the literature, it is observed that people’s pre-existing vulnerabilities and capacities due to factors such as socio-economic status,¹⁸⁰ gender,¹⁸¹ sexual orientation and gender identity,¹⁸² disability,¹⁸³ age,¹⁸⁴ and health status,¹⁸⁵ may limit their ability to access assistance in the disaster context, as well as expose people to further risks.¹⁸⁶

The majority of the literature tends to view vulnerabilities in a siloed fashion. However, a recent paper prepared by Tanaka et al contributing to the UNDRR's Global Assessment Report on Disaster Risk Reduction (2019) offers a more nuanced perspective on recovery planning and vulnerability in the context of gender. In particular, the paper advocates for vulnerability analyses to account for a person or group's 'intersectional vulnerability', on the basis that disaster specialists have recently argued that 'vulnerability and impacts [of disaster] vary by context-specific power relations structured not only by gender, but class, race, ethnicity, caste, age, disability, place, etc., so focusing only on gender may be misleading'.¹⁸⁷

The Volume A of the PDNA Guidelines (see [section 4.1](#) above) advises considering people's vulnerabilities when creating a Recovery Strategy. In particular by:

- collecting information on the general pre-disaster conditions 'which serve as a baseline to compare with post-disaster conditions', involves assessing the social and cultural elements of the disaster affected community; and
- assessing the effect of the disaster, including 'what risks increase as a result of the disaster and how, and what additional threats or deteriorating conditions increase the vulnerabilities of people'.¹⁸⁸

However, the 2018 report on lessons learned from a decade of experience conducting PDNAs published by the UNDP and GFDRR et al reports that the '[m]eans to ensure greater inclusion of the most vulnerable, socially marginalized groups or people with special needs remain challenging in the PDNA process', making various suggestions on how this may be addressed.¹⁸⁹

Other guidelines on recovery and vulnerabilities are focussed on specific vulnerabilities, particularly disability and gender. Disability for shelter and settlement support is addressed in the 2015 All Under One Roof manual published by the IFRC, covering, amongst other things, support for people with disabilities in early recovery.¹⁹⁰

Gender is addressed in a number of recovery guidelines. In 2014, in an effort to ensure gender is adequately considered in PDNAs, the UNDP and the GFDRR et al published Volume B of the PDNA Guidelines, which focus solely on gender.¹⁹¹ However, in its 2018 guidance note on gender equality and women's empowerment in disaster recovery, the GFDRR reports that while Volume B of the PDNA Guidelines resulted in an increase of PDNAs recognising 'that the gender-differentiated impacts of disasters, particularly violence, exclusion, and inequality, are exacerbated by the disaster...these impacts have yet to be translated into gender-specific differentiated needs, policies, interventions, and projects in recovery and reconstruction efforts', with '[m]any PDNAs...often fail[ing] to understand and address gender dynamics due to a tendency to focus more on visible and more easily quantifiable physical impacts at the macro level'.¹⁹² The guidance note provides further advice on considering gender in recovery and the increased risks and particular issues that girls and women especially face during recovery.

In 2010 IRP and UNDP also published guidance note on gender and recovery.¹⁹³ The IFRC's Minimum standards for protection, gender and inclusion in emergencies, are also applicable in the recovery context.¹⁹⁴

With respect to gender, it is noted that the literature, in addition to taking the position that women are 'disproportionately vulnerable to general human rights violations'¹⁹⁵ during disasters, repeatedly identified sexual and gender-based violence ('SGBV') as being highly elevated, although 'infamously underreported',¹⁹⁶ in the disaster context.¹⁹⁷ SGBV can be understood as:

*an umbrella term for any harmful act that is perpetrated against a person's will and that is based on socially ascribed (i.e. gender) differences between males and females. It includes acts that inflict physical, sexual or mental harm or suffering, threats of such acts, coercion, and other deprivations of liberty. These acts can occur in public or in private.*¹⁹⁸

Against this background, the gender specific recovery guidelines highlighted SGBV as a particular risk faced by women that should be considered in recovery planning, which is also addressed by the IFRC legal checklist and global synthesis report on disaster preparedness and response.¹⁹⁹



Jerry Danjuma and Adamu Raymond, villagers in Sobongari, move bricks they made with the training received from the Nigerian Red Cross. They are confident that with this training, they are able to build back their community.

4.4 Urban recovery

It is recognised in the literature that '[t]here are a number of differences between rural and urban situations that need to be considered when implementing a recovery approach after a disaster that affects urban and per-urban populations'.²⁰⁰ The Sphere Handbook reports that urban areas typically differ from other contexts in three main ways: (1) **Density**: a higher density of people, houses, infrastructure, laws and cultures in a relatively small area; (2) **Diversity**: social, ethnic, political, linguistic, religious and economically diverse groups live in close proximity; and (3) **Dynamics**: urban environments are fluid and changing, with high mobility and rapidly shifting power relationships.²⁰¹

The IFRC advises that a number of issues should be considered in urban recovery operations, including:

- **Social structures**: it may be difficult to identify the links between community members, or to locate the representatives in the community, as social structures may be less visible in an urban setting than a rural one.
- **Population registration**: it may be difficult to gather information on the population through the registration of people in formal structures as people may live more informally in urban settings.
- **Land and property**: people may be living on land without permission, or may not have formalized their ownership of land or property, making it difficult to know who to help. People may be living in multi-tenancy buildings across different wealth groups making targeting shelter solutions a challenge.
- **Cost of living**: it may cost more to live in urban areas making it difficult to assess wealth and vulnerability.
- **Provision of services**, e.g. water and sanitation: if there was no pre-disaster system or if it requires reconstruction, there may be limited space for latrines and access to water sources and sanitation may be difficult.
- **Urban economy**: it may be more difficult to restore the economy in situations where people do not have connections to one another. The urban economy has close links with peri-urban and rural settings. The impact of the disaster may therefore spread beyond the urban setting into rural areas. People may also be involved in industrial activities that may be owned by a small number of business people, making a fair restitution of these industries difficult. Many people may be involved in an informal economy that may be illegal. Urban areas are vulnerable to global trends like food price increases.²⁰²

In its 2019 report on strengthening its responses to internal displacement and disasters, the IFRC highlights the following statistics/facts from the Internal Displacement Monitoring Centre:

- between 60–80% of IDPs reside outside of camp settings in urban contexts, a phenomenon likely to increase with growing urbanisation;
- an estimated 17.8 million people globally are at risk of displacement by disaster, with 80% of these people living in urban or peri-urban areas; and
- many people affected by disasters in rural areas seek refuge in urban areas which may provide greater access to housing, services and employment opportunities.²⁰³
- Notwithstanding these facts, the 2019 report also found that National Societies 'are less likely to respond to internal displacement in non-camp settings, particularly in urban environments'.²⁰⁴ Some of the challenges associated with responding to internal displacement identified by the ICRC include: scarcity of data and the complexity of urban settings; and difficulty in adapting approaches developed in rural environments or camps to urban realities, and of integrating long-term considerations in the design of programmes.²⁰⁵

In response to this, the IFRC has developed three key actions to strengthen its responses in urban settings: (1) improve capacities to understand and respond to the needs of internal displacement in urban settings; (2) promote the awareness of and training in existing tools and guidance for working in urban contexts, especially those applying participatory approaches in urban areas; and (3) where not already available, support the adaptation of key programme tools to better identify and address displacement issues in urban contexts, such as improving the visibility of National Society services for both hosted and host communities at neighbourhood levels and understanding local markets and livelihood opportunities.²⁰⁶

4.5 Culture

Consideration of culture is an emerging issue in recovery which may be of relevance to domestic legal and policy frameworks. Culture can be understood as ‘the set of distinctive spiritual, material, intellectual and emotional features of society or a social group that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs’.²⁰⁷

Some literature addresses the need for greater awareness about community beliefs and values about disasters²⁰⁸ because it ‘determines how a particular people calculate peril, experience catastrophes, and recover from them, or do not recover, or do not protect themselves’.²⁰⁹ It has also been observed that culture can often dictate how information is distributed²¹⁰ and influence a community’s conceptual understanding of ‘charity’.²¹¹

UNESCO and the World Bank Group have developed the Culture in City Reconstruction and Recovery Framework (‘the CURE Framework’), in which ‘culture is mainstreamed into all sectors and areas of intervention and across all phases of the reconstruction and recovery process, including needs assessments, scoping, planning, financing, and implementation’.²¹² This Framework was developed in an attempt to address the ‘disconnect between place-based and people-centered strategies in city reconstruction and recovery efforts’.²¹³ The CURE Framework operates under the following 7 Guiding Principles including ‘[a]cknowledging the city as a “cultural construct” where built structures and open spaces are closely linked to the social fabric’ (Principle 1) and ‘[f]ostering cultural expressions to offer appropriate ways to deal with post-crisis trauma and reconcile affected communities’ (Principle 3).²¹⁴

4.6 The environment

For the purposes of this review, environment refers to ‘[t]he physical, chemical, and biological surroundings in which communities live and develop their livelihoods. It provides the natural resources that sustain individuals and determines the quality of the surroundings in which they live’.²¹⁵

The recovery and restoration of the natural environment after disasters is seen by the literature as cross-cutting issue, having significant impact on livelihoods, health, social and cultural recovery.²¹⁶ As explained by Mainka and McNeely: ‘Ecosystem services encompass a broad range of functions, from the tangible provision of the necessities of life, i.e., food, water, medicine, and clean air, to processes that pollinate crops, decompose waste, control noxious pests and diseases, and regulate extreme natural events’.²¹⁷ Thus, supporting the long-term sustainability of these services is ‘as important to human well-being and survival as they are to nature itself’.²¹⁸ The IRP, UNISDR and UNDP authored guidance note on recovery and the environment summarises ecosystem services as follows.²¹⁹

Provisioning services	The goods provided by ecosystems (e.g., food – plants and animals, water, raw materials for production, and many medicines).
Regulating services	The benefits provided by regulatory processes of ecosystems (e.g. climate regulation, water purification, and crop pollination).
Protective services	The protection afforded to humans against extreme natural events through ecosystem features and processes (sand dunes, reefs, forests, and wetlands).
Supporting services	The most general ecosystem services necessary for all living things to survive (e.g. production of atmospheric oxygen, soil formation, nutrient cycling, and water cycling).
Cultural services	The non-material benefits people obtain from ecosystems through reflection, recreation, and aesthetic experience (e.g. scientific discovery, aesthetic values).

A consistent message arising from the literature is that all actions taken during the recovery process must be done so with environmental considerations at the fore, not only to “do no harm” but to also strengthen the ecosystem and environmental practices where possible. Actions taken during the recovery process can have far-reaching negative impacts on the environment, compromising long-term recovery, development and overall community health and well-being.²²⁰ The IRP, UNISDR and UNPD guidance note on recovery and the environment outlines how the following common actions during a recovery operation can have negative impacts on the environment if not adequately planned.

- **Waste management** – post-disaster waste dumping ‘in wetlands or poorly planned landfills has contaminated the soil and groundwater, affecting crop growth, fishing, and other provisioning services provided by the ecosystem’ (debris/waste management is discussed further below in [section 4.6.2](#)).
- **Use of resources** – the unsustainable use of resources ‘for housing and public infrastructure reconstruction has led to the destruction of forests, reefs and sand dunes that serve as protective buffers against landslides, storm surge and cyclones’.
- **Spatial planning** – uninformed spatial planning ‘for housing and public infrastructure reconstruction has led to the destruction of forests, reefs and sand dunes that serve as protective buffers against landslides, storm surge and cyclones’ (see [section 5.2](#) below with respect to reconstruction planning generally).²²¹

The recovery phase can also be an opportunity to increase the resilience of communities through integrating disaster risk reduction and climate adaptation in the restoration of the environment, i.e., building back better and building back safer (see [sections 2.1](#) and [5.1](#), respectively). These considerations are reflected in the IFRC’s Green Response Initiative, which is the way in which the Red Cross and Red Crescent Movement approaches its work with respect to affected populations ‘by actively promoting alternative, more environmentally beneficial solutions in addressing needs’.²²² The Green Response, in acknowledging that emergency response ‘can have many different impacts on the environment and ecosystems’, focuses on ‘improving practices before a disaster strikes, whilst also advising and improving practices during response operations’.²²³

The IRP, UNISDR and UNPD guidance recovery note on the environment (as mentioned above) comprehensively covers, amongst other things: why it is critical to consider the environment in recovery operations; dealing with debris in recovery operations; implementing environmentally sound reconstruction; promoting environmentally friendly and sustainable livelihoods; rehabilitating ecosystems; and general and environment-specific assessment tools.²²⁴

The Environment and Humanitarian Action Network has a repository of tools and technical guidance for mainstreaming environment across the humanitarian response cycle, including recovery.²²⁵ Their recommendations for recovery from sudden onset and protracted emergencies include: the use of environmental impact assessments and ongoing monitoring to avoid, minimise and mitigate any adverse impacts of recovery operations; applying safeguards for the sustainable use of natural resources; reusing/recycling disaster debris; and engaging with natural resource management experts and local environmental actors.²²⁶

Jha et al in *Safer Homes, Stronger Communities: A Handbook for Reconstructing after Natural Disasters* provides guidance on how environmental considerations should be incorporated into reconstruction, emphasising the importance of restoring environment in reconstruction efforts.²²⁷ With respect to law and reconstruction, the Handbook recommends that national legal frameworks for environmental management be enforced and/or strengthened during reconstruction and that relevant national authorities be appropriately integrated and enabled in recovery efforts to establish measures for ensuring compliance with environmental guidelines and standards. Such measures include: requiring environmental impact assessments; compliance with environmental standards when approving site plans and demolition/building permits; recovery of debris materials; proper management of local natural resources for construction material; and measures for avoiding and minimising groundwater contamination. The Handbook provides a list of assessment, planning and implementation tools and notes the importance of community participation in environmental planning and assessment. It also provides specific guidance on managing asbestos in housing and community reconstruction.²²⁸

Another key tool with respect to reconstruction and the environment is the Green Recovery & Reconstruction: Training Toolkit for Humanitarian Aid ('GRRT'), which was the result of a collaboration between the American Red Cross and the World Wildlife Fund ('WWF'). The GRRT consists of 10 modules covering various topics and provides specific technical and general guidance to support environmentally sustainable recovery.²²⁹ The WWF also provides a helpdesk via their Environment & Disaster Management website where environmental specialist support can be accessed. With respect to (re)construction (GRRT module 6), the GRRT does not specifically mention laws, legislation, policies or codes, rather it outlines key principles for environmentally sustainable construction across building materials, sourcing and procurement decisions, site selections, building design and maintenance.²³⁰

Although not specific to recovery, the Sphere Standards recognise environmental sustainability as an important component of any humanitarian response.²³¹ The Sphere Handbook's Chapter on Shelter and Settlements relevantly includes an environmental sustainability standard (Standard 7) and provides key actions, indicators and guidance notes to support assistance programmes to 'minimise any negative programme impact on the natural environment'.²³²

4.6.1 Climate change adaptation and disaster risk reduction

An emerging theme across the literature on the environment and recovery is the importance of climate change adaptation (see [section 3.1.3](#) above) and disaster risk reduction (see [sections 2.1](#) and [2.2](#) above) in the recovery process. As posited by Plein in his 2019 article on lessons from disaster recovery in an era of climate change, 'resilience strategies and adaptation policies and practices in land use, built environments and economic activities...are especially important to disaster recovery efforts aimed at preventing or minimizing future hazard'.²³³

While CCA and DRR may have once been considered separately, the literature demonstrates that practitioners and scholars alike now take the position that the two concepts should be considered in concert.²³⁴ The IFRC appears to have combined the two concepts into what it terms 'climate-smart disaster risk reduction'.²³⁵

The IRP and UNISDR (as it was then) argue that a key commonality shared by CCA and DRR is that both 'must be incorporated in the post-disaster recovery phase into the policies of other sectors, such as agriculture, water resources, health, land use, the environment, finance, and planning'.²³⁶ In her chapter published in the Handbook of Disaster Research (2018), Hore goes so far as to argue that CCA should be considered a subset of DRR.²³⁷ She bases this on four key reasons, which briefly summarised are: (1) climate change is a key contributor to disaster risk; (2) 'interpretations of vulnerability in climate change are theoretically limited, and do not acknowledge the insights provided in DRR literature and work'; (3) 'climate change is one of many factors influencing parameters of future disasters. Interactions between climate change and specific hazards in specific locations are extremely complex, meaning attribution of disasters to climate change is difficult'; and (4) the political importance of climate change should be leveraged so as to engage interest in other key processes and concepts such as DRR; '[e]mbedding CCA within DRR will capitalize on the current dominance of climate change in both development and environmental management agendas, and allow for broader agendas and more long-term perspectives to be promoted and achieved, thereby leading to positive policy and practice outcomes'.²³⁸

In addition to the publications already cited this section, the following publications are relevant to CCA and DRR in the recovery context.

- The IRP and UNISDR guidance note on recovery and climate change covers a range of issues including: climate resilient livelihoods; climate resilient infrastructure; stronger institutions for climate resilient recovery; community based approaches for climate resilience; and health and climate change.²³⁹ As highlighted above, this note takes the view that DRR and CCA should be considered together.
- The IFRC guide to mainstreaming DRR and CCA (2013), which was developed to support National Societies and IFRC staff, contains useful principles with respect to integrating DRR and CCA into recovery programming.²⁴⁰ Amongst other things, the guide explains that both DRR and CCA are key to a successful recovery process as an affected population's recovery 'needs to be sustainable in the long term in a hazard-prone environment that may also suffer additional or magnified stresses due to climate change'.²⁴¹

- The IFRC's Framework for Climate Action Towards 2020 provides guidance for National Societies with respect to how to integrate climate change considerations (including CCA) into its programmes and operations, including response activities.²⁴²
- Scholars Sharma and Chauhan in a book chapter discuss how to incorporate traditional knowledge with respect to CCA and DRR into post disaster recovery. In this publication, they argue that traditional knowledge is often a 'valuable source of information about local climate systems, longstanding adaptation practices and adaptive capacities of vulnerable communities'. They discuss this thesis with reference to two case studies: the 2006 flash floods in Barmer, Rajasthan and 2010 flash floods of Leh, Jammu and Kashmir.²⁴³
- The Norwegian Red Cross recently published a report on the impact of climate change on humanitarian needs. While this report was not developed specifically for the recovery context, it discusses how climate changes cuts across multiple themes and issues relevant to the recovery process. Amongst other topics, the guide discusses the impact of climate change on livelihoods (see [section 4.6](#)), health (see [section 4.9](#)), and migration and displacement (see [sections 3.2.5](#) and [4.13](#)).²⁴⁴

4.6.2 Debris/waste management

In the literature, the terms 'disaster waste' and 'disaster debris' are used interchangeably as referring to solid and liquid waste generated by a disaster, including hazardous substances and materials, and sometimes animal carcasses, but excluding human remains.²⁴⁵

As intimated above, if debris/waste is not properly managed in recovery operations, it can have serious negative environmental consequences. Potentially due to the significant financial and logistical undertakings involved in debris/waste management,²⁴⁶ there are a number of publications concerned solely with this topic. It is noted that like many other topics, debris/waste management spans the disaster risk management cycle.

Many case studies in the literature demonstrate how disaster/debris waste can overwhelm existing management systems,²⁴⁷ with a commonly cited case being Hurricane Katrina, which created between 76–118 million cubic yards of debris.²⁴⁸ Disaster debris/waste can also have both significant short-term impacts (e.g., hindering access to and for affected populations and areas), and long-term impacts that effect recovery and reconstruction efforts, including improper management that adversely impacts on human health and the environment.

A key issue here, highlighted by several authors, is the safe separation of hazardous waste (e.g., asbestos) from non-hazardous waste which can be used in reconstruction efforts (e.g., building rubble). Relevant considerations include: where the separation takes place and by whom; potentially expanding existing, or establishing additional, debris/waste processing sites and facilities; ensuring safe practices; and environmental impact.²⁴⁹ The Joint UNEP/UNOCHA Environment Unit and Swedish Civil Contingencies Agency (MSB) Disaster Waste Management Guidelines (2013) emphasise the importance of safeguarding the health and safety of personnel in disaster waste management initiatives, which may involve taking measures such as ensuring there is: adequate training and personal protective equipment; and appropriate facilities and equipment to minimise noise, vibration and other harmful emissions. The guidelines also note the 'increasing cases of legal action relating to exposure to hazardous substances during disaster clean-up works'.²⁵⁰

Reusing and recycling disaster debris/waste is also consistently highlighted in the literature as an opportunity to reduce debris/waste and support more sustainable recovery. However, with the exception of a few examples, the cost and time required for safe sorting and recycling has often resulted in this opportunity being missed in practice.²⁵¹ The World Bank's 2010 Handbook for Reconstructing After Natural Disasters provides practical guidance on developing a disaster debris management plan.²⁵²

Consistent across the literature is the notion that in order to support the timely reconstruction of physical assets, various legislative measures are typically needed in order to effectively co-ordinate and accelerate the physical reconstruction process.²⁵³ Regarding the law and disaster debris/waste management, Brown and Milke explain that environmental and other legislation relevant to waste management are often waived in emergency settings through special powers, often enabled by an emergency legal modality which takes effect at the time of a declaration of a state of emergency/disaster.²⁵⁴ They posit that such waivers have the tendency to 'opt for



Shaman Ali started his entrepreneurship with the help of a cash grant provided as part of the Integrated Recovery Programme (IRP) for families affected by the 2010 monsoon floods in Pakistan.

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the quickest debris collection, treatment and disposal options' even if they are inconsistent with peace time laws and regulations.²⁵⁵ The authors also note that it is often unclear to what degree, and in what circumstances, these relaxations are acceptable, noting the lengthy and expensive legislative and/or environmental remediation processes that sometimes follow disasters.²⁵⁶ In their article published in the Journal of Cleaner Production, Zhang et al also highlight the lack of clarity regarding the degree to which relaxations are acceptable regarding waste management. They also note a lack of specificity (including clarification of authority) and enforceability of relevant legislation, especially in the context of disaster.²⁵⁷

There is a gap in the research analysing the interplay of law and disaster debris/waste management in the context of disaster risk management, both generally and relating to IFRC Disaster Law's existing research specifically. If this is an IFRC priority moving forwards, it is recommended that research into the area is inclusive of the whole disaster risk management spectrum and not specific to recovery alone.

4.7 Livelihoods

The restoration and improvement of livelihoods is one of the core functions of recovery,²⁵⁸ and was one of the most prevalent issues addressed across the literature.²⁵⁹ As such, it is highly relevant to the development of domestic legal and policy frameworks.

Livelihoods can be understood as 'the means of making a living' with 'sustainable livelihoods' referring 'to people's capacity to generate and maintain their means of living, and enhance their own well-being as well as that of future generations'.²⁶⁰ To that end, the local economy is seen as 'the system whereby the affected community's material and service needs are met through appropriate labour and employment, business development, land use, financial resources, and interaction with the broader economy'.²⁶¹ The notion that large scale disasters can cause 'economic slowdown, loss of employment and decreased entrepreneurial activity, pushing more people into poverty' is either implicitly or explicitly recognised across the literature.²⁶²

In their guidance note specifically on livelihood recovery, the IRP, UNISDR and UNDP report that disaster victims 'have overwhelmingly identified livelihoods as their greatest recovery priority'.²⁶³ The note focuses on two key issues or phases in livelihood recovery, using case studies.

- **Enabling livelihood protection**, which involves interventions aimed at protecting, replacing and rebuilding the productive assets needed to initiate a pre-existing or new livelihood. Interventions include: cash grants and material assistance; creating temporary income-earning opportunities; procuring local goods and services; and using market chain analysis to reinvigorate markets.
- **Improving livelihood protection**, which involves interventions to initiate and strengthen livelihoods to be more economically and environmentally sustainable and more resilient to future disasters. Interventions include: engaging developing actors in livelihood programming; building and strengthening micro-finance institutions; and intervening in markets.²⁶⁴

The IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters (see [sub-section 3.2.3](#) above) also provides a list of activities which can be considered in during the recovery of livelihoods, which appear to focus on ensuring that persons with vulnerabilities and non-discrimination are considered during livelihood recovery efforts.²⁶⁵ For example, the Guidelines suggest that livelihood recovery programmes could consider ensuring:

- 'access for all sectors of the affected population, including women, to re-training and skills-development programmes, taking into account the often hidden role of certain groups such as older persons in the formal and informal economy'; and
- that 'training programmes do not reinforce existing social or stereotypical gender divisions of labour which push women, children and social, economic, ethnic, religious or racial minorities into the least desirable jobs with the lowest pay and poorest working conditions'.²⁶⁶

4.8 Education

The 2018 GFDRR Guidance Note on Recovery of the Education Sector opines that '[d]isasters affect populations involved in every level of education'.²⁶⁷ Underpinning this guidance note is the notion that restoring the education sector is key in achieving a community's or society's successful recovery as it is closely interlinked with livelihood, cultural (psycho-social) and health recovery.²⁶⁸ As such it is highly relevant to the development of national legal and policy frameworks for recovery.

Among other aspects, educational facilities and personnel can offer refuge, security and healing after a disaster and education 'enhances people's resilience during disasters and encourages support for and involvement in Disaster Risk Reduction actions'.²⁶⁹ In line with BBB, the guidance note advocates that education systems should be rebuilt to 'better prepare for and mitigate against known vulnerabilities and hazards'.²⁷⁰

Much of the literature in this area is concerned with recovery of the education sector post-disaster and appears to largely focus on primary and secondary schooling education, due to the unique risks children are exposed to in the disaster context, e.g., trafficking and labour exploitation, which education can help mitigate.²⁷¹

4.9 Health

Recovery of the health sector after a disaster is clearly of critical importance and is linked to the positive obligations of states to achieve the full realization of the right to health.²⁷²

Chapter 8 of the Sphere Handbook provides practical guidance for humanitarian workers in the health sector, including 18 standards to support health systems and essential healthcare during relief and early recovery. The chapter notes the importance of supporting and developing existing health systems and notes that staff choices (national and international) will have short- and long-term implications for national health systems (and therefore, on recovery).²⁷³

The 2017 GFDRR et al Guidance Note on Recovery of the Health Sector outlines the potential policy, planning, financial, and implementation decisions and activities involved in developing and putting into effect a health sector recovery plan.²⁷⁴ In light of this guidance note, it is possible to conceptualise health recovery as comprising:

- recovery of health facilities (e.g., hospitals and clinics), equipment and reestablishment of the supply chain (e.g., of medicines);
- recovery from injuries or exacerbated conditions resulting from the disaster (e.g. injuries from the disaster, asbestos pollution, post-traumatic stress and mental health issues, ramifications of pro-longed periods without regular medication such as for treatment of heart conditions, asthma, and anti-retrovirals); and
- return to normal for ongoing health and medical needs (e.g., vaccinations, sexual and reproductive health, and treatment for common viruses).²⁷⁵
- The guidance note highlights the opportunity for BBB and the added value of including the health sector within general recovery planning to encourage safer and healthier communities.²⁷⁶ In relation to medium- to long-term recovery of the health sector, the note encourages a review, and/or strengthening, of law and policy relevant to the health sector, including the key piece of legislation dealing with health care, policies to reduce child mortality and improve maternal health, and national mental health policies.²⁷⁷

The UNDP, UNDRR and IRP *Guidance Note on Recovery: Health* is another source relevant to recovery of the health sector. The note comprises case studies, discussing actions taken and lessons learned in supporting the recovery of people's health and the health sector following a disaster, including cyclone Nargis in Myanmar (2009), Aceh Tsunami in Indonesia (2004), Gujarat Earthquake in India (2001), and the Great Hanshin-Awaji Earthquake, Japan (1995). Building on learnings from these case studies, the guidance note highlights, amongst other things: the importance of active leadership from the relevant government ministry in close coordination with governmental and non-governmental organisations; ensuring adequate long-term funds; and establishing appropriate monitoring and evaluation programmes.²⁷⁸

In the law and policy context, it is also important to highlight the need for recovery from 'health emergencies', in particular epidemics. At the international level this is governed by the International Health Regulations (IHR)²⁷⁹ which prescribe the monitoring, reporting and management measures to be undertaken in the course of disease control. While these do not include strategies for 'recovery' per se, applying the principles of BBB could be an opportunity to strengthen the capacities of the health sector to better respond to disease outbreaks in future, in line with the measures required by the IHR.

4.10 Psychosocial recovery

Article 12 of the ICESCR places an equal emphasis on physical and mental health when requiring states to take progressive steps to fulfil everyone's 'right... to the enjoyment of the highest attainable standard of physical and mental health'.²⁸⁰

A review of the literature confirms that many people affected by disasters experience mental health issues, including post-traumatic stress disorder, phobia and anxiety, and depression.²⁸¹ Such issues may significantly shape individual and collective recovery and may result in negative coping strategies, such as substance abuse. The connection between disasters, trauma and the increase of SGBV has also been discussed by the literature (see further [section 4.3](#) above).²⁸²

In addition to emphasising the importance of responding to psychosocial needs of affected communities, the literature also highlights the need for psychosocial support to be provided to front-line personnel to support their own recovery and well-being.²⁸³ A New Zealand Red Cross report on the Canterbury Earthquake Appeal Recovery Programme also highlights the need for psychosocial recovery interventions to be delivered in an appropriate and culturally sensitive manner, e.g., taking into account the diverse concepts of well-being that may exist within a disaster affected community.²⁸⁴

The 2017 GFDRR Guidance Note on Recovery of the Health Sector highlights the increasing demands on psychosocial support following a disaster event, and recommends that national mental health policies are reviewed to reflect post-disaster needs, including additional funding.²⁸⁵ More generally, the Sphere Minimum Standards Mental Health Standard 2.5 identifies key actions and indicators for supporting mental health, including taking steps to develop a sustainable mental health system during early recovery planning and protracted crisis.²⁸⁶

The WHO report, 'Building Back Better: Sustainable Mental Health Care after Emergencies', includes a review of 10 countries (Afghanistan, Burundi, Indonesia (Aceh), Iraq, Jordan, Kosovo, Somalia, Sri Lanka, Timor-Leste and West Bank and Gaza Strip) that were able to build better-quality and more sustainable mental health systems following emergencies. The report identifies and summarises overlapping practices and commonalities which shaped the success of the recovery efforts, including that:

1. mental health reform was supported through planning for long-term sustainability from the outset;
2. the broad mental health needs of the emergency-affected population were addressed;
3. the government's central role was respected;
4. national professionals played a key role;
5. co-ordination across agencies was crucial;
6. mental health reform involved review and revision of national policies and plans;
7. the mental health system was considered and strengthened as a whole;
8. health workers were reorganised and trained;
9. demonstration projects offered proof of concept and attracted further support and funds for mental health reform; and
10. advocacy helped maintain momentum for change.²⁸⁷

Mooney et al in their article on psychosocial recovery from disasters, makes a clear connection between individual and collective psychosocial recovery and community engagement, in recovery planning and decision-making. They also note that people facing vulnerability pre-disaster (e.g., children, elderly people, people with disabilities, people living alone, and people with previous mental health issues), are more at risk of negatively coping with disasters.²⁸⁸ The connection between psychosocial recovery and community engagement, accountability and empowerment is echoed by others, including the IASC in its Guidelines on Mental Health and Psychosocial Support in Emergency Settings and in its Action Sheet on operationalising psychosocial support in crisis.²⁸⁹ The Action Sheet provides recommendations relevant to law and policy making, including planning with local authorities/governments and existing services to fund and provide appropriate extra provision to support local services for several years following the disaster. The Action Sheet also emphasises the importance of understanding and facilitating conditions for appropriate cultural, religious and spiritual support, which would arguably be supported by an inclusive community participatory process.²⁹⁰

The longevity of psychosocial recovery was emphasised across the literature reviewed, which speaks for the role of law and policy to ensure adequate and appropriate action.²⁹¹

4.11 Private sector

The literature views the private sector (or commercial sector)²⁹² in two main ways in the recovery context: (1) as a group of actors which can offer support, including by way of formal and informal funding in recovery efforts,²⁹³ and (2) as a sector of society which needs support during recovery, especially in recognition of the benefits that a functioning private sector brings to disaster affected communities, such as the provision of livelihoods.²⁹⁴

The benefit of the private and public sectors working together in the recovery context is reiterated across the guidelines; businesses are generally seen as playing a vital role in supporting community recovery and their continued operation is important for community resilience.²⁹⁵ In particular, three key roles for the private sector in disaster recovery were identified in the GFDRR, World Bank Group, EU and UNDP 2015 Guide to Developing Disaster Recovery Frameworks as: (1) purveyors of goods and services participating in an economic transaction; (2) local institutions that represent long term interests of the community; and (3) charitable donors of goods, services, and expertise.²⁹⁶

4.12 Financing recovery

Financing recovery operations, including reconstruction, is discussed across the literature in varying degrees and detail.²⁹⁷ Consistent across the literature is the notion that recovery efforts require the mobilisation of funds in the timeliest manner possible.²⁹⁸ The main sources of funding discussed in the literature are:

- 1. Domestic sources**, including: national government operational and capital budgets, insurance proceeds; special levies or taxes; government disaster contingency funds; and contingency financial arrangements;²⁹⁹
- 2. International sources**, including: international aid (including cash transfers);³⁰⁰ bilateral donor loans, multi-donor trust funds,³⁰¹ and regional funding sources;³⁰²
- 3. Private sector funding**, including: microfinance³⁰³ microinsurance,³⁰⁴ self-funding or community contributions;³⁰⁵ private philanthropies and charity contributions;³⁰⁶ and funding raised on social media platforms.³⁰⁷

The GFDRR, World Bank Group, EU and UNDP in their 2015 Guide to Developing Disaster Recovery Frameworks addresses financing recovery efforts in a comprehensive manner. The Guide identifies what it describes as the 'four major financing challenges', namely: 'to quickly quantify the economic costs of the disaster, develop recovery and recovery budgets, identify sources of financing, and set up the mechanisms to manage and track funds.'³⁰⁸ The Guide also observes that '[g]ood financial practice across post-disaster experience shares the common characteristics of rapid disbursement, coordination of resources, and flexible sources of funding'.³⁰⁹

On a more granular level:

- the IFRC has discussed its use of cash transfers as ‘a tool for delivering assistance’ which can ‘be applied across multiple sectors’.³¹⁰ With approximately half of the world living in urban centres, the IFRC identifies cash transfers as being particularly helpful in urban settings;³¹¹
- the Humanitarian Programming Group has commissioned and published a guide on evaluating how to make cash transfers in emergency situations;³¹²
- the ADB has also published a paper on lessons learned on microfinance and recovery in the context of the 2015 Nepal earthquake;³¹³ and
- the *International Journal of Disaster Risk Reduction* has very recently published a study by Yore and Walker on microinsurance in recovery settings (discussed below). Specifically, the study focussed on the elements of a microinsurance initiative that may lead to an increased likelihood of its success as a disaster recovery support mechanism.³¹⁴

Three major issues with respect to securing adequate funding were identified by the literature. Firstly, the UNDP discusses ‘a persistent funding gap in recovery’. In essence, this gap is created by the fact that: ‘Humanitarian funding instruments focus predominantly on immediate life-saving interventions, whereas development funding focuses on promoting long-term and sustained socio-economic change. If recovery is not funded during the humanitarian phase, funding gaps are likely to occur when the humanitarian funding is phased out and before developmental funds can be accessed and mobilized’.³¹⁵ This results in the risk that ‘recovery needs remain largely unmet, leaving affected populations highly vulnerable to secondary disasters or dependent on relief assistance for extended periods of time’.³¹⁶

Secondly, Yore and Walker identify the prevailing models of disaster relief as being reactive, with finance often being raised post-disaster and often being ‘both unpredictable and slow to materialise’.³¹⁷

Thirdly, Yore and Walker also identify an issue with the amount of funding made available for disasters: (emphasis added)

*Estimated current economic average annual loss (AAL) at the hands of disasters caused by natural hazards in 77 of the world's poorest countries stands at \$29 billion, with an estimated 10% chance of this increasing to \$47 billion in economic losses in 2018. Only \$6 billion (12%) of current losses in these low and lower-middle income countries are met by humanitarian aid and a meagre \$2 billion (5%) are covered by insurance, **leaving a \$39 billion shortfall that must be met by the people directly affected by disasters and their governments.**³¹⁸ In response to the second and third issues, Yore and Walker opine that microinsurance is a viable solution.³¹⁹ Indeed, currently, traditional humanitarian finance models for reconstruction dominate, whereas there are other methods of reconstruction financing that are also occurring as peer-to-peer lending platforms or diaspora lending or donation platforms post-disaster that promote direct giving.*

4.13 Internal displacement

As highlighted above, the issue of internal displacement is relevant to recovery, especially given the potential for it to become protracted and extend beyond the emergency phase of a disaster and well into the recovery process (see [section 3.2.4](#) above).

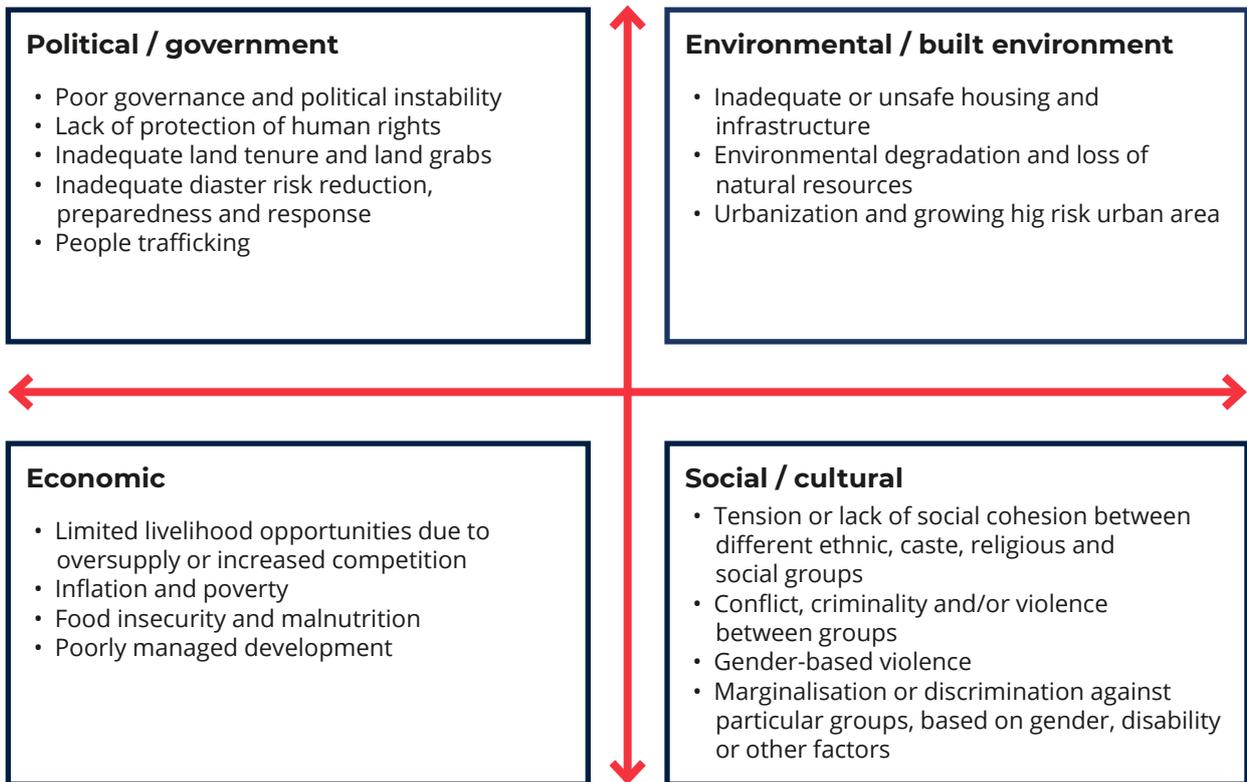
4.13.1 Protracted displacement

Protracted displacement can be ‘broadly understood as situations in which IDPs have been displaced for a long period of time without immediate prospects of a durable solution’.³²⁰ Specifically, ‘IDPs who are prevented from taking or are unable to take steps for significant periods of time to progressively reduce their vulnerability, impoverishment and marginalization and find a durable solution’.³²¹

The Global Report on Internal Displacement (‘GRID’), prepared annually by the Internal Displacement Monitoring Centre (‘IDMC’), has recently found that ‘displacement is becoming “more protracted and more urban”’: of the average 17 million people at risk of being displaced by floods, over 80% are in urban or peri-urban areas’.³²²

As noted above in [section 3.2.5](#), the application of human rights and other protection measures for IDPs is addressed in the UN Guiding Principles on Internal Displacement.³²³

Meeting the immediate life-saving needs of people experiencing protracted displacement is ‘response’ activity. However, particularly relevant to recovery, and more specifically the concepts of disaster risk reduction, climate adaptation and BBB, is the notion that ‘many interconnected drivers that can influence the necessity to move following a disaster’.³²⁴ If recovery is to be successful, it is critical to address the various underlying factors which cause displacement as part of the recovery process. A number of these factors are summarised in the table below.³²⁵



Many of the above issues have clear links to law and policy, and are also reflected in other sections of this literature review. The inter-connectedness between issues of protracted displacement and recovery is reflected in literature on other topics such as the vulnerability and capacities of children and young people,³²⁶ housing, land and property rights;³²⁷ and gender.³²⁸

There have also been a number of case studies conducted on protracted displacement which crosses international borders (although not necessarily disaster-related), including: Mayukwayukwa, Western Zambia with respect to Angolan refugees;³²⁹ Bangladesh with respect to Rohingya refugees;³³⁰ and Calcutta with respect to East Bengali Dalit refugees.³³¹

4.13.2 Durable solutions

Another issue of direct relevance to enabling appropriate recovery after disasters is finding ways to end displacement through ‘voluntary, safe and dignified durable solutions’.³³² The IASC Framework on Durable Solutions for Internally Displaced Persons posits that ‘[a] durable solution is achieved when internally displaced persons no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement’.³³³ The Framework and the IFRC’s Movement Policy on Internal Displacement both identify the following three durable solutions:

- return and reintegration, whereby the person returns to their place of origin before the crisis;
- local integration, whereby the person integrates into the local community to which they located following their displacement; and
- relocation, whereby the person moves and integrates into another location within the country and integrates into that community.³³⁴

The IASC Framework advocates for a rights-based approach to support durable solutions³³⁵ and provides a detailed discussion on the criteria for determining the extent to which a durable solution has been achieved. Such criteria include: long-term safety and security; enjoyment of an adequate standard of living without discrimination; access to livelihoods and employment; effective and accessible mechanisms to restore housing, land and property; family reunification; and access to effective remedies and justice.³³⁶

The IASC Framework lays out key principles to guide the search for durable solutions, including that:

- the authorities concerned should grant and facilitate rapid and unimpeded access to humanitarian and development actors that assist IDPs in achieving a durable solution;
- the needs, rights and legitimate interests of IDPs should be the primary considerations guiding all policies and decisions on durable solutions; and
- IDPs who have achieved a durable solution continue to be protected by international human rights, and where applicable, humanitarian law.

With respect to the responsibility to provide durable solutions, the IASC Framework states that the 'primary responsibility to provide durable solutions for IDPs needs to be assumed by the national authorities' with international and humanitarian agencies having 'complementary roles'.³³⁷

The IFRC has identified a number of issues associated with durable solutions, including the following:

- Return and reintegration: In disaster settings, there may be complex barriers to voluntary and safe return, including for example related to housing, land and property (HLP).
- Local integration: Acceptance by the local community and reducing the potential friction points is critical through addressing the needs of host communities, overcoming social and cultural differences and promoting social cohesion.
- Relocation: Identifying new suitable locations for settlement can be especially complex, raising not only many of the issues that apply in situations of return and local integration, but with the added layers of a more formal process of site and community selection.
- Confusion about responsibilities: concerning local government powers, role and responsibilities, leading to delayed and inadequate action.
- Residual hazard risks or economic and social challenges: which may persist in the longer term and need to be overcome.³³⁸

A 2019 book edited by Asgary, *Resettlement Challenges for Displaced Populations and Refugees*,³³⁹ also presents eight case studies on resettlement challenges with respect to disaster displaced populations, including:

- the impact of post-disaster housing reconstruction policies on different beneficiary groups in Bam, Iran;³⁴⁰
- the status of sheltering a year after the multiple disasters in Fukushima;³⁴¹ and
- the urbanism of emergency: use and adaptation of public open spaces in disaster-induced resettlement sites.³⁴²

In 2006, The Global Protection Cluster Working Group also published a Handbook for the Protection of Internationally Displaced Persons.³⁴³ While not specifically concerning protracted displacement, the Handbook provides relevant advice on the topic including on preventing, mitigating and responding to specific protection risks and rights violations commonly faced by IDPs (Part 4), and key protection activities that contribute to an effective protection response, identifying potential operational challenges (Part 5).



Community members participate in a PASSA meeting in Mitrodanga, Bangladesh.

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4.14 Legal facilities

For the purposes of this review, legal facilities for recovery can generally be understood to refer to laws and regulatory provisions which create an enabling environment through special privileges or exemptions for individuals and organisations participating in recovery activities.

Much of the specific guidance on legal facilities has been developed in the context of the IFRC's work on disaster law.³⁴⁴ The IDRL Guidelines (discussed in [section 3.2.2](#) above) and related Model Act include 'special entitlements and exemptions' for humanitarian workers and organisations while undertaking disaster relief and initial recovery including: disaster visas or visa waivers; recognition of foreign professional qualifications; recognition of foreign driving licenses; customer facilitation and priority treatment; and the importation of medicine, food, and vehicles; tax exemptions; and preferential exchange rates.³⁴⁵

The 2019 IFRC DPR Checklist also promotes the development of 'appropriate legal facilities for disaster preparedness and response'; and states: '[e]ffective DPR requires a legal framework that facilitates the work of humanitarian actors and removes unnecessary cost burdens and bureaucratic barriers which may deter individuals and organizations from participating in this essential work'.³⁴⁶

Given IFRC's unique and long-standing expertise with regards to legal facilities to support disaster risk management preparedness, response and early recovery, it may be relevant to further explore how these can and/or should apply in the recovery context.

Consistent across the broader literature in this area is the notion that various legislative measures are needed to effectively co-ordinate and accelerate the physical reconstruction process.³⁴⁷ These issues are generally identified through specific case studies rather than through international standards or guidelines³⁴⁸ and suggest that the nature of the legislative measures required is highly dependent on a number of factors, including: the type and kind of legal system in any given country or region (e.g., whether the country has a common law or civil law system); the strength of the respective legal system; the resources of the country to make or facilitate any legislative changes or exemptions; and what legislation is already in place in the relevant jurisdiction, which may either currently facilitate or hinder timely and safe reconstruction.³⁴⁹ The literature in this area also consistently discusses the regulation of building and construction (see [section 5](#) below), environmental protection and debris/waste management (see [section 4.6](#) above).

Monitoring and evaluation

The monitoring and evaluation ('M&E') of recovery programs is an identifiable theme in the literature, centred largely around the issue of accountability. The IFRC uses the following definitions for M&E:

- **Monitoring** is the routine collection and analysis of information in order to track progress against set plans and check compliance to established standards. It helps identify trends and patterns, adapt strategies, and make decisions to keep the project on track and ensure effectiveness; and
- **Evaluation**, is an assessment that identifies, reflects upon, and judges the worth of what has been done. The aim is to determine the relevance and fulfilment of objectives, developmental efficiency, effectiveness, impact and sustainability. An evaluation should provide information that is credible and useful, enabling the incorporation of lessons learnt into the decision-making process of both the recipients and donors.³⁵⁰

The IFRC, in its 2011 monitoring and evaluation guide, conceptualises M&E as a stage within cycle of any program or project, as demonstrated by the diagram below.³⁵¹ Translated to the recovery context, an M&E would start after a PDNA has taken place (see [section 4.1](#) above) and once the recovery program is at least in its mid-stages.

Key M&E activities in the project/programme cycle



Due to the fact that both governmental and non-government actors provide and co-ordinate recovery assistance, two key questions arise: (1) Who is the subject of the monitoring and evaluation?; and (b) Who is performing the monitoring and evaluation? Another important question for any M&E activity is also how the M&E is taking place, i.e., what methodology, metrics and principles are being applied.



Pham Phuc Anh, a Red Cross volunteer, is seen helping to rebuild the roof of a house affected by recent storms in Nghia An Commune, Quang Ngai city in November, 2020.

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Although not developed specifically for recovery, ALNAP has developed the Evaluation of Humanitarian Action Guide (2016) ('EHA Guide'),³⁵² a comprehensive guide for evaluating all types of humanitarian projects/programs, which can be utilised by humanitarian actors for self-evaluation as well as by third parties (e.g., an evaluation commissioner).³⁵³ The EHA Guide emphasises that '[q]uality evaluation processes are not linear', with evaluation processes having a 'number of feedback loops' and potential 'back and forth between activities'.³⁵⁴ The Guide is written and structured so as to take this into account. Amongst other things, it covers issues such as: deciding to do an evaluation (Chapter 2); how evaluations can be utilised (Chapter 3); types of evaluations (Chapter 4); and planning and managing evaluations (Chapter 9).

The IFRC's guide on M&E is also another general guide which can be used by humanitarian actors for self-evaluation in the recovery context. The guide is divided into three key parts: Part 1 lays out the key concepts and considerations relevant to M&E; Part 2 discusses six key steps for M&E; and the last part of the guide comprises annexes which are additional tools, resources and examples for M&E.³⁵⁵

There do not appear to be any international guidelines on how government recovery programs should be (internally or externally) monitored and evaluated, or guidelines which exclusively address how governments should monitor and evaluate recovery programs by third parties. This is perhaps unsurprising given that recovery programs 'take place within the boundaries of an international order based on sovereign States'.³⁵⁶ The various and often divergent approaches to monitoring and evaluating disaster management programs as between countries is demonstrated in the IFRC's DPR synthesis report.³⁵⁷

The Australian and New Zealand School of Government's Monitoring and Framework for Disaster Recovery Programs (2016) is an example of how a government M&E recovery framework can be developed in the context of a single jurisdiction (in this case, the Australian jurisdiction). The Framework was commissioned by the National Emergency Management Projects ('NEMP'), which is ultimately managed by Australia's Attorney-General's Department.³⁵⁸ Among other things, the Framework provides: a list of key evaluation questions that can be addressed in any disaster recovery evaluation; a guide for the source, collection and use of key data to assess recovery; and a guide for disseminating the findings from recovery program evaluations.³⁵⁹

The sources already mentioned present various methods of M&E, with both the EHA Guide and the IFRC guide taking the position that the method and style of M&E should be adapted to each individual project. Specifically addressing M&E in recovery, in his 2008 article published in the Disaster Prevention and Management journal, Labadie takes the position that in the recovery and reconstruction context, 'performance auditing and performance measurement', i.e., 'identifying risks and controls, setting measurable targets, assessing whether sustainability and survivability goals are met', should be applied.³⁶⁰ He recommends this against his starting position that the '[m]echanisms for assessing whether recovery funds are well spent are often weak or missing'.³⁶¹

However, M&E is not the only accountability mechanism in the recovery context – there are also other measures including remedies embedded in fraud and corruption laws and policies, human rights law, criminal law, and tort law. These measures have not been explored for the purposes of this literature review but it is suggested that further research into such measures could be undertaken, especially at the country-level.

4.15 Capacity development

Capacity development is an important issue for recovery and may be considered relevant in the context of developing or strengthening domestic legal and policy frameworks, particularly because it concerns issues of standards and resource allocations.

Capacity development in the context of recovery can broadly be understood as the development of an actor's/sector's ability to recover in the aftermath of a disaster.³⁶² In the standards and guidelines surveyed, capacity development has been raised with respect to the public sector and civil society (including individual communities). Capacity development 'will either be built into traditional recovery projects such as housing, community infrastructure or micro-enterprise development, or they will be stand-alone interventions aimed at enhancing the capacities of intuitions in one or more sectors supporting the crisis recovery'.³⁶³

With respect to public sector capacity development, the UNDP Toolkit on Disaster Recovery states that '[e]ven prior to a disaster, the capacities of the public sector are often stretched and inadequate to fulfil their existing mandates'.³⁶⁴ It is within this context that the UNDP understands capacity development to 'have a dual objective of addressing the capacity constraints so that these stakeholders can play an effective role in recovery in the short run and, secondly, of addressing pre-disaster capacity gaps'.³⁶⁵

The standards and guidelines are relatively vague on civil society capacity development at the macro level. However, in its Monitoring and Evaluation Framework for Disaster Recovery Programs, the Australia and New Zealand School of Government addresses capacity development at the community level. Specifically, it understands capacity development as 'refer[ring] to system-level factors that allow community members to apply the skills and knowledge to bring about disaster recovery, such as health, education, and mutual support systems'.³⁶⁶



Kim Sung Suk and her grandson Ris Sok Gon in front of their new house built by the government in a flood-affected community in DPRK. Kim Sung Suk lost her house and all her belongings during the floods.

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5 | RECONSTRUCTION – THEMES AND ISSUES

This section of the literature review canvasses the legal and operational issues and themes specifically relevant to the reconstruction aspect of recovery. These issues have been identified from a survey of operational standards and guidelines dealing with reconstruction.

As discussed above in [section 2.3](#), reconstruction is understood as an element of recovery and is defined as:

The medium- and long-term rebuilding and sustainable restoration of resilient critical infrastructures, services, housing, facilities and livelihoods required for the full functioning of a community or a society affected by a disaster, aligning with the principles of sustainable development and “build back better”, to avoid or reduce future disaster risk.³⁶⁷

5.1 Building back safer/better

The concept of building back better/safer (see [section 2.1](#) above) is especially relevant to reconstruction. The 2017 GFDRR note provides helpful guidance on the reconstruction of physical assets in the recovery process. The note lists the following BBB activities for the reconstruction of physical assets, including:

- introducing DRR measures including building codes and regulations to increase the resilience of physical assets being reconstructed, such as earthquake-resistant building designs or raised-floor elevation in flood-prone areas;
- introducing and enforcing appropriate land-use planning regulations, which curtail reconstruction in high-risk areas;
- reconstructing improved hazard-control infrastructure, such as flood embankments;
- replacing damaged assets with context-sensitive, technologically updated alternatives, e.g., modernising damaged telecommunications equipment; and
- using recovery as an opportunity to right-size infrastructure to better meet community needs, e.g., reconstructing hospitals with an adequate number of beds.³⁶⁸

5.2 Reconstruction planning

The World Bank's Safer Homes, Stronger Communities Handbook provides considerable guidance and analysis, including case studies and 'how-to' guides, regarding numerous elements of reconstruction planning.³⁶⁹ It is noted that the Handbook is designed for use by multiple stakeholders, including local government.

- **Land use and physical planning** (Chapter 7) - Land use planning is 'a public policy exercise that designates and regulates the use of land in order to improve a community's physical, economic, and social efficiency and well-being', whereas physical planning is a 'design exercise that uses the land use plan as a framework to propose the optimal physical infrastructure for a settlement or area, including infrastructure for public services, transport, economic activities, recreation, and environmental protection'. It is important to note that '[l]and use plans and physical plans are not necessarily mutually exclusive'; '[i]t is common practice in many countries to prepare comprehensive development plans that address both land use zoning and the provision of physical infrastructure'.³⁷⁰
- **Infrastructure and services delivery** (Chapter 8) – infrastructure in this context includes 'lifeline systems and related local public services'. The importance of reconstructing and rehabilitating public facilities such as public buildings and meeting spaces, and educational and health facilities is also discussed in this chapter.³⁷¹ (See further [section 5.5](#) below)
- **Environmental planning** (Chapter 9) – This section of the Handbook provides, guidance on, amongst other things, how to develop a disaster debris management plan (regarding disaster debris/waste management, see further [sub-section 4.6.2](#) above) and how to carry out an environmental impact assessment and environmental monitoring of reconstruction projects (with respect to environmental protection, see further [section 4.6](#) above).³⁷²
- **Housing design and construction technology** (Chapter 10) – this chapter largely focusses on issues relevant to the designing, constructing and retrofitting houses. In particular, it covers 3 topics relevant to rebuilding houses: (1) design; (2) construction technology; and (3) the decision whether to repair or retrofit versus demolish.³⁷³ (See further [section 5.4](#) below)
- **Cultural heritage conservation** (Chapter 11) – cultural heritage is traditionally known as referring to 'monuments, archaeological sites, and movable heritage collections'. However, it now also 'includes historic urban areas, vernacular heritage, cultural landscapes (tangible heritage, which include natural and cultural sites), and even living dimensions of heritage and all aspects of the physical and spiritual relationship between human societies and their environment (intangible heritage)'. This chapter of the Handbook 'addresses the importance of protecting the cultural heritage of communities, especially traditional housing'.³⁷⁴

The Handbook also presents the following 10 overarching guiding principles for the purposes of reconstruction planning.

1. A good reconstruction policy helps reactivate communities and empowers people to rebuild their housing, their lives, and their livelihoods.
2. Reconstruction begins the day of the disaster.
3. Community members should be partners in policy making and leaders of local implementation.
4. Reconstruction policy and plans should be financially realistic but ambitious with respect to disaster risk reduction.
5. Institutions matter and coordination among them improves outcomes.
6. Reconstruction is an opportunity to plan for the future and to conserve the past.
7. Relocation disrupts lives and should be kept to a minimum.
8. Civil society and the private sector are important parts of the solution.
9. Assessment and monitoring can improve reconstruction outcomes.
10. To contribute to long-term development, reconstruction must be sustainable.³⁷⁵

5.3 Housing, land and property rights

Housing, land and property rights ('HLP') is a complex issue and the literature on it is voluminous.³⁷⁶

As explained in the IFRC and NRC report on HLP:

The concept of HLP includes the full spectrum of rights to housing, land and property held according to statutory or customary law or informally — both public and private housing, land and/ or property assets. Land rights are rights held to both land and natural resources. HLP rights are held by owners, tenants, cooperative dwellers, customary land tenure owners and users, and informal sector dwellers without secure tenure.³⁷⁷

A survey of the literature reveals the complexity of this area, including:

- the myriad sources from which HLP are derived, including multiple sources at the international, national and local levels (including customary laws or faith-based systems) and the complexities of these sources themselves;
- the diverse geographical locations within which such rights can materialise, especially how the realisation of these rights (or lack thereof) materialise in urban versus rural settings;
- the interaction of HLP with other areas of law including: general IHRL; regional human rights laws and regimes, some of which recognise collective rights;³⁷⁸ property law; land laws; laws concerning the rights of indigenous peoples and land; local council laws and regulations; construction law; labour law; occupational, health and safety law; administrative law; and trusts law;
- the interaction of these rights with political and cultural issues;
- the interaction with other issues in the recovery context, including protracted displacement and durable solutions, livelihoods, vulnerabilities³⁷⁹, and of course reconstruction more generally; and
- the range of actors that such rights involve, including: natural persons, unnatural persons (e.g., companies, non-for-profits, and charities), governments, local councils, communities.

HLP are typically the domain of domestic and local laws.³⁸⁰ While there are also a number of international instruments that address the right to housing,³⁸¹ the right to adequate housing as enshrined in Article 11(1) of the ICESCR is recognised as 'the most comprehensive and perhaps most important'.³⁸² The Committee on Economic and Social Rights' General Comment No. 4 provides detailed guidance on this particular provision.³⁸³

The Sphere Handbook provides key actions, indicators and guidance with respect to HLP. Key actions include undertaking due diligence and achieving as much legal certainty about tenure as possible given the context and constraints, the so called 'secure enough' tenure approach.³⁸⁴ Due diligence is defined by the Global Shelter Cluster as the 'process of research and analysis in any given situation to avoid harm to other persons or property'.³⁸⁵ The Global Shelter Cluster's standard on due diligence in land rights and shelter provides a number of key actions to be undertaken in order to achieve as much legal certainty as possible prior to commencing any emergency shelter programmes.

Other relevant guidance and tools supporting the 'secure enough' tenure approach include IFRC's Rapid tenure assessment Guidelines for post-disaster response planning (2015) and IFRC's Minimum elements' for community-based land mapping approaches in post disaster contexts (2015).³⁸⁶ Though highly useful for supporting efficient and equitable assistance in the relief phase, these tools do not address recovery.

Prior research on law and disaster preparedness and response undertaken by IFRC concludes with recommendations that law and policy should provide for:

- temporary emergency shelter assistance to be provided based on need rather than tenure status;
- 'secure enough' or 'reasonably secure' tenure to be applied if tenure security is necessary; and
- community verification and community-based land mapping is used to demonstrate or verify tenure.³⁸⁷

The ability to recover is also considered contingent on the ability to rebuild and reconstruct, which may in turn be contingent on the ability to show proof of tenure. The concept of ‘good enough’ tenure is closely linked to the urgency of a disaster response setting. How ‘good enough’ tenure translates into the recovery phase and longer-term resilience is an area that could be further explored by IFRC.

Relevant to recovery, the IOM and Protection Cluster and Solutions Alliance highlight in their HLP guidance note the need to address the root causes and inequalities with regard to accessing HLP. They argue that ‘unless the root causes of [HLP] issues are addressed, they will continue being barriers to recovery, sustainable development and the achievement of durable solutions’. They also emphasise that the rule of law and development programming should consider the capacity of institutions necessary to increase security of tenure, resolve disputes, maintain and enforce land records, and enable access to justice.³⁸⁸ The guidance note includes specific suggestions for HLP programming across various themes. Relevant here, these include:

- conducting a legal audit to assess consistency of national legislation with key international laws and standards of relevance to HLP, and supporting the domestication/integration of land-related international laws and standards;
- supporting the development of institutional capacity to respond to HLP challenges arising from restitution/compensation processes;
- ensuring authorities are aware of the relevant international laws and standards (e.g., the Pinheiro Principles);
- reviewing the protection of HLP of vulnerable groups (e.g., women, minorities) and, if necessary, advocate for legislative and policy frameworks to enhance the protection of their HLP;
- increasing national capacity to manage legal pluralism/coexistence of different tenure systems (e.g., protection of customary HLP); and
- supporting participatory community or state-driven land titling and land rights identification processes (only with advance guarantees that such processes will indeed protect and not weaken land rights), emphasizing that security of tenure is key part of the right to adequate housing.³⁸⁹

Regarding HLP dispute resolutions and restitution, the guidance note recommends reviewing and/or strengthening institutional capacities (e.g., court systems and cadastre), including customary justice and dispute resolution mechanisms.³⁹⁰ The guidance note makes specific reference to the Sendai Framework, including Priority 4 (see [sub-section 3.2.6](#) above), and argues that in order to design adequate DRR policies and to ‘build back better’, the formal and informal landscape of HLP must be included in planning and implementation, especially if relocation initiatives are being considered (see also [section 5.2](#) above).³⁹¹ Generally, the links between HLP and planned relocations as part of durable solutions for displacement and/or disaster risk reduction/BBB measures are highlighted across the literature reviewed.³⁹²

In ‘Holding On: Security of Tenure – Types, Policies, Practices and Challenges’ (2012), Geoffrey Payne and Alain Durand-Lasserve provide guidance on relevant elements of tenure regularization policy to incrementally move towards a more formal tenure system.³⁹³ Emphasizing that local conditions must determine policy choices, the authors provide examples of short-, medium- and long-term tenure policy options (not including customary or religious tenure categories) and outline their characteristics, benefits and limitations. Through these different policy options, the authors seek to reduce predatory pressures that might arise when a given settlement or area of land is about to become fully legal with long-term security, which may result in the displacement of existing residents or the capture of economic opportunity by outsiders. They recommend a period of 10–20 years for an incremental transition.³⁹⁴ Though there is no specific mention of recovery, these longer-term strategies may be relevant to consider in the context of recovery and reconstruction.

As initially concluded, the literature pertaining to HLP in the disaster risk management context is voluminous. As such, there may be merit in undertaking further analysis to explore how HLP is and/or should be considered in the recovery context.



Recovery efforts done by Mozambique Red Cross after Cyclone Idai.

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5.4 Housing reconstruction

Housing is reportedly the sector most affected by natural disasters and it appears accepted across the literature that '[e]ven though housing is a private good in most countries, the economic and social benefits of housing recovery justify government involvement'.³⁹⁵ The UNICEF evidence synthesis on shelter self-recovery (see [section 4.2](#) above) highlights the significance of housing and shelter in the recovery process:

*Shelter is critical to the survival of populations affected by humanitarian crises as it provides safety and security, protection from the climate and resistance to ill health and disease. Populations affected by natural disasters or complex emergencies may continue to live in their own homes and communities (even if they have been damaged or destroyed), or they may be forced to seek shelter elsewhere. Shelter and settlement interventions are therefore often described as targeting displaced or non-displaced populations. Having somewhere safe, secure and healthy to live, with access to livelihood opportunities, healthcare and education is also fundamental to sustaining family and community life during post-crisis recovery and reconstruction or displacement, return and resettlement.*³⁹⁶

Five housing reconstruction approaches are presented in the World Bank's Safer Homes, Stronger Communities Handbook, namely: (1) the cash approach; (2) owner-driven reconstruction ('ODR') in which conditional financial assistance is given, accompanied by regulations and technical support aimed at ensuring houses are built back safer; (3) community driven reconstruction; (4) agency driven reconstruction in-situ; and (5) agency driven reconstruction in a relocated site.³⁹⁷ The authors of the Handbook and the World Bank favour ODR in most situations based on the view that it is 'the most empowering, dignified, sustainable, and cost effective reconstruction approach in many types of disaster situations'.³⁹⁸ However, the Handbook recognises that each situation is unique, so other approaches may sometimes be preferred.³⁹⁹ Appendix A outlines these approaches in table format.

With respect to ODR, in 2010 the IFRC published ODR guidelines which provide operational guidance on a broad range of topics, including assessments, planning and implementation in relation to: programme development; the notion of a participatory process; technical assistance; and financial assistance.⁴⁰⁰ There are also case studies published on ODR which provide analysis on its, particularly in relation to law and policy.⁴⁰¹

As part of its Disaster Recovery Guidance Series, the GFDRR has published a housing and settlements specific recovery guidance note,⁴⁰² with housing and settlements also being addressed within other broader recovery standards and guidance notes.⁴⁰³ The GFDRR guidance note covers a range of issues, including: addressing immediate housing needs and demands; organising the housing recovery effort; establishing relevant institutional frameworks; preparing the housing sector recovery plan; mobilising and channelling financial resources; and organising the implementation process.⁴⁰⁴

A 2018 article published in the *Sustainability* journal takes the view that '[d]espite an international consensus for housing to be "built back better"...following disasters, and the considerable resources expended on reconstruction efforts globally, the management of post-disaster housing reconstruction programmes often leaves much to be desired'.⁴⁰⁵ Against the background of an analysis of post-reconstruction programmes in developing countries, the authors suggest the following legal and policy measures be considered in post-disaster housing reconstruction:

- grant provision and disbursement policies for beneficiaries/homeowners;
- provision and/or review of legislation governing local resource exploitation;
- provision and/or review of legislation and policies on tax and import duty exemptions and/or waivers;
- legislation and policies enabling enforcement/adherence to building codes and land-use regulations;
- regulation and policy provision or review to ensure provision and use of health and safety facilities and equipment;
- legislation and policy provision to mandate local manpower engagement;
- regulation and policy provision to control local resource markets including labour wage escalation; and
- legislation and policy provision to ensure accountability by donors and implementing agencies.⁴⁰⁶

5.5 Infrastructure reconstruction

Infrastructure is another sector which can be significantly affected by disasters. Infrastructure can be understood as ‘the physical and organizational structures, networks, or systems required for the successful operation of a society and its economy’.⁴⁰⁷ Specifically, infrastructure can be divided into two broad categories:

- physical infrastructure, constituting ‘public facilities that link parts of the city together and provide the basic services the city needs to function, such as a network of roads and utilities’; and
- social and economic infrastructure, including ‘facilities such as hospitals, parks and gardens, community centres, libraries, entertainment and shopping facilities, and educational buildings’.⁴⁰⁸

Although infrastructure is addressed across a number of standards and guidelines,⁴⁰⁹ the most recent specific and comprehensive guidance note on recovery and infrastructure was published by the UNDP, IRP and UNISDR in 2010. The note covers four major issues: (1) reconstruction planning, prioritisation and coordination; (2) funding infrastructure construction; (3) upgrading of infrastructure; and (4) labour, materials and technical assistance.⁴¹⁰

Some general guidance on infrastructure reconstruction is also provided in Chapter 8 of the World Bank’s Safer Homes, Stronger Communities Handbook.⁴¹¹ The position taken in the Handbook is that post-disaster reconstruction begins with a series of decisions that must be made almost immediately but ‘[d]espite the urgency with which these decisions are made, they have long-term impacts, changing the lives of those affected by the disaster for years to come’.⁴¹²

5.6 Building codes and regulations

The literature consistently emphasises the importance of strong building codes and regulations in reducing disaster risk and supporting successful reconstruction.⁴¹³

As discussed above, consistent across the literature was the notion that in order to support timely reconstruction of physical assets, various legislative measures are typically needed in order to effectively co-ordinate and accelerate the physical reconstruction process.⁴¹⁴ Rotimi et al’s article on New Zealand’s Building Act 2004, published in the International Journal of Strategic Property Management, is an example of a study concerned with the removal of bureaucratic barriers around building codes and regulations to facilitate reconstruction. The Building Act ‘provides for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings’ to ensure that:

- people who use buildings can safely do so;
- buildings appropriately contribute to people’s health and physical independence;
- people can safely escape from buildings in case of fires; and
- buildings are designed and constructed to promote sustainable development.⁴¹⁵

Strictly applied, the authors posit that the Act results in, amongst other things, loss of: ‘vital momentum of action as a result of delays caused by poor planning and implementation’; and ‘commitment to the reconstruction process because disaster practitioners are unable to apply pragmatic solutions to real-time reconstruction problems, due either to its inflexibility and fear of being held liable for decisions taken’.⁴¹⁶ The study suggests that a best practice legislative framework will ‘prepare disaster agencies to meet recovery objectives whilst not compromising the need to build back safer’.⁴¹⁷ One of the key issues with the Act with respect to recovery was that building consent process (which is an involved process requiring assessors, engineers, building control officers and other professionals for facilitation) may create a ‘potential bottleneck considering that there will be a spike of applications’ for building consent.⁴¹⁸ The authors suggest, amongst other things, discretionary powers during recovery need to be considered and training and re-training of relevant professionals, particularly via packaged-induction schemes, be considered.⁴¹⁹

In the context of disaster risk reduction, the IFRC and UNDP's 2014 multi-country report on effective law and regulation for DRR relevantly discusses sectoral laws on building and construction, land use and development planning. The report:

- concludes that most countries have extensive and legally enforceable building laws and codes, some of which integrate construction and spatial planning.⁴²⁰ However, the level of implementation and compliance varies significantly, attributed to unclear mandates, technical capacities and resources;
- notes that it is generally the responsibility of local government authorities to ensure ongoing compliance and to grant building approvals, however the legal frameworks are usually established by national or state legislation.⁴²¹ Poverty, technical and exclusionary language of codes and standards and cultural norms around government involvement in domestic house construction are identified as issues for compliance;
- notes that less formal regulations may be appropriate for small owner-built housing on safe land to allow for limited resources, with focus to be concentrated on compliance with higher standards for schools, hospitals and other gathering places; and
- concludes that an effective regulatory regime for reducing disaster risk in construction should include regulations tailored to relevant hazards, incentives and sanctions for compliance, public awareness and the devolvement of resources and capacities at the local level of implementation.⁴²²

The 2016 Guide on Effective Post-Disaster Reconstruction Programmes produced by Evidence on Demand states 'it can be said with some certainty that the impact of a disaster will be related to the quality of codes and standards and demonstrate the extent of enforcement and compliance'.⁴²³ The guide describes building codes, standards and regulations 'as the basis for ensuring confidence in infrastructure assets for all stakeholders',⁴²⁴ arguing for a balance between setting strong codes, specifications and enforcement and driving people away from the formal construction sector. To achieve this balance, the authors recommend:

- setting appropriate codes, i.e., codes that are easily available, accessible, understandable, affordable;
- setting codes for the informal sector, incorporating basic design strengthening features;
- linking training with materials and micro-finance;
- integrating formal systems with key stakeholders, such as linking financing with insurance and compliance with codes; and
- tailoring systems for housing and infrastructure, recognising that housing is often built by individuals with infrastructure built by governmental and commercial organisations.⁴²⁵

The World Bank's 2010 Handbook for Reconstructing after Natural Disasters emphasises that any comprehensive post-disaster reconstruction plan should include a mapping and possible strengthening of existing building codes and standards for reconstruction, noting that any updates should conform with local building technologies and materials and appropriately reflect the cultural and climatic conditions.⁴²⁶

As a case study, the relatively few major structural collapses and low casualty rate during the 2010 Maule earthquake is credited to the robust building codes and their enforcement in Maule urban settlements. Notably, Chilean law reportedly holds original building owners accountable for any damage or losses that can be traced to a code violation (regardless of changes in ownership). Moreover, Chile reportedly requires construction plans for public buildings (e.g., schools, hospitals) and high-rise buildings to be approved by an independent reviewer.⁴²⁷



Julia Wati cares for tree saplings in Indonesia. The American Red Cross provided relief after the 2004 Indian Ocean Tsunami, but also invested in long-term projects to ensure that towns build back stronger, healthier, and better prepared.

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6 | SUMMARY OF FINDINGS

This section provides a brief overview of the topics explored above and identifies some areas which may require further research. A more detailed analysis of specific gaps and further research is provided separately to the IFRC-DLP.

Definitions and scope of recovery and reconstruction

- The literature is generally consistent in adopting the UNDRR definitions of recovery.
- The UNDRR definition of reconstruction is widely accepted and in general is considered to be a part of recovery.
- BBB/safety is considered an essential component of recovery and is the subject of specific approaches and frameworks, sometimes considered as encompassing the whole recovery process, including development and resilience. Importantly, legislation for ‘compliance’, ‘facilitation’ and ‘inclusive approaches’ are seen as key ingredients for ensuring that BBB is achieved. ‘Risk informed recovery’ is also a potentially relevant topic given the broader literature on risk-informed approaches.
- There are intersections between recovery and other aspects of disaster risk management.
 - **Response and early recovery:** While much of the literature describes response and early recovery as occurring concurrently and alongside longer term recovery, others describe them as separate, time-bound processes.
 - **Development:** Some literature describes recovery as extending only as far as enabling disaster mitigation measures but not the achievement of broader long-term development goals, whereas other literature describes these two processes as intertwined and potentially spanning decades.
 - **Resilience:** Most literature regards recovery as an important opportunity to further the resilience agenda.

Legal frameworks for disaster recovery and reconstruction

- Recovery is generally addressed within the broader context of disaster management and mostly in ‘soft law’ and guidance documents rather than legal instruments.

- **International Law:** International Human rights Law is applicable in post-disaster situations and a number of human rights are of particular relevance during the recovery process (e.g., the rights to food, water, housing and livelihoods). Refugee Law and the Guiding Principles on Internal Displacement reaffirm the applicability of IHRL in recovery and recognise the entitlement to recovery assistance, including recovery processes such as resettlement. International Environmental Law treaties and declarations reinforce the importance of environmental protection within disaster management and reinforces the link between environmental protection, sustainability, climate change and recovery/build back better.
- **Soft law and other international instruments:** There are numerous relevant instruments although many are applicable to all phases of disaster management and are not specific to recovery. These include: UNGA Resolution 46/182; IDRL Guidelines; ILC protection of persons in the event of disasters; IASC Operational Guidelines on Protection of Persons in Natural Disasters; Sendai Framework for DRR; Sphere Handbook and the SDGs.
- **Bilateral agreements:** There are numerous agreements concerning bilateral cooperation in the event of disaster however further examination is needed to determine the extent to which they also address specific issues of recovery and reconstruction.
- **Regional legal frameworks:** The Hyogo Framework and SDGs have provided the impetus for the development of comprehensive legal frameworks at regional level which need further examination.
- **National legal frameworks:** Countries have many different approaches to addressing recovery in their legal frameworks for disaster. Sometimes it is included as part of their disaster management law, sometimes as part of 'development', but there has also been a growing trend for countries affected by major disasters to establish dedicated agencies and legal arrangements for recovery. These different approaches considered to have advantages and disadvantages, with key elements of success including the clear demarcation of responsibilities and minimized bureaucratic hurdles. This is an area requiring further examination.

Key recovery themes identified in the literature

- **Post-disaster needs assessments:** PDNAs are an internationally accepted methodology for determining recovery needs after disaster, through a government-led process, supported by comprehensive standards.
- **Community/people-centered approaches to recovery:** Numerous guidelines and standards emphasise the importance of disaster-affected communities being empowered to take key roles in and/or lead their own disaster recovery. These include a number of specific recommendations relating to stakeholder engagement, socio-cultural considerations, and the engagement of existing community structures and knowledge.
- **Vulnerable groups:** The literature identifies a number of pre-existing factors which may increase people's vulnerability post-disaster, which should be taken into account as part of the recovery process. These include socio-economic status, gender, age and health, which are often considered in a siloed way across different guidelines. Some recent literature encourages the consideration of peoples' 'intersectional vulnerability' in recognition that vulnerability and its impact vary according to a combination of context-specific power relations, and encourages the use of pre-disaster baselines against which to measure the increased risks and vulnerabilities caused by the disaster. Gender inequality and sexual and gender-based violence are also the subject of specific focus in recovery-related guidance.
- **Urban recovery:** The literature recognises the unique context and particular challenges of recovery in urban locations due to population density, diversity and dynamic social changes. The IFRC has identified a number of issues for urban recovery to be taken into consideration and has developed recommendations for National Red Cross / Red Crescent Societies to build capacities to respond to post-disaster urban displacement.
- **Culture:** The importance of understanding culture in disaster recovery is an emerging issue which may be relevant to disaster law and policy frameworks. Culture in cities has also been identified as a specific issue for reconstruction and recovery which has been the subject of specific guidance by UNESCO and the World Bank Group. In particular, it would be useful to explore this guidance from a legal and policy standpoint.

- **The environment:** Environmental considerations are considered an important aspect of the recovery process, both in the context of the restoration of the environment after disasters but also as part of future disaster risk and climate change adaptation, and in ensuring that communities have continued and sustainable access to essential services. A number of organisations are promoting the integration of 'green' approaches throughout their humanitarian work.
- **Disaster debris/waste management:** The literature acknowledges the many challenges posed by the quantity of and capacities for removing solid, liquid and hazardous waste generated by disaster situations. Specific international guidelines have been developed to identify measures to improve the management of disaster waste addressing the following topics, all of which have relevant legal and policy dimensions: planning; management of health and safety; the reuse/recycling of materials; and environmental protection.
- **Livelihoods:** The restoration of livelihoods is considered one of the core purposes of recovery and is frequently addressed in the literature. Some literature frames this in terms of 'livelihood protection' which should be both 'enabled' through the provision of financial and material assistance, and 'improved' through building economic and environment sustainability. Livelihood capacity building for women and vulnerable groups is also encouraged.
- **Education:** The literature recognises the importance of prioritising education sector recovery, in particular primary and secondary education, due to the unique risks of children in disaster contexts, but also because of its central role in supporting community livelihoods and well-being. In this regard, BBB approaches are recommended.
- **Health:** Underpinned by the right to health, the literature identifies laws and policies for recovery of the health sector as being of vital importance, including the recovery of health facilities, recovery of the population from disaster-related illnesses and injuries and the return of normal health and medical services, including principles of BBB. Recovery from a 'health emergency' such as an epidemic is also identified as requiring a greater focus on recovery and needs a further examination. Ministry leadership, appropriate resources and the strengthening of legislation on health care, child mortality and maternal health are also considered important.
- **Psychosocial recovery:** There is significant literature addressing the specific topic of the recovery of mental health following a disaster, for both people affected by disaster and support workers. It is recognised as being connected to overall community recovery. Specific policy considerations include: recognising the importance of psychosocial support in post-disaster settings; developing a sustainable mental health system; and ensuring it is adequately resourced. A number of other guidance documents provide more specific measures which can support this area.
- **Private sector:** The literature considers the role of the private sector as both a beneficiary and provider of support during disaster recovery, and as such encourages strong collaboration between the private and public sectors. In particular, the literature highlights the key roles of the private sector: as economic purveyors of goods and services; as local institutions representing the interests of communities; and as charitable donors of goods, services and expertise. Further research is needed on the policy considerations to facilitate these different roles.
- **Financing recovery:** Ensuring adequate and timely financing for recovery is identified in the literature as a major challenge and something that often falls through the gap between immediate humanitarian response and longer term development funding mechanisms. Securing funds for recovery as part of the humanitarian response and identifying non-traditional sources such as micro-finance and peer-to-peer lending platforms is also recommended. There are also a number of guidance documents on the implementation of multi-sector cash transfers for recovery, including for urban settings.
- **Internal displacement:** Protracted internal displacement following a disaster is identified as a critical recovery issue, and has been the subject of numerous studies and guidelines on addressing needs and finding durable solutions to end displacement. National authorities are considered to have the primary responsibility in this regard and should be facilitating rapid and unimpeded access to humanitarian agencies in complementary roles. The various issues affecting protracted displacement and durable solutions include: housing, land and property barriers; addressing the needs of host communities; the complexity of finding new locations for settlement; lack of clarity around local government authority; and residual hazards, economic and social challenges.

- **Legal facilities:** Legal facilities are defined as the provision of legal exemptions, privileges and removal of bureaucratic barriers to support recovery activities. The IDRL Guidelines include legal facilities such as visas for early recovery, but do not necessarily answer questions about facilities for long-term recovery. The literature addresses the removal of bureaucratic hurdles for reconstruction (discussed further below) but these measures depend on the specific context. This area needs further examination.
- **Monitoring and evaluation:** M&E has been identified as essential for BBB and for the accountability of recovery providers, both public and private. Various international guidance exists on the principles and practice of good M&E approaches, much of which has been developed by and for the humanitarian sector. An example is given of a national government evaluation framework for disaster recovery, which includes guidance on evaluation questions, data collection and dissemination on findings.
- **Capacity development:** Standards and guidelines emphasise the importance of strengthening the current and future abilities of the public sector and communities to recover in the aftermath of disaster, which can be integrated into existing recovery activities or as stand-alone interventions.

Key reconstruction themes identified in the literature

- **Building back safer and sustainability:** While applicable to recovery more broadly, the literature identifies a number of opportunities for integrating building back safer and sustainability into reconstruction efforts, including climate change considerations. These include: the integration of disaster risk reduction measures into building, infrastructure, land use and planning regulations; upgrading damaged assets with more appropriate and technologically advanced solutions; and improving infrastructure to better meet the needs of the community.
- **Reconstruction planning:** There is detailed multi-stakeholder guidance on post-disaster reconstruction planning, which could be considered highly relevant to the development of domestic legislation and policy for recovery. This includes a number of overarching principles and a range of topics including public policies for physical and land use planning, infrastructure and services delivery, environmental planning, housing design and construction technology, and cultural heritage conservation.
- **Housing, land and property rights:** The extensive literature on this complex topic is largely focused on resolving tenure issues during emergency operations, which includes concepts such as ‘secure enough’ and ‘good enough’ tenure and community-based solutions for settling tenure disputes. In a recovery context, the literature suggests greater emphasis could be placed on longer term issues such as addressing the root causes of inequality of tenure and the strengthening of domestic HLP systems including resolution mechanisms and restitution. Further analysis of the literature is needed in this area.
- **Housing reconstruction:** The literature describes several approaches commonly undertaken for housing reconstruction and although context-specific, there is strong support for ‘owner driven reconstruction’, which includes financial, regulatory and technical assistance for housing which is built back safer. There are extensive operational resources on this subject, some of which also highlight a number of key legal and policy measures which could be taken by governments to facilitate and ensure the quality and fairness of the housing reconstruction process.
- **Infrastructure reconstruction:** This includes both physical infrastructure, such as roads and public utilities, and social and economic infrastructures, such as schools, hospitals, and community facilities. There are numerous documents recommending international standards and guidelines be integrated into domestic legal and policy frameworks, including those addressing: infrastructure reconstruction planning, prioritisation and coordination; funding infrastructure construction; upgrading of infrastructure; and labour, materials and technical assistance.
- **Building codes and regulations:** Good building codes are widely regarded in the literature as essential for supporting reconstruction efforts and building back safer approaches. The central dilemma is finding the right balance between strengthening measures to ensure safety, risk reduction and sustainability on the one hand, and the need to minimise bureaucracy, complexity, costs and other deterrents to reconstruction on the other. Although it is acknowledged that every context is different, the literature identifies a number of core principles and there are examples of measures which have helped to ensure building codes are effectively implemented.

APPENDIX A – APPROACHES TO HOUSING RECONSTRUCTION

Reconstruction Approach	Potential legal issues
<p>Cash approach - cash only assistance to disaster affected households</p>	<ul style="list-style-type: none"> • Determining legal ownership / tenancies, potential for exclusion • Increased potential for non-compliance with planning laws, building regulations, material standards • Use of unregulated construction labour • Regulations related to cash transfer. This could include laws and regulations that effectively exclude vulnerable from financial inclusion.
<p>Owner-driven reconstruction - conditional cash transfer to households, with technical assistance and training. Normally cash in tranches after stages of construction have been approved.</p>	<ul style="list-style-type: none"> • Determining legal ownership / tenancies, protection for exclusion • Regulations related to cash transfer • Regulations related to training • Planning law, Building codes and compliance • Regulations related to liability for humanitarian agency (especially an issue in relation to repairs)
<p>Community driven reconstruction (CDR) - transfer of funds to community group. Normally includes technical assistance and training of community and households.</p>	<ul style="list-style-type: none"> • Laws and regulations related to community based organisations / civil society organisations. • Regulations related to cash transfer • Liability issues for humanitarian agency • Contract between community legal entity and contractor
<p>Agency-driven reconstruction in-situ - Agency hires a contractor to reconstruct. Contractor may then but not always contract local people.</p>	<ul style="list-style-type: none"> • Contract compliance with national laws & enforceable (does not have to be within the country) • Design compliance with planning laws, building codes, environmental regulations
<p>Agency driven reconstruction in relocated site - Agency hires a contractor to reconstruct.</p>	<ul style="list-style-type: none"> • Contract compliance with national laws & enforceable (does not have to be within country) • Design compliant with planning laws, building codes, environmental regulations

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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.



The International Federation of Red Cross and Red Crescent Societies (IFRC) is the world's largest humanitarian network, with **192 National Red Cross and Red Crescent Societies** and around **14 million volunteers**. Our volunteers are present in communities before, during and after a crisis or disaster. We work in the most hard to reach and complex settings in the world, saving lives and promoting human dignity. We support communities to become stronger and more resilient places where people can live safe and healthy lives, and have opportunities to thrive.