



Ready or not?

Third progress report on the implementation of the Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance

November 2015

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Saving lives, changing minds.



The International Federation of Red Cross and Red Crescent Societies' work is guided by the Strategy 2020 which puts forward three strategic aims:

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

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The International Federation of Red Cross and Red Crescent Societies (IFRC) is the world's largest volunteer-based humanitarian network. Together with our 189 member National Red Cross and Red Crescent Societies worldwide, we reach 97 million people annually through long-term services and development programmes as well as 85 million people through disaster response and early recovery programmes.

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Cover photo: The Pakistan Red Crescent distributes relief after an earthquake in Khyber Pakhtunkhwa province. © IFRC.

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Executive summary

In 2007, the International Conference of the Red Cross and Red Crescent adopted the “Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance” (also known as the IDRL Guidelines). The Guidelines were developed after six years of research and consultations by the International Federation of Red Cross and Red Crescent Societies (IFRC) revealed a consistent set of regulatory problems in international relief operations, resulting from a lack of clear rules at the domestic level. Drawing on existing international norms and global experience, the IDRL Guidelines provide recommendations as to how states can strengthen their own laws, rules and procedures to avoid regulatory problems in disasters.

Since their adoption, 23 countries have adopted new laws, rules or procedures drawing on the IDRL Guidelines. Over a dozen more have bills or draft rules currently pending. In addition, a number of global and regional organizations have made use of the IDRL Guidelines to develop or strengthen regional mechanisms for international disaster cooperation. For their part, numerous National Red Cross and Red Crescent Societies have been active in supporting their authorities to make use of the IDRL Guidelines and the IFRC has developed a number of fruitful partnerships to help support their dissemination.

While this level of progress appears to compare favourably with that of similar guidance documents, it still means that many states have yet to adopt comprehensive rules to manage international relief in future operations. Moreover, recent research indicates that regulatory problems continue to burden international operations. Stakeholders have therefore suggested that methods be explored to accelerate progress, including the possibility of further strengthening regional and global legal frameworks for international disaster cooperation.

Introduction

This report is intended to update the state parties to the Geneva Conventions, the components of the Red Cross and Red Crescent Movement and their many partners about global progress in the implementation of the “Guidelines for the domestic facilitation and regulation of international disaster response and initial recovery assistance” also known as the “IDRL Guidelines.” It follows on similar updates prepared by the International Federation of Red Cross and Red Crescent Societies in 2009 and 2011.

1. Background

The numbers and impacts of disasters are on the rise world-wide. While many countries have significantly improved their preparedness in recent years, major disasters (some predictable, others utterly unexpected) still regularly overwhelm domestic capacities. To name just a few, since the last update report in 2011, the Philippines (with Typhoon Haiyan of 2013), Vanuatu (with Cyclone Pam of 2015), Nepal (with the 2015 earthquake), Serbia, Bosnia and Croatia (with the 2014 floods), and Guinea, Liberia and Sierra Leone (with the 2014 Ebola outbreak) experienced some of the worst disasters in their histories, requiring significant international support.

Global experience has shown that managing international assistance operations is becoming increasingly complex. The absence of a specific domestic regulatory framework can make it very difficult for an affected state to oversee, regulate and facilitate the entry of life-saving relief. Ad-hoc approaches, hastily devised in the wake of a catastrophic disaster, have often led to a certain loss of state control and the arrival of inappropriate or poor quality relief. They also frequently result in unnecessary restrictions, delays and expenses hampering the right aid, just when it is most urgently needed. Nevertheless, few states have comprehensive frameworks in place.

In 2007, after six years of research and consultations on these issues, the International Federation of Red Cross and Red Crescent Societies led negotiations on the development of the IDRL Guidelines. This non-binding set of recommendations aims to assist states to develop the necessary laws, rules and procedures in order to avoid the most common regulatory problems in international response operations. The IDRL Guidelines were unanimously adopted by the state parties to the Geneva Conventions at the 30th International Conference of the Red Cross and Red Crescent later that year.

In 2011, Resolution 7 of the 31st International Conference welcomed progress to date in the implementation of the Guidelines (including the development of model act, as described further below), but noted that many states' legal and institutional frameworks remained under-prepared. Reiterating the "urgency" of action, the resolution also called on states, National Societies and other partners to renew their efforts to put the IDRL Guidelines into practice.

2. Progress at the national level

a. New legislation, regulations and procedures

At the time of the 2011 progress report, 9 countries had adopted new laws, rules or procedures based on the IDRL Guidelines. As of the writing of this report, that number has now more than doubled, for a new total of 23 countries, including 4 in Africa, 6 in the Americas, 8 in Asia-Pacific, and 5 in Europe and Central Asia¹.

Figure 1: Countries where laws or rules drawing on the IDRL Guidelines have been adopted



Some of these countries (Burkina Faso, Cambodia, Seychelles, and Vietnam) have included extensive sections drawing on the IDRL Guidelines in their national disaster management (DM) acts. Several others (Colombia, Indonesia, Namibia, Peru, Philippines) have included much more cursory provisions in their DM acts, but with the intention of fleshing them out with implementing regulations. Others have included individual provisions in sectoral laws or regulations, such as those on immigration (Mexico, Norway), customs (Tajikistan), aviation (Ecuador) and medicines (Mozambique), while some have adopted less formal instruments, such as operating procedures or manuals (Cook Islands, New Zealand, Netherlands). A fuller description of the developments in each of the 23 countries is provided in Annex 1.

Indonesia, whose lack of procedures was a major gap during the 2004 tsunami operation, is now a global leader in terms of the comprehensiveness of its

¹ They are Bhutan, Burkina Faso, Bosnia-Herzegovina, Cambodia, Colombia, Cook Islands, Ecuador, Indonesia, Mexico, Mozambique, Namibia, Seychelles, Finland, Norway, Netherlands, New Zealand, Panama, Paraguay, Peru, Philippines, Tajikistan and Vietnam.

legislation, regulations and guidelines drawing on the Guidelines. A 2014 impact study by the Indonesian Red Cross found that the new rules had contributed positively in several recent disasters, through additional work was still needed to ensure their full understanding and implementation. For its part, in 2015, Colombia launched the first formal “National IDRL Technical Advisory Commission” to meet regularly and advise the government on preparations for managing future international disaster assistance. Moreover, with support from the Vanuatu Red Cross and IFRC, Vanuatu officials temporarily adopted a set of ad hoc rules drawing on the IDRL Guidelines in the immediate aftermath of Cyclone Pam, which contributed to smoother management of relief activities. Vanuatu is now considering the adoption of more permanent rules for the future.

In addition, the IFRC is aware of some 13 countries that have draft legislation or rules currently pending that draw substantially on the IDRL Guidelines (see Annex 2). Many of these draw substantially on the “Model act on the facilitation and regulation of international disaster relief and initial recovery assistance” described further below.

b. Technical support

Since 2007, National Societies, with support from the IFRC and other partners, have provided technical assistance in 53 countries to support interested governmental authorities to use the IDRL Guidelines to evaluate and, as necessary, strengthen their relevant laws, rules or procedures (see Annex 3). This assistance has ranged from training, legal research and stakeholder consultations, to drafting assistance with new bills, rules or procedures. In many cases, it has involved years-long processes of consultation, technical advice and support.

Since 2007, some 31 research reports on national laws and rules for regulating international disaster response have been published, supporting not only legal development projects domestically but also providing valuable comparative information for other countries.² Since 2012 (when figures began to be compiled), more than 50 country-level workshops on disaster law have been organized by National Societies in cooperation with their authorities.

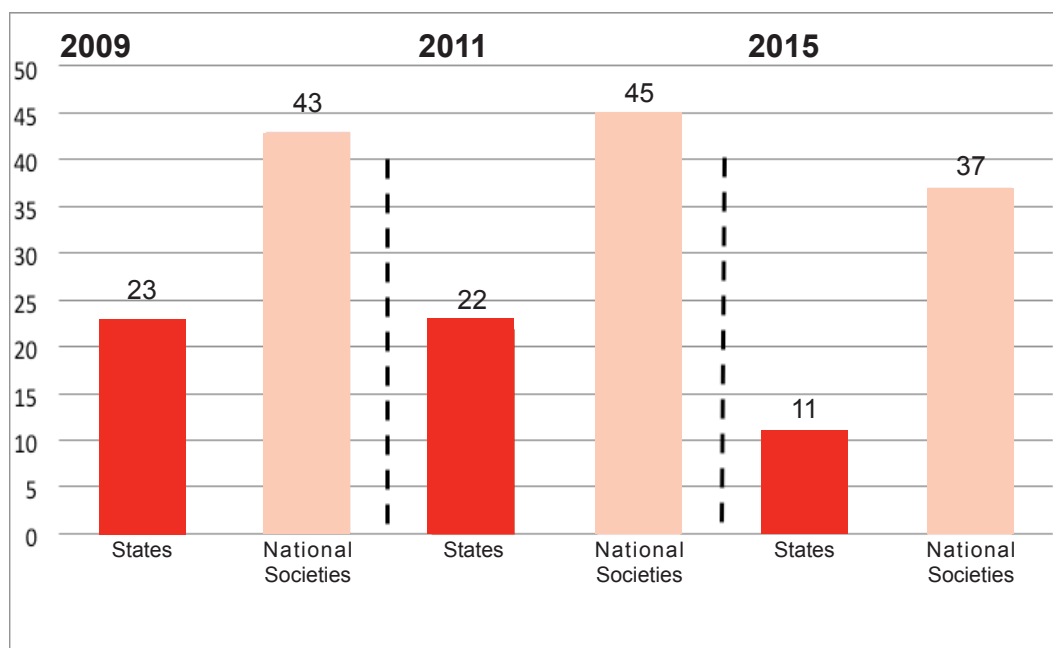
Members of the International Conference have been formally surveyed on several occasions about their follow-up with various resolutions of the 30th International Conference, including Resolution 4 concerning the IDRL Guidelines. Unfortunately, the response to these surveys has been less complete than might be hoped. Nevertheless, the chart below sets out the numbers of states and National Societies that have indicated in those surveys that they were actively following-up with the IDRL Guidelines.

A drop can be seen in the number of states reporting engagement, from 22 in 2011 to 11 in 2015. However, the IFRC is itself currently engaged in supporting National Societies to cooperate with their states in follow-up projects related to the IDRL Guidelines in over twenty countries, and therefore believes that the results are not fully representative. Nevertheless, they do illustrate the danger that “issue

² These reports are available at www.ifrc.org/dl.

fatigue” might halt momentum before a more substantial number of countries have adopted the rules and procedures they need to manage future assistance, as discussed more fully below.

Figure 2: Reported follow-up on the IDRL Guidelines



c. Strengthened capacity

National Societies have been active in building their knowledge and capacity to support their authorities to make use of the IDRL Guidelines and improve their preparedness for managing international disaster assistance. Since 2012, at least one volunteer or staff member has been trained on disaster law issues in 107 National Societies. The Italian Red Cross has been among the most active, offering repeated intensive trainings on disaster law to dozens of its international humanitarian law volunteers. The Costa Rica Red Cross has also recently taken up IDRL training. Miguel Carmona Jimenez, president of the Costa Rica Red Cross has noted that “training in disaster law should be a priority for any Red Crosser.”

3. Progress at the regional level

In addition to progress at the national level, many regional organisations have utilised the IDRL Guidelines in developing or strengthening their regional frameworks and mechanisms for disaster management. The implementation of these regional frameworks is expected to result in continued progress at the national level, as states amend their rules and procedures to align with them.

a. Africa

The African Union (AU) has developed a draft Humanitarian Policy Framework that, including a Disaster Management Policy that refers to the IDRL Guidelines and the importance of legal preparedness for international disaster relief. However, the framework is still pending final approval from AU heads of state. This is now expected to take place in early 2016. The IFRC has been cooperating with the AU on initial mapping of disaster management legislation in the region as well as on several regional workshops and consultations to discuss the issue of IDRL. It has also lent its support to workshops promoting the ratification and implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) of 2009, which includes provisions relevant to the facilitation of international humanitarian assistance when national capacities are exceeded.

In mid-2015, the IFRC and AU jointly organised a consultative meeting on law and disasters, seeking views from member states and Regional Economic Communities on how the IDRL Guidelines could be further progressed. African Red Cross and Red Crescent Societies, as well as AU member states, confirmed the importance of prioritizing the development of effective international disaster response laws.

At the sub-regional level, the IFRC has organized joint workshops related to the IDRL Guidelines for states and humanitarian partners with the Southern African Development Community (SADC), Economic Community of Western African States (ECOWAS), Intergovernmental Authority on Development (IGAD), Economic Community of Central African States (ECCAS), and the Indian Ocean Commission (IOC).

b. Americas

In the Americas, formal inter-governmental resolutions drawing on IDRL Guidelines have been adopted by the Organization of American States (OAS) as well as several of the annual “Enhancing International Humanitarian Partnerships”

(MIAH) meetings and Regional Platforms on Disaster Risk Reduction.³ In 2013, two head of state summit outcomes, from ACS⁴ and the Central American System for Integration (SICA),⁵ committed member states to improving legal preparedness for international relief. The Central American Coordination Centre for Natural Disaster Prevention (CEPREDENAC), Andean Committee for Disaster Prevention and Assistance (CAPRADE), and the Union of South American Nations (UNASUR) have all drawn on the IDRL Guidelines in updated versions of regional manuals for disaster cooperation. The Caribbean Disaster Emergency Management Agency (CDEMA) also considered the IDRL Guidelines in the development of the Model Comprehensive Disaster Management Legislation and Regulations in 2013.

The IFRC has worked in collaboration with SICA and the Central America Economic Integration System (SIECA) in the development of a regional protocol as well as regional customs arrangements drawing on the IDRL Guidelines. Both have been “technically validated” and await approval by heads of state later this year. This year, Panama and Costa Rica drew on the IDRL Guidelines in updating their bilateral cooperation agreement to facilitate cross-border pre-hospital assistance by their National Societies.

The Permanent Working Group of Inter-Governmental Bodies of Latin America and the Caribbean (consisting of the OAS, CAN-CAPRADE, SICA-CEPREDENAC, CARICOM-CDEMA, CELAC, MERCOSUR-REHU, UNASUR, ACS, SELA and the Iberoamerican Association of Governmental Civil Defence and Civil Protection Bodies) has decided to prioritize the promotion of the culmination of the “Regional Legal Compendium for International Humanitarian Assistance in Cases of Emergency” as one of its main activities.

While pre-dating the IDRL Guidelines, it should also be recalled that some six countries have acceded to date to the OAS’ Inter-American Convention to Facilitate Disaster Assistance of 1991. Of these, three countries joined the convention since the IDRL Guidelines were adopted in 2007. However, the agreement has yet to be applied operationally and there have been discussions in the region about possibilities for a more modern text.

c. Asia Pacific

In 2009, the Association of Southeast Asian Nations’ (ASEAN) Agreement on Disaster Management and Emergency Response (AADMER) entered into force. To help operationalize the agreement, ASEAN developed a set of operating procedures, drawing on the IDRL Guidelines. The IFRC has also provided its support for consideration of regulatory issues in a number of regional simulation exercises, trainings and other meetings organized under the mantle of the AADMER. Drawing on the AADMER, the South Asia Regional Cooperation (SAARC) adopted its own Agreement on Rapid Response to Natural Disasters in 2011, however this latter

³ These outcome documents are available at <http://bit.ly/20Jnqch>.

⁴ Association of Caribbean States, Fifth Summit of the Heads of State or Government, Declaration of Petition-Ville, April 26, 2013.

⁵ Declaration of the 41st Ordinary Meeting of the Heads of State and Government of the Member States of the Central American System for Integration, 27 June 2013.

agreement is not yet in force. The IFRC and SAARC are continuing discussions on how to partner on IDRL training and dissemination amongst South Asian member states.

In 2008, the Asia Pacific Economic Cooperation (APEC) Summit adopted a new Strategy for Disaster Risk Reduction and Emergency Preparedness. The Strategy refers to the IDRL Guidelines and possible cooperation with the IFRC in assisting member states to use them. More recently, East Asian Summit (EAS) participating countries (comprising the 10 ASEAN member states and 8 additional states from across Asia-Pacific) adopted the EAS Rapid Disaster Response Toolkit, which draws on the IDRL Guidelines and, among other things, encourages planned and coordinated management of offers and requests for international disaster assistance.

In 2012, Pacific Islands Forum leaders (heads of government) adopted the 42nd PIF Leaders Communiqué which included a provision calling on all member countries to consider the IDRL Guidelines and to work with National Societies, the IFRC, the UN and other partners to strengthen their legal frameworks.

d. Europe and Central Asia

In 2007, just following the 30th International Conference, the European Union adopted its European Consensus on Humanitarian Aid, setting out its priorities in the humanitarian domain. The document expressly subscribed to the IDRL Guidelines and tasked the European Commission with developing an action plan for practical measures to implement the Consensus.

In 2010, the European Council adopted “Council Conclusions on Host Nation Support,” which recognized that legal and administrative requirements may be a barrier to speedy cross-border disaster assistance and in 2012 the European Commission issued a set of “EU Guidelines on Host Nation Support,” drawing on the IDRL Guidelines. EU and member states’ commitments concerning building host nation support preparedness were later included in 2013 revision of the legislation underlying the Union Civil Protection Mechanism. While not linked to the IDRL Guidelines, it is also worth noting that the Lisbon Treaty of 2007 established a new legal basis for civil protection cooperation in the EU as well as specific duties for mutual assistance in cases of disaster.

The North Atlantic Treaty Organization (NATO) drew on the IDRL Guidelines for its 2009 Checklist and Non-Binding Guidelines for the Request, Reception and Provision of International Assistance on IFRC advice for its 2014 Model Technical Arrangement for Liability of Relief Personnel. In 2013, the Organization for Security and Cooperation in Europe (OSCE) likewise drew on the IDRL Guidelines for a Self-Assessment Tool for Nations to Increase Preparedness for Cross-Border Implications of Crises.

In Eastern Europe and Central Asia, the Commonwealth of Independent States (CIS) Inter-Parliamentary Assembly formally adopted in 2014 a model for the consideration of its member states for national legislation on the regulation of international disaster relief. This model drew substantially on the model act

published by IFRC, OCHA and the Inter-Parliamentary Union in 2013. As a CIS model, this document will now be promoted among the national legislatures of member states. Likewise, in 2015 the Collective Security Treaty Organization (CSTO) parliamentary assembly also adopted a resolution calling on its member parliaments to consider the IFRC/OCHA/IPU model act.

e. The Middle East and North Africa

Since the adoption of the IDRL Guidelines in 2007, the League of Arab States (LAS) has adopted a revised version of its Arab Cooperation Agreement in organization and facilitation of relief operations (first approved by LAS Council in 1987, entered into force in 1990 and updated in 2009) and also developed a draft Arab Protocol (2008) on cooperation for speedy and immediate response within Arab countries to transfer equipment and expertise in cases of disasters, crisis and emergencies.

With support from the Qatar Red Crescent Society, the Gulf Cooperation Council has developed regional manual to strengthen their legal framework for facilitation and regulation of international disaster response operations, drawing on the IDRL Guidelines.

4. Progress at the global level

a. Promotion of the IDRL Guidelines at the United Nations

A number of UN resolutions and outcomes have promoted the use of the IDRL Guidelines by member states. UN General Assembly resolutions 66/227 of 2011, 67/231 of 2012, 68/103 of 2013, 69/243 of 2014, on “international cooperation on humanitarian assistance in the field of natural disasters, from relief to development” and 66/119 of 2011, 67/87 of 2012, 68/102 of 2013, 69/135 of 2014 on “strengthening of the coordination of emergency of emergency humanitarian assistance” welcomed progress in the implementation of the IDRL Guidelines and the support of National Societies and other partners in this respect. Furthermore, ECOSOC Resolutions 2012/3, 2013/6 and 2014/13 on “Strengthening of the coordination of emergency humanitarian assistance of the United Nations” have also made a reference to the IDRL Guidelines, encouraging states to adopt and implement them.

Likewise, the Sendai Framework for Disaster Risk Reduction 2015-2030 underlines the importance of “review[ing] and strengthen[ing], as appropriate, national laws and procedures on international cooperation, based on the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance” (para 33(p)).

In 2011, the IFRC signed an MOU with OCHA about cooperating in promoting legal preparedness for international disaster response. The two agencies have subsequently collaborated in a number of regional workshops to promote dialogue on this topic, as well as in the development of key products, including the Model Act and Model Emergency Decree, as discussed further below.

b. International Law Commission

In 2007, the International Law Commission (ILC), a UN body of legal experts elected by states to promote the “progressive development of international law and its codification,” began work on “Draft Articles on the Protection of Persons in the Event of Disasters.” The draft articles aim to “facilitate an adequate and effective response to disasters that meets the essential needs of the persons concerned, with full respect for their rights” (article 2).

The reports of the ILC’s special rapporteur on this topic, Dr. Eduardo Valencia-Ospina, have made reference to the IDRL Guidelines, though the text of the Draft articles themselves have entered into less technical detail. In 2014, the ILC adopted the first reading of the draft articles and called for comment from states, UN agencies and other organizations, including the IFRC and International Committee of the Red Cross.

c. World Customs Organization

In 2010, the World Customs Organization signed MOUs with the IFRC and with OCHA and created an ad hoc working group of its members to develop an action plan to promote effective customs treatment of relief consignments in situations of disaster. In 2011, the WCO's Permanent Council adopted a resolution on "the role of customs in natural disaster relief," which refers to the IDRL Guidelines and sets out a series of steps for the WCO secretariat and member states to take in coordination with IFRC and OCHA to improve their preparedness for future disasters, including national reviews of existing rules and procedures, the development of global reference materials, and the convening of regional dialogues between customs administrations and humanitarian organizations. Since that time, the WCO, OCHA and IFRC have co-sponsored three regional workshops for customs and disaster management officials with humanitarian organizations.

OCHA and IFRC are currently supporting discussions among member states of Istanbul Convention on Temporary Admission and the Revised Kyoto Convention on the Simplification and Harmonization of Customs procedures concerning updating provisions of these two instruments related to disaster situations drawing on the IDRL Guidelines.

5. New tools and training opportunities

a. New tools

From 2009-11, the IFRC partnered with OCHA and the Inter-Parliamentary Union (IPU) to develop a “Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance” to assist states in incorporating the recommendations of the IDRL Guidelines into their national law. The project benefited from expert assistance from the WCO and pro bono help from the law firms of Allen & Overy LLP, CMS Cameron McKenna, Baker & McKenzie, and the legal department of Microsoft Corporation and benefitted from the input of numerous outside experts.

In 2011, a “pilot” version of the model act was completed and the 31st International Conference of the Red Cross and Red Crescent welcomed this initiative. After piloting in several countries and additional consultations, in 2012, a final version of the Model Act was launched in 2013. In 2014, the IFRC and OCHA, with support from Allen & Overy LLP, also developed a pilot model emergency decree, which will be finalized in 2015. The model emergency decree is designed for countries that have not been able to develop necessary laws for managing international relief before a disaster strikes. Along similar lines, a model regulation has also been under development.

b. Training and learning opportunities

In 2010, the IFRC developed an introductory module on the IDRL Guidelines in four languages, available to anyone interested, without cost, on the IFRC’s online Learning Platform. To date, it has been completed by 2,854 individuals.

Since 2012, the IFRC has also cooperated with various partners to organize an annual “Short Course on Law, Legal Protection and Disasters” for governmental officials, representatives of the Red Cross and Red Crescent representatives and the United Nations and other stakeholders, and hosted by the International Institute for Humanitarian Law (IIHL) in Sanremo, Italy. Delegations are invited from states in which disaster law issues are under active discussion and have contributed to several of the new laws and procedures that have been adopted, as noted above. For the last two years, the course has been conducted in partnership with the United Nations Development Programme. In addition, since 2014, the IFRC has cooperated with the law faculties of the Universities of Bologna, Roma Tre, Uninettuno and Pisa, Sant’Anna to co-convene another annual course at the IIHL, the “International Disaster Law Course.” This course is targeted to academics and humanitarian practitioners on a global basis, with open enrolment.

The IFRC has additionally supported numerous regional and country level training opportunities for governmental officials, Red Cross and Red Crescent representatives and other humanitarian stakeholders, including through ASEAN AHA Centre 'Excellence' training programme and the legal clinic of the University San Francisco of Quito, Ecuador, as well as trainings for interested diplomats in New York, Geneva, Brussels and Addis Ababa.

6. Persistence of regulatory issues in international response operations

As noted above, the IDRL Guidelines were originally formulated on the basis of case study research, a global survey and consultations undertaken by the IFRC and its partners from 2001-06. The cumulative findings of this research were reported in a 2007 desk study.⁶ While there has been encouraging progress since then, there is also clear evidence that many of the problems identified in the original study remain challenges today.

a. Outcome of the HERE-Geneva study

In March 2015, the humanitarian think-tank “HERE-Geneva” produced a study commissioned by the IFRC to update the impact of regulatory problems and the gains from legal preparedness in international disaster response operations since the publication of the desk study in 2007.⁷ Countries covered included the Philippines, China, Namibia, Israel, Kenya, Pakistan, Chile, El Salvador, Niger, Japan, Liberia, Sierra Leone, Serbia-Bosnia, Ethiopia and the USA between 2008 and 2014. The study was based on a literature review, past research projects by the IFRC, and interviews with a range of stakeholders.

The study pointed to a “persistent and generalized lack of clarity around roles and responsibilities in international disaster response which often leads to confusions and duplications,” an ad hoc and inconsistent approach to the clearance of imported goods and equipment and issuance of visas to foreign personnel, and ongoing gaps in coordination, domestic oversight and quality control, attributable to the absence of a clear rules base. On the other hand, the study also noted that some countries have taken steps to increase their legal preparedness with good results and that there had been many improvements in international mechanisms for coordination.

b. Outcome of the 2015 survey

In addition, in 2015, the IFRC partnered with OCHA, the Logistics Cluster, World Bank Group, WCO, World Trade Organization and World Food Programme to develop an updated survey of disaster management and humanitarian practitioners about their experience of regulatory issues in disaster relief operations.⁸

Some 239 participants responded to this survey, including governmental officials, staff and volunteers of National Red Cross and Red Crescent Societies,

⁶ IFRC, Law and legal issues in international disaster response: a desk study (2007).

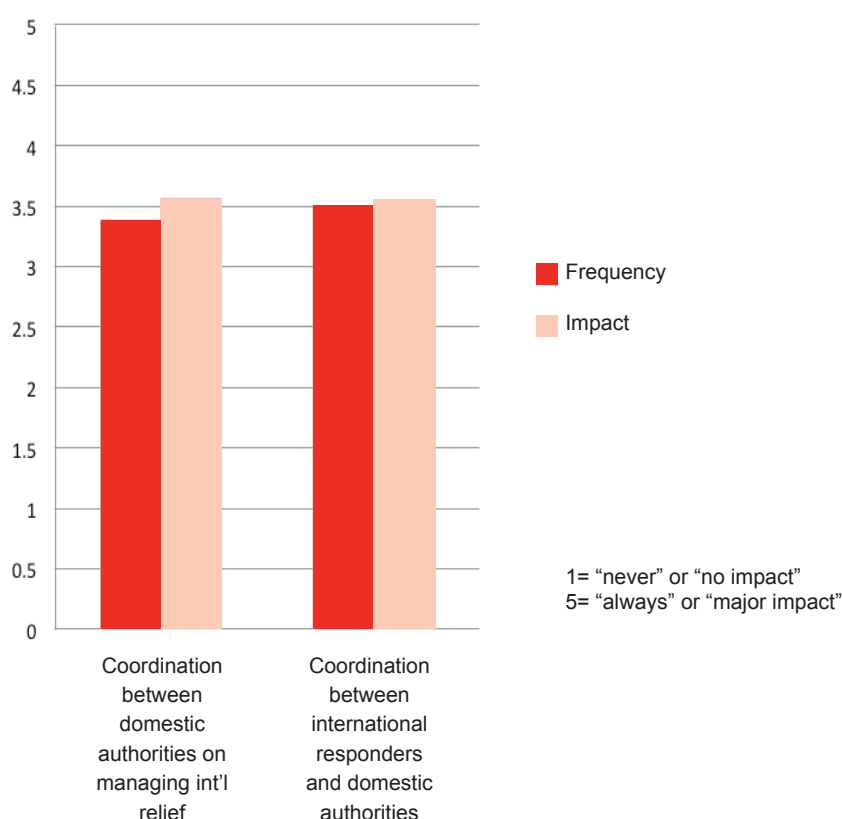
⁷ HERE-Geneva, The Impact of Regulatory Problems and the Gains from Legal Preparedness in Recent Response Operations. Expert Meeting, 10 March 2015, available at <http://bit.ly/1OM4s0k>.

⁸ IFRC, Report on the survey on disaster relief, regulation and protection (2015), available at www.ifrc.org/dl.

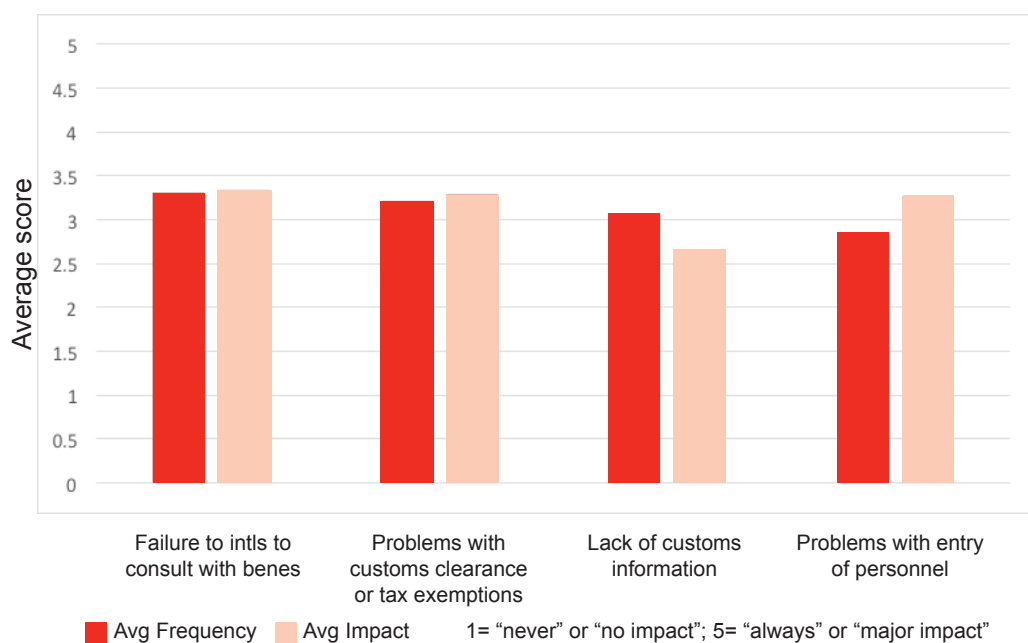
representatives of inter-governmental and regional organizations and the private sector from 95 countries, reporting on their experiences with disaster operations in their own countries and abroad over the last ten years.

The survey examined the extent of regulatory problems both in domestic and international relief. Of relevance to this report, problems specific to international relief were among those reported as the most frequent and having the highest impact. At the top of the list was coordination issues, in particular between international and domestic responders, and among domestic agencies as to how to manage international assistance, which more than half of participants had encountered frequently or always in their experiences in foreign countries. Figure 3 below illustrates the average scores of these top problem areas (as encountered in foreign countries) on a scale of 1 to 5, with 1 representing “never” or “no impact on the operation” and 5 representing “always” or “major impact on the operation”.

Figure 3: Coordination issues in international operations



Aside from coordination, participants cited difficulty or delay in obtaining customs clearance or exemptions from duties, taxes or costs; delays or restrictions in the entry of relief personnel, difficulty in accessing information on customs and other border-crossing procedures, and failure of international responders to adequately consult with beneficiaries about decisions among the most frequent and highest impact regulatory problems. The average scores for problems encountered in foreign countries are illustrated in Figure 4 below.

Figure 4: Top regulatory problems in international operations aside from coordination

In comparison with the IFRC's 2007 survey, the results of the most recent questionnaire similarly emphasized problems with coordination and with the entry of relief personnel, goods and equipment. On the other hand, respondents to the 2007 survey responses placed greater emphasis on corruption and inappropriate relief items, whereas the issue of failure to adequately consult with beneficiaries arose as a widely shared concern.

Across the board, respondents to the 2015 survey tended to report having experienced more problems abroad than in their home countries. This was particularly so for governmental participants, followed by those from National Red Cross and Red Crescent Societies. Meanwhile, NGO employees, followed by those from international organizations, were the most likely to indicate higher frequency and impact of problems both at home and abroad. This diversity in the experience of domestic stakeholders as opposed to those providing support abroad may provide some indication as to why it remains challenging to prioritize the development of domestic laws, rules and procedures on these issues.

A full report from the survey, including problems relation to the regulation of domestic relief as well as protection problems, is available online.⁹

⁹ See *supra* note 8.

c. Consultations in 2014-15

In preparation for the 32nd International Conference, the IFRC organized a series of (mainly) regional consultations¹⁰ on progress in the use of the IDRL Guidelines and potential means for accelerating their implementation. While lauding progress to date, participants agreed that developing stronger legal preparedness for international disaster relief should remain a priority and that measures should be explored to accelerate the development of the necessary laws, rules and procedures.

Participants raised a range of ideas, including providing additional training of disaster management, customs and other relevant officials, promoting additional south-south cooperation and exchange of practices, developing more bilateral agreements among neighbouring states, and further developing regional agreements and mechanisms. A number of participants expressed strong interest in the possibility of a global treaty, in light of the International Law Commission's project, though others expressed doubts about whether such a project would be feasible.

¹⁰ Consultations were conducted in Toluca in November 2014, Bogota in January 2015, Geneva in March and June 2015, Addis Ababa and Kuwait City in June 2015, Pretoria in August 2015, Bangkok in June 2015, Almaty and Minsk in September 2015, Suva in October 2015. Reports from the various meetings are available at www.ifrc.org/dl.

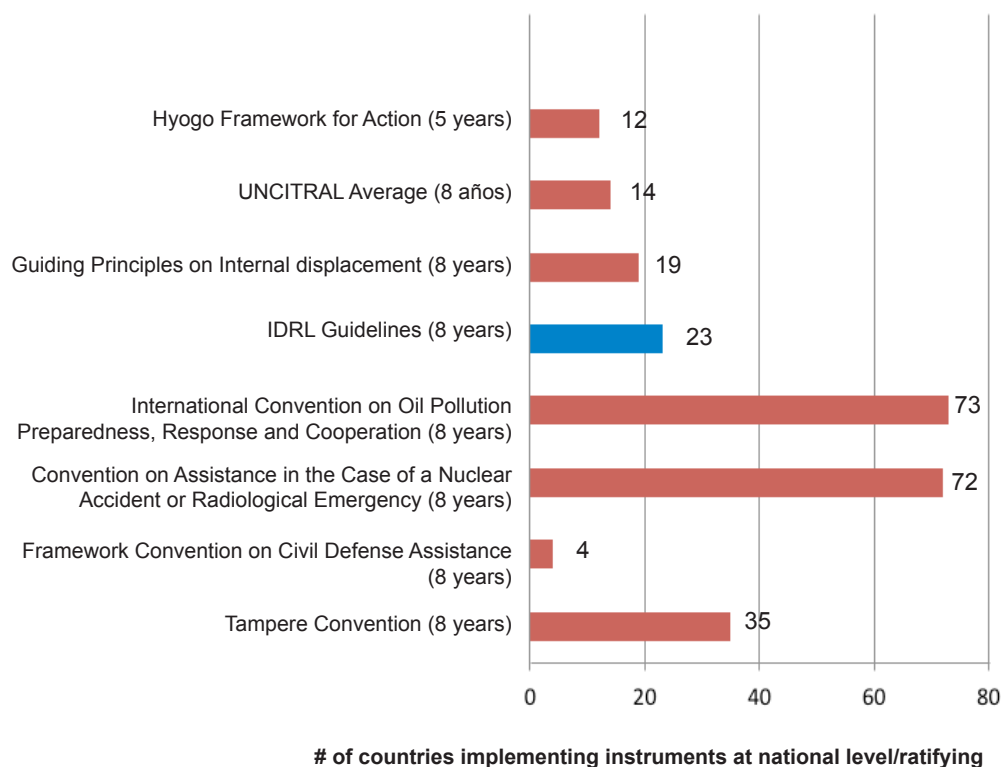
7. Assessment of progress

The primary stated purpose of the IDRL Guidelines is to support states in developing laws, rules and procedures for the management of international disaster assistance in advance of a disaster. As noted above, 23 countries have done so to date. In the consultations discussed above, some participants felt that this should be seen as a success, whereas others felt that progress was too slow.

In some ways, the IDRL Guidelines are unique in the field of international disaster relief as a soft-law instrument primarily aimed at promoting the development of domestic law. Other well-known international instruments in the area are either legally binding (as the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations), intended to set out broad principles (such as Code of Conduct of the Red Cross and Red Crescent and Non-Governmental Organizations in Disaster Relief), or describe globally accepted operating procedures (such as the Oslo Guidelines on the Use of Military and Civil Defense Assets in Disaster Relief).

Figure 5 illustrates several imperfect “benchmarks” for comparing the progress of the IDRL Guidelines, now eight years old, with regard to domestic uptake.

Figure 5: Benchmarks for the IDRL Guidelines.



The first comparison is with the Hyogo Framework for Action (HFA). The HFA was adopted for a ten-year prior in 2005 and was intended to guide the action of governments and other stakeholders with regard to risk reduction. Like the IDRL Guidelines, the HFA address themselves to disasters, though in a much broader way. Unlike the IDRL Guidelines, the HFA was not exclusively focused on the development of domestic laws or rules, though this was certainly included among its aims, in particular under “Priority One: Ensure that disaster risk reduction is a national and a local priority with a strong institutional basis for implementation.” As of the five-year mark following the adoption of the HFA, the United Nations Office for Disaster Risk Reduction (UNISDR) reported in the “Mid-Term Review 2010-2011” that 12 countries had updated or adopted new legislation based on the HFA.¹¹

The Guiding Principles on Internal Displacement of 1998 also have similarities with the IDRL Guidelines in that they set out standards for humanitarian assistance for persons displaced by disasters (though also for those displaced by conflict or development projects). However, as in the case of the HFA, the development of domestic law is not their only purpose. Nevertheless, efforts have been made in the following years to encourage states to draw on them for domestic law. As of their eight-year mark in 2003, 19 countries had done so (and today, the number is 29).¹²

The United Nations Commission on International Trade Law (UNCITRAL) has developed a series of model laws for UN member states on topics relevant to trade.¹³ Their subjects are in no way related to those of the IDRL Guidelines, but like the latter document, their primary purpose is promoting the development national law without necessarily relying on pre-existing binding international law. Moreover, they have the additional (and apparently rather rare) advantage for purpose of comparison that UNICTRAL gathers and publicly shares detailed information on their domestic implementation. Of the five models assessed here, domestic implementation 8 years after release ranged from 1 to 30 countries, with an average of 14.

The chart also includes ratification information for several treaties on topics similar to the IDRL Guidelines, as of 8 years following their adoption. Of course, ratification of a treaty is not the same as developing domestic legislation.

¹¹ UNISDR, Hyogo Framework for Action 2005-2015 Building the Resilience of Nations and Communities to Disasters – Mid-Term Review 2010-2011 (2011), at 22. Five years later in its 2015 Global Assessment Report, UNISDR informed that more than 120 countries have undergone legal or policy reform. The report, however, neither includes a list of those countries nor specifies the extent to which those reforms were based on the HFA. It mentions though that at least eight countries have adopted new legal frameworks for disaster risk management over the last two years, reflecting how countries have been able to use the HFA as a catalyst for DRR. UNISDR, GAR Global Assessment Report on Disaster Risk Reduction (2015), at 118-120.

¹² Brookings Institution-London School of Economic Project on Internal Displacement, IDP Laws and Policies Index, <http://www.brookings.edu/about/projects/idp/resources/idp-policies-index> (accessed 30 October 2015).

¹³ Those examined here are the Model Law on Cross-Border Insolvency, Model Law on Electronic Commerce, Model Law on International Commercial Arbitration, Model Law on International Credit Transfers, and Model Law on Procurement of Goods, Constructions and Services.

Unfortunately, detailed information on the degree to which these treaties have been implemented into domestic law is not readily available. However, the chart does show that, with one exception, the speed of ratification of treaties in this area has been quite a bit faster than the pace of adoption of domestic law drawing on the IDRL Guidelines.

Conclusion and recommendations

There has been undeniable progress since the adoption of the IDRL Guidelines. Twenty-three countries have drawn on them for new laws, rules and procedures, a number on par with comparable soft-law instruments, and more than twice the total reported by the 2011 progress report. New bills and drafts are currently pending in 13 countries and work is very actively ongoing in several dozen to evaluate existing rules in light of the recommendations of the IDRL Guidelines. For their part, National Red Cross and Red Crescent Societies have expressed their continued interest in supporting their authorities with this question and are gradually increasing their capacity and expertise to do so.

Moreover, the IDRL Guidelines have received a very positive reception by regional organizations, some of which have integrated them into new or existing regional instruments. There is certainly greater understanding and higher profile discussion about the issues raised by the IDRL Guidelines today than at the time of their adoption as evidenced, for example, by their frequent mention in the consultations related to the upcoming World Humanitarian Summit.

On the other hand, there are still many countries that lack comprehensive domestic laws, rules and procedures for managing international relief and recent research indicates that regulatory problems continue to burden international response operations. Among countries that have adopted new legislative language, some have kept the relevant provisions fairly vague with the intention of developing further regulations and guidance, which is sometimes slow in coming. Moreover, there has been some tendency to “pick and choose” among various aspects of the IDRL Guidelines, sometimes putting off aspects that might be legally or politically complicated to take up. This will mean, even in the best case scenario, that we will continue to see a patchwork of different rules and approaches among states to IDRL issues in the future. Of course, the ultimate measure of the effectiveness of the IDRL Guidelines will be their impact on relief operations. This has yet to be fully tested, though, as noted above, there have been some promising developments, as in the case of Indonesia.

Against this background, the IFRC is encouraging the state parties to the Geneva Conventions and the components of the Red Cross and Red Crescent Movement to reaffirm their commitment to promoting stronger laws, rules and procedures for the management of international disaster relief at the upcoming 32nd International Conference of the Red Cross and Red Crescent. It also recommends further consultations about the possibility of strengthening legal frameworks at the regional and global levels to supplement domestic efforts.

Annex 1: Countries that have adopted laws, policies or procedures drawing on the IDRL Guidelines

Bhutan	In 2013, Bhutan adopted a comprehensive “Disaster Management Act,” including articles 14-18 which set out procedures for appealing for international disaster relief, drawing in part on the IDRL Guidelines.
Bosnia and Herzegovina	In 2013, Bosnia and Herzegovina issued its “Instructions on International Assistance for Protection and Rescue Purposes,” drawing in part on the IDRL Guidelines.
Burkina Faso	In 2014, Burkina Faso adopted a “Law on the Prevention and Management of risks, Humanitarian Crises and Disasters”. Chapter 10 of the law sets out procedures for international cooperation, drawing in part on the IDRL Guidelines. To date, nine implementing decrees have been drafted under this Act and are pending approval.
Cambodia	In 2015, Cambodia adopted a national “Law on Disaster Management.” This law includes a chapter on “International Cooperation and Assistance” (Chapter 5), based on recommendations from the IFRC, Cambodia Red Cross and the IDRL Guidelines. The law also calls for the development of a detailed sub-decree on international assistance.
Colombia	In 2012, drawing on a recommendations from a report developed by the Colombian Red Cross, Colombia adopted new disaster management legislation, including a section on international response and work on more detailed implementing regulations was begun. In 2013, Colombia adopted new procedures on international humanitarian assistance. In 2014, the government established a permanent “IDRL Committee” and a “Legal Advisory Commission” responsible for providing advice on the strengthening of the legal framework for international disaster operations in the country. The IFRC, Colombian Red Cross and Colombian government also developed a cooperation agenda for the implementation of IDRL in the country and regionally. Work continued in 2015 to develop protocols and procedures and test the level of preparedness of the country for the reception of international disaster assistance through disaster simulations.
Cook Islands	In 2014, the Cook Islands National Council adopted new “standard operating procedures” for managing incoming disaster assistance based on advice emerging from a project by the Cook Islands Red Cross and the IDRL Guidelines.

Ecuador	In 2014, drawing on recommendations from a taskforce comprised of representatives of government, the Red Cross and the United Nations, Ecuadorian authorities added specific provisions related to disasters to a new “Regulation on Operating Permissions for the Delivery of Aviation Transport Services” to include specific provisions related to relief flights.
Finland	In 2011, a new “Rescue Act” entered into force, with new provisions added explicitly mentioning international organizations as among the actors from whom the Ministry for the Interior may request international assistance
Indonesia	In 2008, Indonesia adopted the “Law of the Republic of Indonesia Number 24 of 2007 Concerning Disaster Management.” The law contains an article on the role of international institutions (article 30). The role of international assistance is regulated in more detail in the “Government Regulation of the Republic of Indonesia Number 23 of 2008 Concerning Participation of International Institutions and Foreign Non-Government Organizations in Disaster Management,” which draws upon the IDRL Guidelines and recommendations from IFRC and PMI. This regulation was followed by the adoption of a BNPB (national disaster management agency) guideline in 2010 on “the role of international organizations and foreign non-government organizations during emergency response” (Guideline 22/2010). Guideline 22/2010 is currently under revision, and Law 24/2007 is due to be revised in 2016. PMI and IFRC have played an active role in the development of this legal framework since 2005.
Mozambique	Mozambique adopted its “Disaster Management Law” in April 2014. The law highlights the need for the national disaster management body to seek support, and where necessary, external intervention, upon determination of a disaster exceeding national coping capacity. The law foresees the formulation of future regulations on international assistance, as applicable within the framework of international commitments and cooperation with other countries.
Myanmar	In 2013, Myanmar adopted a “Natural Disaster Management Law” with two key provisions relating to the role of international assistance (chapter 2, Article 3(c) and chapter 3, Article 5(k). This was followed by the adoption of a set of implementing “Disaster Management Rules” in 2015, including a chapter on “Communication and Collaboration with Assisting International Actors,” which draws upon recommendations in the IDRL Guidelines and advocacy and advice from Myanmar Red Cross and IFRC.
Mexico	In 2012, Mexico adopted new provisions in its “Civil Protection Law” for the facilitation and regulation of humanitarian assistance following disasters and is now in the process of adopting new regulation and standard operating procedures to complement existing regulations. That same year, Mexico also adopted a new guideline for providing expedited visas for international relief personnel.

Namibia	Namibia adopted a “Disaster Risk Management Act” in 2012, providing the country’s first comprehensive legislative framework for disaster risk management. The Act includes provisions on the facilitation of entry and operation of international relief personnel and experts, reduced and simplified customs procedures, exemption from duties, taxes and charges for donations of equipment and materials during disaster situations.
Netherlands	In 2010, the Netherlands finalized a “Manual for Incoming Foreign Assistance,” drawing in part on the IDRL Guidelines, after testing its procedures in a simulation exercise known as FloodEx 2009.
New Zealand	In 2012, the New Zealand National Crisis Management Centre drew on the IDRL Guidelines in updating its “Standard Operating Procedures,” for its International Assistance Cell.
Norway	A new migration regulation went into effect in January 2010 establishing an “emergency visa” category, allowing for the issuance of a visa upon arrival, which could be used for relief personnel (who are not already eligible for entry under Schengen or other rules)
Panama	Panama adopted manuals on coordination of international assistance, and for foreign affairs, referring to the IDRL Guidelines and established a specific visa type for humanitarian personnel.
Paraguay	In January 2015, a new Red Cross Law was adopted with rules related to the facilitation of relief materials imported by the Paraguayan Red Cross.
Peru	In 2011, Law No. 29664 created the Disaster Risk Management System in Peru. Its regulation No. 048-2011-PCM states that the Governing Body, with the support of the National Institute of Civil Defence, shall elaborate “a regulation to facilitate humanitarian assistance operations in the country, in accordance with the IDRL Guidelines initiative”. In 2014, drafting commenced on a dedicated law for the facilitation and regulation of international disaster assistance was drafted. The bill is now under review by various departments of the government and pending approval.
Philippines	In 2010, the Philippines adopted a national ‘Disaster Risk Reduction and Management Act’ (commonly referred to ‘Republic Act No. 10121’). Sections 16 and 18 are the main provisions which refer to international assistance. Further details relating to requests and donations of international assistance are outlined in Rule 14 of the Implementing Rules and Regulations (IRR) for RA 10121. Section 14 of the IRR also states that foreign donations and importations for humanitarian assistance and disaster relief shall be guided with the ‘International Disaster Response Law (IDRL) Guidelines’ as deemed appropriate. Republic Act 10121 is currently under review, which is expected to be completed in 2016. An operational guideline for the Philippines International Humanitarian Assistance Cluster (PIHAC) which refers to and draws upon the IDRL Guidelines is also currently under development.

Seychelles	In 2014, the Seychelles adopted a new “Disaster Risk Management Act,” which sets out the country’s first comprehensive legal framework for disaster risk management. Part V of the act is dedicated to international assistance issues, drawing on the IDRL Guidelines and the Model Act for the Facilitation and Regulation of International Assistance. In addition to establishing procedures for the request, offer, acceptance and termination of international assistance, this Part promotes the facilitated entry of humanitarian personnel, temporary recognition of professional qualification, exemption from customs duties and from taxes on relief goods and equipment. The Act also emphasises the obligation of international aid providers to coordinate with national authorities and provide appropriate and good quality goods and services.
Tajikistan	In 2012, Tajikistan revised its Tax Code and Customs Code to provide exemptions on imported disaster relief goods.
Vietnam	In 2013, Vietnam adopted a national “Law on Natural Disaster Prevention and Control,” including a chapter on ‘International Cooperation in Natural Disaster Prevention and Control’ (chapter 4), which is based on inputs provided by IFRC and Vietnam Red Cross, based on the IDRL Guidelines and Model Act on International Assistance.

Annex 2: Draft legislation and rules drawing on the IDRL Guidelines known to be pending

Chile	There is an ongoing revision of the draft Law that establishes the Emergency National System and Civil Protection and creates the National Agency of Civil Protection.
Gambia	The Gambia continues a legal review and drafting of the National Disaster Management Act. The National Disaster Management Agency (NDMA) and the Gambia Red Cross Society together with the IFRC approach the UNDP to look into potential collaboration on the legal drafting the National Disaster Management Act.
Guatemala	A comprehensive bill on procedures for managing international disaster assistance is currently pending in the Congress.
Haiti	There are several draft decrees and bills pending that include provisions recommended by the Haitian Red Cross, including decrees concerning customs clearance and border assistance and draft bills are pending concerning revision of the national civil protection system.
Kenya	A draft disaster management act is currently being prepared. The Kenya Red Cross is offering its support.
Kyrgyzstan	A bill concerning the management of international humanitarian aid is currently pending.
Nepal	A bill to modernize the country's main disaster management act is currently pending. The bill includes a number of provisions recommended by the Nepal Red Cross.
Maldives	A disaster management bill, adopting recommendations provided by Maldivian Red Crescent and the IFRC on international assistance, is currently pending.
Mauritius	A draft law on disaster management including provisions on international assistance is currently being revised by Parliament.
Mongolia	A revision of the 2003 Law on Disaster Protection is currently in process. Following multi-stakeholder workshops supported by Mongolian Red Cross Society and the IFRC, the new draft contains a chapter on international humanitarian assistance and is expected to be adopted in 2014.

Rwanda	The IFRC, together with the Rwanda Red Cross Society, has provided technical assistance to the Government of Rwanda in its efforts to strengthen the country's legal preparedness for disasters. In close cooperation with the Ministry of Disaster Management and Refugee Affairs (MIDIMAR) the IFRC contributed to the development of a new disaster management law in Rwanda in 2012, which is still pending adoption.
Trinidad and Tobago	A bill to revise the country's civil protection law, including new provisions on international assistance, is currently pending. (Last update 18 Dec. 2014)

Annex 3: Technical assistance projects on IDRL supported by National Red Cross and Red Crescent Societies

Africa	Americas	Asia-Pacific	Europe	MENA
Botswana	Argentina	Afghanistan	Austria	Israel
Ethiopia	Colombia	Cambodia	Bulgaria	Tunisia
Gambia	Dominican Republic	Cook Islands	France	
Kenya	Ecuador	Indonesia	Finland	
Liberia	El Salvador	Laos	Germany	
Madagascar	Guatemala	Myanmar	Kazakhstan	
Mauritius	Haiti	Nepal	Iceland	
Malawi	Jamaica	Pakistan	Ireland	
Mozambique	Paraguay	Philippines	Latvia	
Namibia	Peru	Samoa	Netherlands	
Senegal		Tonga	Norway	
Sierra Leone		Vanuatu	Poland	
South Sudan		Vietnam	Tajikistan	
Uganda			United Kingdom	

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.



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