



INTERNATIONAL LEGAL RESOURCE CENTER



**Submission to UN Habitat III:
Urban Ecology and the Environment: An Analysis of Issue Papers
15 and 17**

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The analysis of Issue Paper 15 and 17 was conducted by an expert from the International Legal Resource Center (ILRC) database.¹

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¹ The ABA/UNDP International Legal Resource Center engaged one expert to provide a thorough a legal analysis under its leadership and guidance. His bio can be found in Annex A.

For more than a decade, the ILRC has assisted the United Nations Development Programme (UNDP) as well as several other United Nations (UN) entities and multinational organizations that work in developing countries with legal issues beyond democratic governance. The ILRC, which is housed within the American Bar Association Section of International Law ([ABA International](#)), identifies experts for requests relating to technical legal assistance projects, knowledge management and advisory services worldwide. The ILRC also conducts assessments of draft and current legislation, gauging their compliance with international standards where appropriate, and provides legal research and substantive advice to governments on policy formulation.

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ABA/UNDP International Legal Resource Center

Since 1999, the *International Legal Resource Center (ILRC)*, housed in the American Bar Association's Section of International Law, has provided pro-bono technical legal assistance to UNDP regarding their rule of law, human rights, and democratic governance work in developing countries by assembling teams of legal experts from over 100 countries to conduct issue-specific research. The ILRC also conducts legislative assessments of domestic legislation that is either in force in developing countries or is in draft form. Experts are selected from a database of over 1750 members that have an average of 19.5 years of experience and who represent over 100 countries. Fifty percent of ILRC experts are non-U.S. lawyers.

To date, the ILRC has carried out over 300 pro-bono projects in over 100 countries on issues such as institutional capacity building, public administration, constitutional reform, access to criminal justice, criminal law reform, mainstreaming human rights, and legal empowerment of the poor. The ILRC is designed to provide free technical assistance on a variety of issues, including, but not limited to: reforming legal institutions and systems, building constitutional frameworks, improving parliaments' efficiency and strategic planning, sustaining decentralization measures, conducting legal education and judicial trainings, evaluating UNDP projects and assisting with work plan development, gender equality, providing legal services to marginalized populations, restructuring public sector regulations, developing independent lawyer associations, and establishing new access to justice mechanisms.

Most recently, ILRC experts have conducted legislative assessments on Sierra Leone's 1964 Police Act and 1991 Constitution, Cambodia's Cybercrime Law, and Uzbekistan's draft law on Public Oversight; commented on Fiji's Mineral Bill; assisted the Jamaican Government in its effort to update HIV/AIDS policy; conducted judicial trainings in Kazakhstan and Tajikistan; and mapped the state of legal aid in over fifty countries. The ILRC has also taken on projects with new institutions and other members of the UN family, including UN Women, UN Office on Drugs and Crime, and the World Bank Group. Please see our [2014 annual report](#) for a comprehensive overview of past projects.

Analysis of Issue Paper 15

Page 1

Throughout this paper, the “New Urban Agenda” is mentioned prominently. I note that the other issue papers do not refer to the New Urban Agenda as the source of the framing for each paper. This may be a consistency issue to be addressed by the editors.

The introductory paragraphs could benefit from at least a short explanation of the relationship between “urban resilience” and other well-known framings such as “sustainable communities,” “adaptation planning,” and “disaster risk reduction.”

“Resilience is a quality...as much as a driver itself...”

It is not very useful to suggest that resilience is both a quality and a driver. Indeed, the list of drivers at the end of the paper does not explicitly list resilience. It would be much more helpful to better define resilience here as the “state of a system” which is closer to quality but more precise.

Page 2

Using the “state of a system” definition would also help explain here that an urban system is sometimes viewed as “system of systems.” The text never really clinches that point, which is an important concept in understanding why the failure of one system can lead to a “cascading effect” across multiple systems. This “disruption” mentioned at the top of p.2 could be better presented by the linkage of systems and cascading effect of system failure.

The mention of “removing residential developments to safer areas” could benefit from a bit more explanation. This topic is now generally described as “retreat and relocation” in the face of climate change.

Page 3

“The concept of resilience has evolved steadily over the years.” But it has not always evolved for the better! The resiliency bandwagon has resulted in the overuse and abuse of resilience terminology. To be clear, resilience is NOT an adequate substitute for sustainability or for adaptation, as some would prefer.

Page 4

Suggest including a specific mention of “green infrastructure” here and a cross-reference to Issue Paper 16.

“The three pillars of the New Urban Agenda — urban planning, urban legislation and municipal finance...” This needs at least a citation to source material if not further elaboration.

There is certainly more to New Urban Agenda than these “three pillars.” For example, in Issue Paper 17 we learn that “the principles of New Urban Agenda: compactness, connectedness, inclusiveness and integration, improve disaster risk management, contribute to climate change mitigation and adaptation, as well as unlock opportunities for sustainable development.”

More to the point, the three pillars used here to frame resilience are inadequate standing alone. In Issue Paper 17, five categories more robust than these three pillars are identified: (i) urban planning and design, (ii) governance, (iii) urban economy, (iv) participation and inclusions, (v) ICT. There is a need to correct or clarify this discrepancy, and I suggest using the Paper 17 categories instead of the three pillars.

The term used for the second pillar -- “urban legislation” -- is way too narrow to use as a placeholder for a full range of governance issues — this would include not only law, policy and regulation, but also stakeholder engagement, institutions and processes. Legislation is just a small sliver of governance.

The “three pillars” approach for resilience is hardly the only framework that has been put forth for urban resilience. The most convincing framework I have come across for urban resilience is that put forward by Marcus Moench and his colleagues at ISET.

I highly recommend: Stephen Tyler & Marcus Moench, “A Framework for Urban Climate Resilience,” *Climate and Development*, 4:4, 311-326 (2012). <http://www.tandfonline.com/doi/full/10.1080/17565529.2012.745389#.VbYpnHsDjl>.

See also, Karen MacClune, et al., “Floods in Boulder: A Study of Resilience,” ISET (2014). <http://i-s-e-t.org/resources/case-studies/floods-in-boulder.html>.

Page 5

The middle paragraph on p.5 — presumably meant to address “urban legislation,” the second of the three pillars on urban legislation — focuses almost entirely on building codes. This is not the best example of an urban “governance challenge” and is inadequate to fully explain the second pillar. Something more is needed here to illustrate governance, perhaps a discussion of the role of tools, processes and institutions.

The next paragraph on “finance decisions” also seems way too brief to cover the third pillar of “municipal finance.” There is a mention of “innovations in urban

finance,” but there is no example provided. Perhaps a good place to mention “public-private partnerships”?

Page 7

“...knowledge and tools for building resilience to disasters are most advanced”

What is the support for this statement? I’m not sure knowledge and tools for disasters is at a more advanced stage than for many environmental stressors. For example, there has been great progress in planning for climate adaptation in a variety of contexts.

“Many national policies address resilience to disaster risk and are increasingly integrated with climate change policies.”

The first part of this sentence may be true, but there are few examples (other than the Philippines) of national disaster policy being integrated with climate policy.

Page 8

Again a prominent mention of the “pillars of the New Urban Agenda”

The several other chapters I’ve reviewed did not continuously allude to the New Urban Agenda or its pillars. Is it necessary? If so, there is a need to conform the other papers.

Under key drivers, could mention specific approaches like “green infrastructure” or “smart growth.”

Also this list of drivers seems peculiarly light on emphasizing the important driver of the changing climate. Climate is mentioned in combination with disaster in the first bullet.

Page 9

Under platforms and projects, the following significant initiatives should be included:

C40 – Cities Climate Leadership (Bloomberg, et al.) <http://www.c40.org>

100 Resilient Cities (Rockefeller Foundation) <http://www.100resilientcities.org>

Urban Climate Change Research Network (Rosensweig et al.) <http://uccrn.org>

Analysis of Issue Paper 17

Page 6

"National governments are the lead actors in the global climate response." No, not necessarily. I would strike this sentence and go directly to discussing the clear need for engagement across all levels of government. There has been much discussion about local and state leadership in the absence of national climate strategies, including in the US.

Page 7

With the mention here of "mitigation" and "adaptation," I simply note that little effort is made in this paper to distinguish mitigation actions from approaches to adaptation. They are generally quite distinct, with mitigation much more quantitative and amenable to traditional regulatory approaches, while adaptation is more qualitative and more closely linked to sustainability concepts and principles.

Similarly, I would take care not to lump mitigation and adaptation actions together under the phrase "climate change solutions" as that is potentially misleading and overly simplistic without the suggested clarification.

Page 9

The section on "Urban Governance" includes some useful items, but does not emphasize the centrality of policy, law and regulation to governance. It might be useful to cross-reference Issue Paper 5 on Urban Rules and Legislation. This section might also include a mention of the use of standards and voluntary programs.

The section on "Urban Economy, finance and investment" does not mention Public-Private Partnerships, an increasingly important vehicle for advancing sustainability and resilience.

Page 10

The section on "Inclusion & participation" should be all about *people*, but there is no real discussion of individuals or stakeholder groups. Stakeholder engagement and multi-stakeholder processes should be strongly emphasized here.

Also, this very limited paragraph about "inclusion & participation" actually begins to address data, information and knowledge, but note that the *entire next section* is titled "Information, data and knowledge management."

Annex A

Ira Feldman

Ira Feldman is a US-based sustainability leader with an interdisciplinary skill set and a global reach. He has over 25 years' experience as an attorney and management consultant focusing on environmental regulatory innovation (e.g., alternatives to "command and control" regulation), strategic environmental management, sustainable business practices and corporate social responsibility. Ira is at the leading edge of the convergence of sustainability, climate adaptation and ecosystem services and he teaches these topics at the University of Pennsylvania. His recent work explores the role of ESG (environment-social-governance) factors in the financial sector; the implications of "soft law" or "private law" for business and government; and the use of Public-Private Partnerships (PPP) to advance sustainable development.

Reflecting the depth and breadth of his expertise, Ira currently serves on the advisory boards of such diverse organizations as the Center for International Environmental Law (CIEL); the Association for the Advancement of Sustainability in Higher Education (AASHE); the Sustainability Accounting Advisory Board (SASB); and the Greenhouse Gas Management Institute (GHGMI). He has long played a leading role in defining future domestic policy directions through his participation in environmental management and sustainability policy initiatives such as the President's Council on Sustainable Development (PCSD) and the Multi-state Working Group on Environmental Performance (MSWG).

As team leader or in partnership with other consultancies and law firms, Ira has assisted governmental entities, multilateral organizations, think tanks, corporate trade associations and SME's, on a wide range of implementation, policy development, and training activities. He led in the development of corporate voluntary excellence programs, environmental performance tools and strategies, and international voluntary standards such as the ISO 14000 series, ISO 26000 and GRI. Previously, as Special Counsel at US EPA headquarters, he pioneered new enforcement settlement approaches; developed the Agency's audit and self-disclosure policy; and was the architect of EPA's first corporate voluntary excellence program.

Ira is committed to advancing sustainability thinking in the US through policy initiatives and electoral politics; bringing clarity and coherence to the emerging field of sustainability professionals; assisting colleges and universities with faculty and curriculum development for sustainability in higher education; and remaining an active contributor to the substantive sustainability and climate dialogue.

