



THE HUMAN RIGHTS  
TO WATER AND  
SANITATION OF

FORCIBLY  
DISPLACED  
PERSONS

A/HRC/39/55

UN SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS  
TO WATER AND SANITATION, LÉO HELLER

# Defining 'forcibly displaced persons'

1. Those who are forced to move, within or across borders —
2. mainly internally displaced persons, refugees, asylum seekers and migrants in vulnerable situations ;
3. while en route, at borders, at reception and at destination;
4. with focus on people who are unable to realize their human rights to water and sanitation by the means at their disposal, and who have to rely, as a result, on national or international assistance.

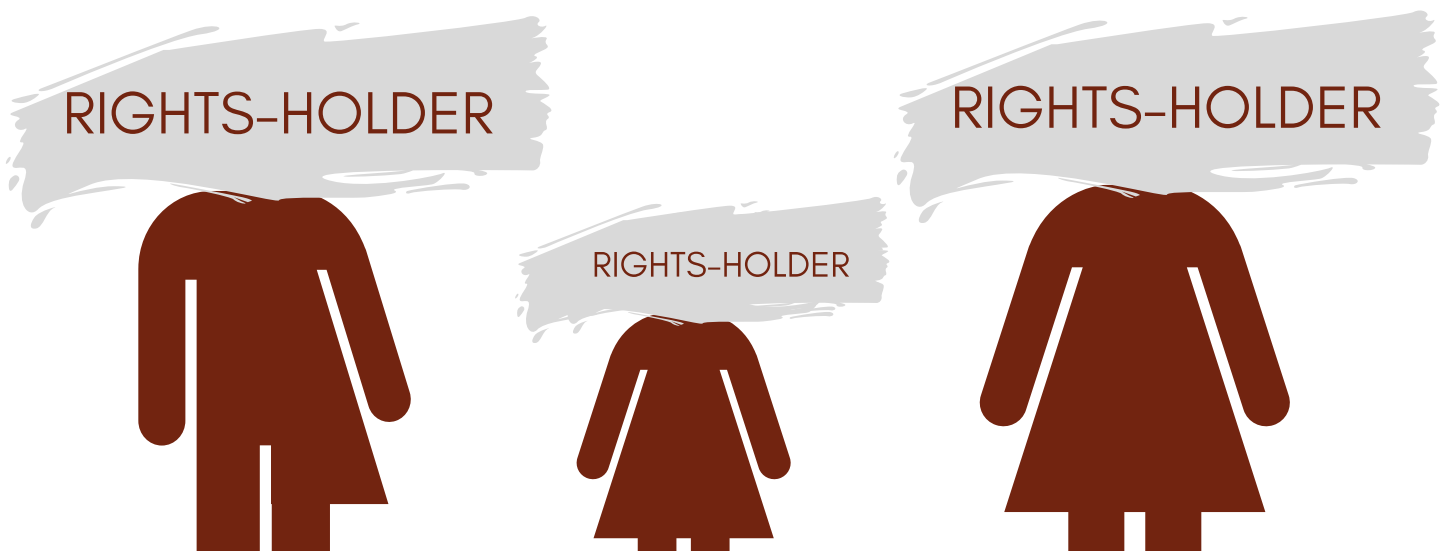
## The Report

When relying on humanitarian assistance, people tend to be seen as “victims”, “beneficiaries” or “recipients”; persons in need of humanitarian assistance should, however, be recognized as rights holders.



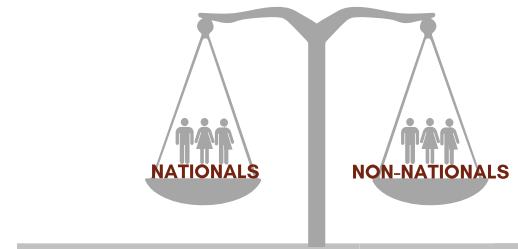
All forcibly displaced persons are equally entitled to the human rights to safe drinking water and sanitation irrespective of their current location and the status bestowed on them, and even in cases where they are considered ineligible for international refugee protection. Access to water and to sanitation is not only a fundamental human right for human survival and health but also for living life in dignity.

The framework of the human rights to water and sanitation must be applied at all times: before, during and after emergency situations, during development projects, and in other situations that may lead to forced displacement. The human rights to water and sanitation in emergency situations are, however, all too often compromised. More children still die from poor water quality and sanitation-related diseases than from direct violence in many conflict-affected countries.



## Who?

All forcibly displaced persons are equally entitled to the human rights to safe drinking water and sanitation, irrespective of their current location and the status bestowed on them, and even in cases where they are considered ineligible for international refugee protection.



Differential treatment on grounds of nationality or legal status is prohibited unless it is in accordance with the law, pursues a legitimate aim and remains proportionate to the aim pursued.

## Where?

Pursuant to international human rights law, forcibly displaced persons in transit or at destinations should be guaranteed access to water and sanitation on the same conditions as granted to nationals of the States concerned, regardless of their legal status and documentation.



## When?

The framework of the human rights to water and sanitation must be applied at all times: before, during and after emergency situations, during development projects, and in other situations that may lead to forced displacement.

BEFORE, DURING, AND AFTER

## What?

INTERNATIONAL  
HUMAN RIGHTS  
LAW

*which applies at  
all times*



INTERNATIONAL  
HUMANITARIAN  
LAW

*which applies to  
armed conflict*

provide complementary and mutually reinforcing protection of the human rights to water and sanitation.



## By who?

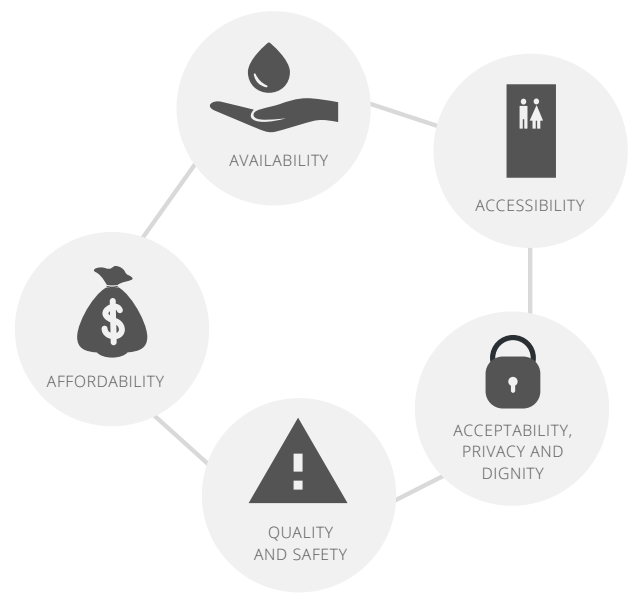
States have an obligation to provide water and sanitation services to forcibly displaced persons who do not have sufficient means, whether they are staying in camps, informal settlements, detention centres, or urban or rural areas.

As State capacity may be limited in such situations, international organizations, non-governmental organizations, funders and other humanitarian organizations can play a key role in providing assistance. Such organizations also should respect, protect and facilitate the human rights to water and sanitation in the services they provide.



# Standards in emergencies

Except for certain situations in armed conflicts, there are no mandatory standards on access to water, sanitation and hygiene that humanitarian actors are required to follow in emergencies. Some countries apply the same national standard of water and sanitation to refugees, asylum seekers and migrants en route, as required by human rights law.



## Minimum Core Obligations

During an emergency, immediate obligations of access to the minimum essential level of water and sanitation on a non-discriminatory basis apply.

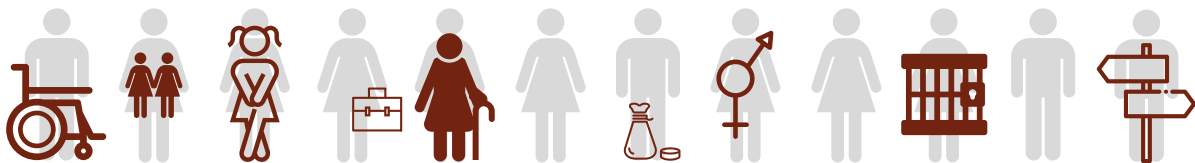
On the right to water, these core obligations as ensuring safe and equal access to the minimum essential amount of water that is sufficient and safe for personal and domestic uses to prevent diseases, especially for disadvantaged or marginalized groups.



Even though the Committee does not make any explicit reference to the core obligation of the right to sanitation, the core obligation for the immediate realization of the right to sanitation can be assumed as what every person needs for health and survival, and to live in dignity.



The core obligations reflect the actual practice of many States at the national level; what forcibly displaced persons actually require may be quite different, depending on the individuals concerned, cultural factors, locations or other specific factors. The human rights to water and sanitation can provide guidance on the extent to which and how the needs of forcibly displaced persons should be fulfilled.



## The Sphere Standards

Others apply the Sphere standards, a set of minimum standards applicable in humanitarian responses. Although the Sphere standards are widely recognized and adopted, they are not a binding instrument. These standards do not fully reflect the human rights to water and sanitation. For instance, water quantity is explicitly prioritized over the water quality, a definition allegedly grounded on the health impact. The core obligation requires, however, a minimum amount of water that is both sufficient and safe



# EMERGENCY SITUATIONS

## PERSONS EN ROUTE AND IN TRANSIT

When forcibly displaced persons are en route, in transit or at reception, they are vulnerable, because they require access to water and sanitation immediately and continuously in unfamiliar places.

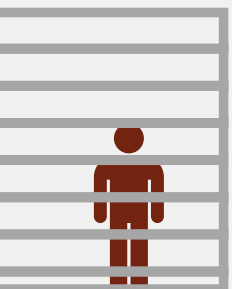
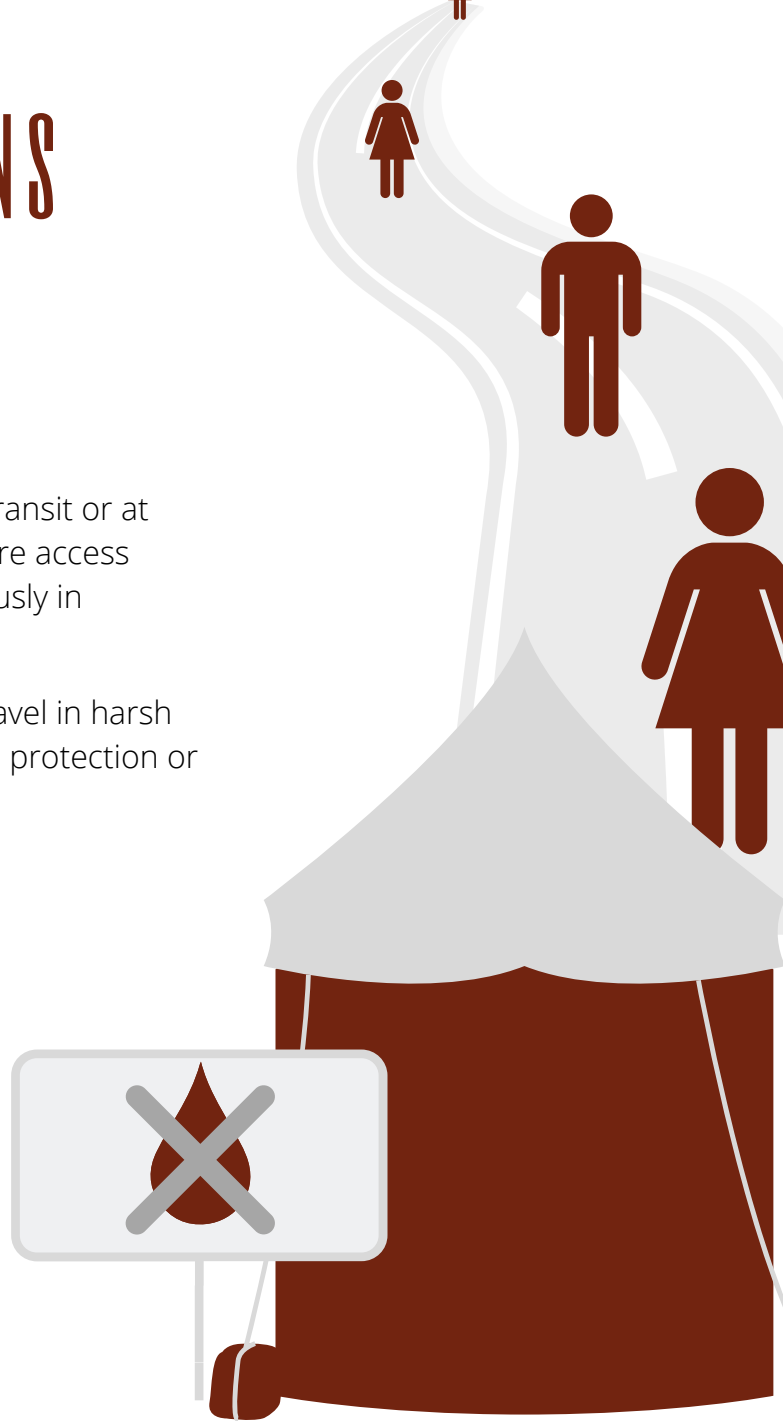
En route, many displaced persons are forced to travel in harsh conditions, such as heat or cold, without adequate protection or assistance.

## PERSONS AT RECEPTION

In reception and detention facilities under the authority of receiving countries, States often do not apply the same conditions as those granted to nationals, and provide a lower standard of water and sanitation services to forcibly displaced persons, possibly on the basis of a discriminatory policy or owing to the lack of a policy on forcibly displaced persons.

Poor conditions are sometimes used to discourage forcibly displaced persons from entering these countries or to expel them.

States, particularly economically developed States, have no justification for providing forcibly displaced persons with substandard water and sanitation services or for using poor living conditions as a means to discourage them from entering the territory or to expel them.



Migrants and sometimes their children are detained in unacceptable substandard conditions, with poor hygiene, and limited or no access to sanitation, water and other services.

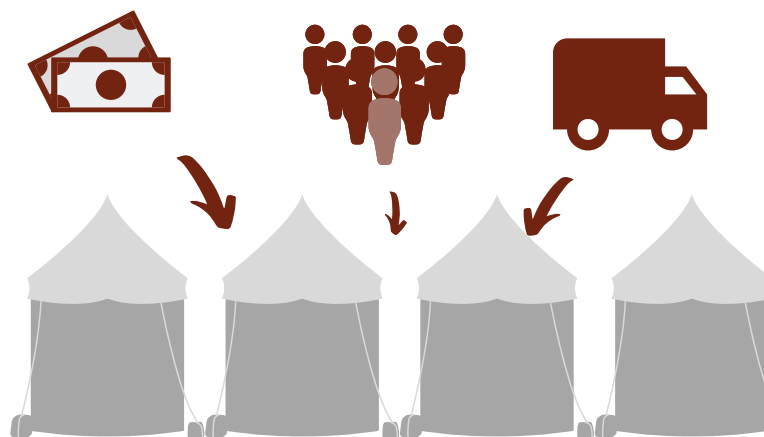
Even if receiving countries have limited resources, they cannot justify “restricting the enjoyment of the essential content” of economic, social and cultural rights because of lack of resources.

# CAMPS FOR REFUGEES, MIGRANTS AND INTERNALLY DISPLACED PERSONS

The standard of services provided to forcibly displaced persons in emergency situations depends on how quickly financial, human and material resources can be mobilized. The amount of resources made available depends on the political, geographic and financial situations of both the countries concerned and donors.

## Internally displaced persons

Internally displaced persons outnumber refugees, and are often at the frontline of conflicts; yet, they tend to fall within protection gaps. Their own States, who are primarily responsible for ensuring their human rights, may not provide adequate support owing to political or financial reasons or lack of capacity.



## Prioritizing resources

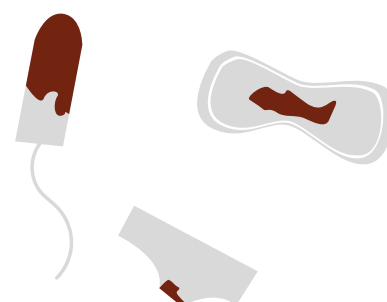
With the resources mobilized to address emergency situations, States and humanitarian actors focus on the timely provision of water and sanitation for life-saving and on the prevention of outbreaks of water-borne diseases, such as cholera.

Among the core obligations of the human rights to water and sanitation, some are prioritized under life-saving efforts in humanitarian interventions.

While priorities should certainly be determined in an acute emergency, there is a risk of interpreting “life-saving” from an overly narrow point of view, with no time frame established for progress towards the full realization of the human rights to water and sanitation, such as accessibility, quality and acceptability.

The human rights principle of equality and non-discrimination requires actions targeting those “most at risk” and ensuring equal access. While attention is increasingly paid to access to water and sanitation services by persons with disabilities in emergency situations, several studies have revealed that, in multiple camps, water points, toilets and washing facilities, among other facilities, were physically inaccessible to refugees with disabilities.

Although menstrual hygiene is not seen as a “life-saving” matter, it is a vital issue for adolescent girls and women who are forced to manage it during emergency situations, something that calls into play not only their dignity but also their safety.



# OUTSIDE ORGANIZED CAMPS

Forcibly displaced persons increasingly live outside organized camps. Despite this, humanitarian assistance, including in the form of water, sanitation and hygiene, is usually directed to camps. Therefore, those forcibly displaced persons living outside the organized camps in host communities are left behind.

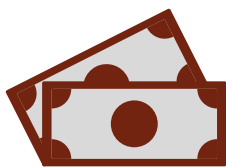


Most of them live in urban informal settlements, and hence may have no access to piped water or sanitation; some are even forced to use unsafe water and unimproved sanitation solutions.

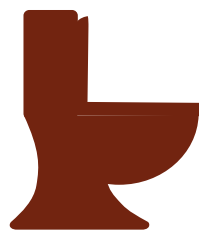
Because of the types of shelter and locations in which they live, some have to rely on expensive water and sanitation provided by informal service provider.

Identifying needs of individual level within a household is an even greater challenge owing to the absence of intra-household data; for example, menstrual hygiene management specifically targeting adolescent girls living in a household poses a challenge that has not yet been properly addressed in terms of the development of guidelines or plans of action and implementation by actors involved in such situations.

Providing assistance to forcibly displaced persons living outside organized camps can be daunting, given that they are often dispersed or hidden in host communities, and therefore harder to reach. Support for access to water and sanitation services can be provided through:



cash programmes,

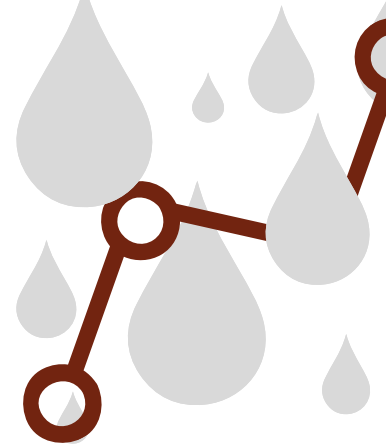


the upgrading of facilities  
at the household or  
communal infrastructure  
level,



or by helping  
municipality utilities  
to improve and  
extend services.

# PROGRESSIVE REALIZATION



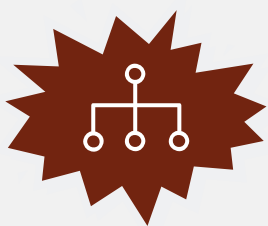
The progressive realization of the right to water and sanitation in the human rights framework does not simply mean a gradual improvement in and expansion of service levels; it also requires taking deliberate, concrete and targeted steps to the maximum extent of resources available.

It also requires planning at the outset of an emergency and the implementation of affirmative actions for disadvantaged groups to raise their level of access to that of the rest of the community.

In actual fact, the degree of access does not always improve and can, in some cases, even deteriorate, owing to a decline in political attention, inadequate funding, lack of planning or inadequate support for service providers in assuring the operational continuity of essential services.



Wastewater management, for instance, is all too often not considered in the initial planning at the outset of an emergency, for a variety of reasons, not least because it requires significant amounts of upfront financial resources.



Lack of coordination among States, humanitarian actors and local actors, the lack of clear allocation of responsibilities and the lack of leadership by States are often identified as obstacles to the progressive realization of the human rights to water and sanitation during and after the emergency phase.

## Challenges

Governments are expected to play a coordinating role; fragile governments, however, are often further disempowered when they are bypassed in the channelling of humanitarian aid.



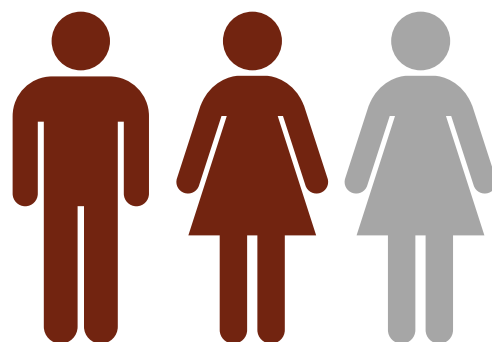
Most situations of displacement in fact often rely on external funds given that developing countries continue to host the overwhelming majority of forcibly displaced persons. While the cost of meeting the increasing levels of humanitarian need has been growing steadily, global aid commitments for water and sanitation have declined.



# PROTRACTED DISPLACEMENT

Protracted displacement has been defined as displacement in which refugee populations of 25,000 persons or more from the same nationality have been in exile for five or more years.

Insufficient system operation and maintenance caused by the lack in human and financial capacity compound the deterioration in access to water and sanitation services even further. The additional pressure placed on water and sanitation services risks becoming a source of social tension between forcibly displaced persons and local populations as well.



Currently, two thirds of refugees are in a situation of protracted displacement\*.

## Towards an inclusive approach



Certain humanitarian bodies are increasingly conscious of the need for an inclusive approach to access to water and sanitation, which involves including forcibly displaced persons in national and local development planning.

It also involves providing assistance in expanding and strengthening local water and sanitation services, thereby ensuring access to water and sanitation for forcibly displaced persons and other affected populations. Emergencies can be an opportunity not only for ensuring the continuity of service provision, but also for making access to service more inclusive.

An inclusive approach is also one that addresses other human rights issues in order to achieve the full realization of the human rights to water and sanitation for forcibly displaced persons.

Insecurity of tenure prevents internally displaced persons from being able to leave informal settlements and makes them more dependent on informal services. Lack of access to work denies forcibly displaced persons the ability to live autonomously, and can have a negative impact on the financial sustainability of water and sanitation services.



# The humanitarian–development nexus

Despite the fact that displacement is likely to be a long-term issue, both host States and donors often respond to it as if it were a short-term emergency. Protracted displacement can still be an emergency, and the development stage can still revert to an emergency situation.

The human rights principles that are vital to the humanitarian-development nexus include sustainability, participation, equality and non-discrimination and progressive realization.



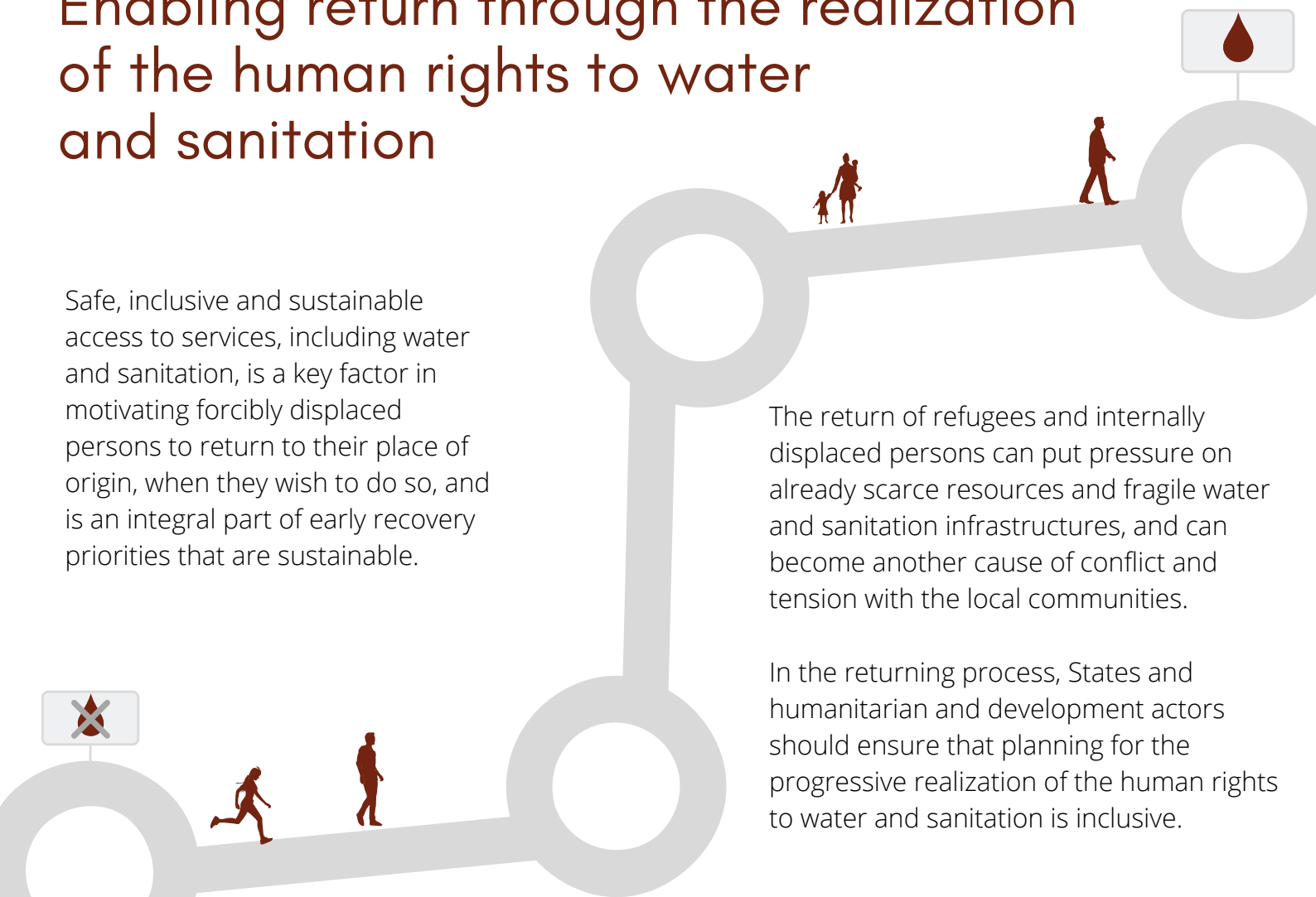
What sustainability means for development actors with regard to time frame and targeted groups may be different for humanitarian actors. Water and sanitation services that are the cheapest and quickest to install often do not comply with the normative content of the human rights to water and sanitation, and might require repair or reinstallation in a relatively short period of time.

## Enabling return through the realization of the human rights to water and sanitation

Safe, inclusive and sustainable access to services, including water and sanitation, is a key factor in motivating forcibly displaced persons to return to their place of origin, when they wish to do so, and is an integral part of early recovery priorities that are sustainable.

The return of refugees and internally displaced persons can put pressure on already scarce resources and fragile water and sanitation infrastructures, and can become another cause of conflict and tension with the local communities.

In the returning process, States and humanitarian and development actors should ensure that planning for the progressive realization of the human rights to water and sanitation is inclusive.



# BUILDING RESILIENCE AND PREPAREDNESS

Access to water has often been a major cause of armed conflict, other situations of violence and social unrest in many places. Emergencies often hit the marginalized hardest, as they have few means to mitigate the impact by themselves and often have no other option but to flee their homes.

Strengthening the framework of the human rights to water and sanitation could reduce and mitigate the risks of displacement when emergencies arise. Many human rights issues — equality, the right to housing, the right to participate, the right to information, and access to justice, which all contribute to the resilience of people when they are combined with the realization of the human rights to water and sanitation.

## PARTICIPATION AND ACCESS TO INFORMATION



Experience has shown that, when an emergency arises, people who take their lives into their own hands and can participate in shaping their fate are more likely to recover from the shock of disasters and are thus more resilient.

Empowering people by affording them access to information and participatory mechanisms is therefore crucial. Participatory processes can help in the design of culturally acceptable infrastructures, allowing users to gain ownership and therefore feel responsible for maintenance, resulting in greater system sustainability.



## REMEDY AND ACCOUNTABILITY

The human rights to water and sanitation include access to effective judicial or other appropriate remedies at both the national and international levels for those whose rights have been denied or violated; those persons should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition.

As one aspect of resilience and preparedness, States should take advantage of times of stability to establish clear institutional structures to help in the coordination of water, sanitation and hygiene interventions in times of emergency. States are, however, often fragile and lack the necessary capacity to do so, and therefore leave the decision-making to humanitarian organizations, which either provide water and sanitation services directly or, in some cases, provide support to local service providers.

In the humanitarian-development nexus, unclear accountability mechanisms for both humanitarian and development actors are contributing to unsustainable or discontinuous interventions. .



## PREPAREDNESS

International humanitarian actors are required to address inadequacies in water and sanitation services and the environmental sustainability issues that predate the onset of a crisis, which then exacerbates these vulnerabilities.

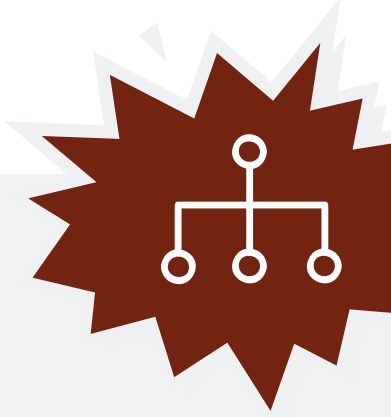


## PREVENTION AND MITIGATION

Strong human rights protection prior to the onset of the crisis can, however, mitigate vulnerabilities during emergencies and increase the effectiveness of humanitarian assistance. The effects of the realization — or lack thereof — of human rights during times of stability are often repeated or even exacerbated in humanitarian responses.

It is no accident that access to sanitation and menstrual hygiene management do not receive due and priority attention in the humanitarian context.

## COORDINATION

A stylized icon of an organizational chart, representing coordination and structure. It features a central node at the top connected to three nodes below, all enclosed within a dark red, jagged starburst shape.

National coordination structures to address emergency situations is an important feature of preparedness. During a natural disaster that leads the internal displacement of many people, it is not always clear who is responsible at the governmental level and who is accountable for them, which may lead to inadequate or delayed access to water and sanitation services.

The infrastructure of water and sanitation systems should also be planned in an adaptive way, to allow it to be flexible enough to cope with emergency situations. Contingency plans on, for example, making repairs, are vital to ensure system resilience.

# CONCLUSION

## Beyond "life-saving"

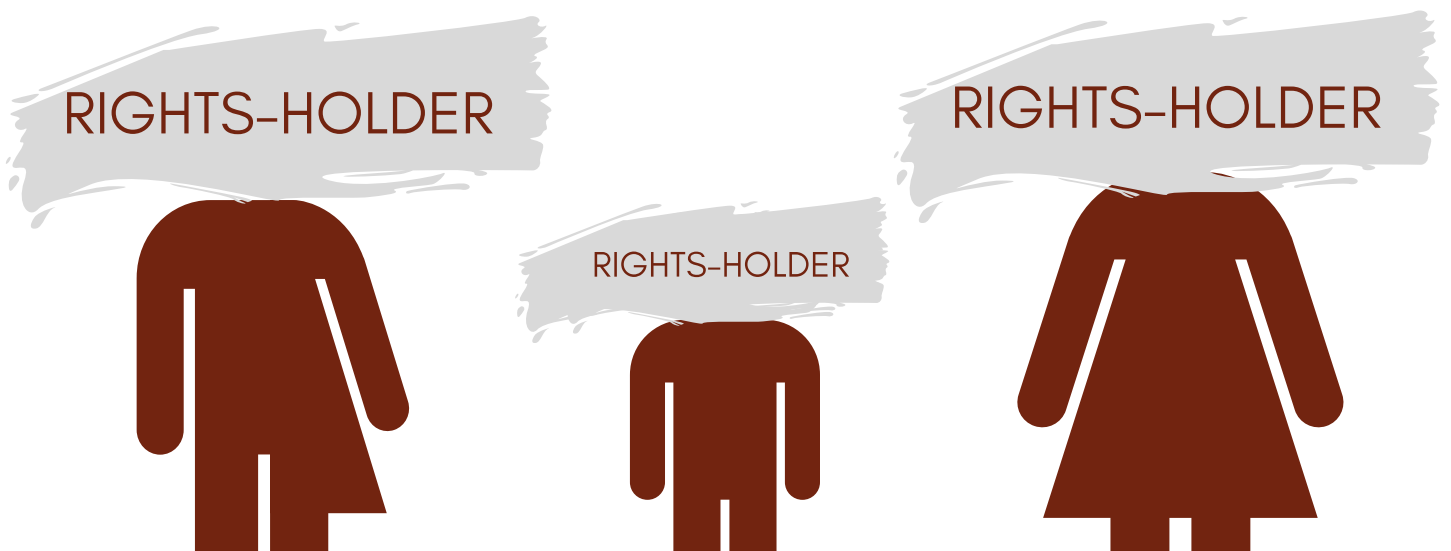
The Special Rapporteur expresses his concern at the practice followed, during emergencies, of prioritizing certain minimum obligations by narrowly interpreting "life-saving", and of not setting a time frame to move towards the progressive realization of the rights of displaced persons. In stabilized and protracted situations, the degree of access by forcibly displaced persons should progressively improve from the minimum essential level. The Special Rapporteur reminds economically developed States that they have a special responsibility to assist the poorer developing States in the provision of safe drinking water and adequate sanitation in a manner that is consistent with the human rights framework.

## Beyond camps

Humanitarian assistance tends to concentrate on camps, even though most forcibly displaced persons actually live outside camps. An inclusive approach that seeks to involve forcibly displaced persons in national and local development planning and in supporting local water and sanitation services is needed. Global monitoring in the development context, however, lacks disaggregated data on access to water and sanitation by forcibly displaced persons.

## Beyond emergency situations

Strengthening the human rights to water and sanitation during times of stability could help to reduce and mitigate the risks of displacement, since the realization of these rights requires the strengthening of other human rights. The level of the realization of the human rights to water and sanitation can indeed act as a gauge of the implementation of other human rights, and hence reflect people's degree of resilience. The effects of the realization — or lack thereof — of human rights during times of stability are often repeated or even exacerbated in humanitarian responses. Strengthening participation and access to remedies and accountability to all will contribute to strengthening the protection of human rights and the resilience of affected persons when an emergency arises.



## *In the light of the above conclusions, the Special Rapporteur recommends that States:*

- (a) Guarantee the human rights to water and sanitation by refugees, asylum seekers and migrants in transit or at their destination with the same conditions as those granted to nationals of the States concerned, regardless of their legal status and documentation;*
- (b) Establish a clear institutional structure in the provision of water and sanitation during times of stability as one aspect of resilience and preparedness;*
- (c) Strengthen support for the realization of the human rights to water and sanitation by internally displaced persons, and seek international support when needed;*
- (d) Respect the provisions of international humanitarian law in situations of armed conflict, including by granting safe, rapid and unimpeded humanitarian access to those in need.*

## *The Special Rapporteur recommends that States and humanitarian actors:*

- (a) Apply the framework of the human rights to water and sanitation at all times — before, during and after emergency situations, armed or non-armed conflicts or disasters;*
- (b) Ensure immediate access to the minimum essential level of water and sanitation on a non-discriminatory basis during situations of emergency, including by:*
  - (i) Ensuring equal access to the minimum essential amount of water that is sufficient and safe for personal and domestic uses and to prevent disease;*
  - (ii) Providing the elements that every person needs for health and survival, and to live in dignity;*
  - (iii) Adopting and implementing a water and sanitation strategy and plan of action that addresses the entire population, including refugees, asylum seekers, migrants and internally displaced persons;*
  - (iv) Monitoring the extent of the realization of the human rights to water and sanitation;*
  - (v) Taking measures to prevent, treat and control diseases linked to water and sanitation;*
- (c) Apply the human rights principles of progressive realization, using the maximum available resources, and of sustainability;*
- (d) Develop planning for progressive realization, including efforts aimed at strengthening the operational resilience of water and sanitation services in an inclusive and sustainable manner from the outset of the emergency phase, with an assumption that the situation could continue;*
- (e) Set up mechanisms for the participation of forcibly displaced persons and other affected populations, from the preparatory processes through to the phases during emergencies, and throughout different stages;*
- (f) Address the needs of the most at risk when designing water and sanitation interventions, through participatory processes.*

## *The Special Rapporteur recommends that States and humanitarian and development actors:*

- (a) Apply the human rights framework as a humanitarian-development nexus, in particular the principles of sustainability, participation, equality and non-discrimination and progressive realization;*
- (b) Continue to strengthen efforts for an inclusive approach to address access to water and sanitation by forcibly displaced persons, by:
  - (i) Including asylum seekers, refugees, migrants and internally displaced persons in national and local development plans, by and monitoring the realization of their human rights to water and sanitation;*
  - (ii) More effectively supporting local water and sanitation service providers in order to improve services and to ensure their operational continuity in an inclusive manner, including by ensuring access by forcibly displaced persons and other affected populations;**
- (c) Apply an inclusive approach when preparing a safe environment, with access to basic services for the voluntary repatriation, integration and settlement of refugees and internally displaced persons, taking into account their aspirations and with a view to progressively improving services;*
- (d) Strengthen the human rights to water and sanitation as a means to build the resilience of both people and services, and to reduce and mitigate the risks of displacement by ensuring in particular participation and the right to information, remedy and accountability;*
- (e) Clearly identify roles, responsibilities and performance standards of actors, and set up accountability mechanisms.*

## *The Special Rapporteur recommends that funders and humanitarian and development actors:*

- (a) Prioritize the allocation of humanitarian and development funds to support the realization of the human rights to water and sanitation by forcibly displaced persons;*
- (b) Develop a multi-year programming and financing plan to address access to water and sanitation services by forcibly displaced persons and other affected populations in order to achieve the progressive realization of their rights to water and sanitation;*
- (c) Place greater emphasis on accountability for the affected persons;*
- (d) Allocate additional resources to humanitarian and development actors so that they may carry out research, and collect and analyse data on access to water and sanitation by forcibly displaced persons.*