

Expert Consultation on the human rights to water and sanitation of forcibly displaced people in need of humanitarian assistance

Organized by the UN Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller

16 - 17 May 2018, Geneva
Palais Wilson, 1-016

BACKGROUND

Pursuant to Human Rights Council Resolution 27/7 of 2014 and 33/10 of 2016, the Special Rapporteur on the human rights to safe drinking water and sanitation, Mr. Léo Heller, is elaborating a report on the human rights to water and sanitation of forcibly displaced persons in need of humanitarian assistance. The report will be presented to the Human Rights Council at its 39th session in September 2018.

As part of the consultation process, the Special Rapporteur invited States, International agencies and non-State actors to contribute their views and perspectives in writing through a questionnaire. A total of [17 submissions](#) were received.

SCOPE and OBJECTIVE OF REPORT

For the purposes of the report, **forcibly displaced persons** are “those who are forced to move, within or across borders, due to armed conflict, persecution, terrorism, human rights violations and abuses, violence, the adverse effects of climate change, natural disasters, development projects or a combination of these factors”. The report will specifically target those who are unable, for reasons beyond their control, to access to water and sanitation services, physically or financially, and have to rely, as a result, on international and/or national humanitarian assistance - mainly internally displaced persons, refugees, asylum seekers, and migrants in a vulnerable situation while *en route*, at borders and at reception.

States have a special obligation to provide forcibly displaced people who do not have sufficient means with the necessary water and sanitation services, whether they stay in camps, informal settlements, detention centres or in urban and rural areas. The role of intergovernmental and non-governmental organisations is of crucial importance in the delivery of water, sanitation and hygiene (WASH) humanitarian assistance to people affected by forced displacement, especially when States’ capacity is overstretched. In this respect, the Special Rapporteur highlights that WASH humanitarian assistance should be provided in a manner that is consistent with the International Covenant on Economic Social and Cultural Rights and other human rights standards.

In humanitarian situations where multiple actors play roles in ensuring access to water and sanitation and where the State, as the primary duty bearer, has a limited capacity, the human rights standards (availability, accessibility, quality, acceptability) and principles (equality and non-discrimination, sustainability, participation, accountability) are often compromised. The States have to fulfil the human rights to water and sanitation in emergency situations. Non-state actors also have human rights responsibilities. In a practical term, taking a human rights-based approach can be a short-cut to ensure access to water and sanitation for everyone and will lead to a sustainable solution.

In an attempt to provide guidance and recommendations to States and other stakeholders on how to integrate the human rights standards and principles in their humanitarian responses, the Special Rapporteur wishes to conduct an in-depth analysis of the challenges and is seeking good examples of policies, budgets and practices to overcome such challenges and realize the human rights to water and sanitation of forcibly displaced persons at different stages – preventative stage and during and after emergencies.

PROGRAMME

16 May 2018 (Wednesday)

SESSION 1: Introduction	9:00 – 9:30
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- Purpose and objective of the expert consultation
- Tour de table: Introduction of participants

SESSION 2: The need to integrate the human rights to water and sanitation into reception policies of transit and destination countries	9:30 – 11:00
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The session aims to understand the situations and challenges of the human rights to water and sanitation in different settings including:

- Reception and Detention Centres (ex. Libya¹, Manus Island²)
- Refugee and migrant camps (ex. Lebanon, Bangladesh, Italy, Greece,³ Uganda, Calais in France⁴)
- Urban and rural settings – most refugees live in cities

Several States responded that they apply the same national standard of water and sanitation to refugees, asylum-seekers and migrants on route. Some States apply the Sphere standard. The human rights framework does not provide a quantitative guidance but it requires the fulfilment of essential minimum content of the human rights to water and sanitation for everyone under the effective control of the State, without exception.

Introductory remarks: Auberge des Migrants (5 min)

UNHCR (5 min)

Guiding questions:

- In these settings, who are/should be responsible for ensuring access to water and sanitation?
- In situations of forced displacement across borders, what standard of water and sanitation services do national and local authorities of transit and/or destination countries apply to refugees, asylum seekers and migrants in a vulnerable situation while en route, at borders and at reception?
- How do/should national reception systems respond to the water and sanitation needs of forcibly displaced people?
- What role do humanitarian organizations play if government's policies are discriminatory in the provision of water and sanitation services?
- What are the main concerns of the human rights to water and sanitation in these different settings?
- What are the main different treatments forcibly displaced people tend to receive compared to host communities?
- What are common discriminatory practices within the forcibly displaced people?

¹ See UN human rights chief: Suffering of migrants in Libya outrage to conscience of humanity

² Situation of Manus Island refugees - Asylum seekers who are refusing to leave an Australian detention centre in Papua New Guinea say they are digging into the ground to find water, two days after the camp officially closed. Australia withdrew from the Manus Island centre on Tuesday, following a PNG court ruling that the centre was unconstitutional. The men held at PNG - most of whom have refugee status - have now lost access to running water, electricity and working toilets, and their food supplies are dwindling.

The UN refugee agency has said some alternative accommodation is not ready.

http://www.bbc.com/news/world-australia-41840549?intlink_from_url=http://www.bbc.com/news/topics/ffb794e2-fe27-4fd4-bf6f-bd020673688f/papua-new-guinea&link_location=live-reporting-story

³ OHCHR Report.

⁴ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22240&LangID=E>

- Where international humanitarian assistance is required (international/national), how does it apply the human rights framework? (Ex. New Sphere Handbook / UNHCR WASH Manual, Practical Guidance for refugee settings, 2017)
- When the international humanitarian standard is applied, how long is it usually applied for?

Coffee Break	11:00 – 11:30
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SESSION 3: Challenges to the enjoyment of the human rights to water and sanitation by internally displaced people	11:30 – 13:00
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Conflict, violence and disasters caused 31.1 million new internal displacements in 2016. Disasters displaced three times more people than conflicts. While no precise data exists, it is estimated that 10 to 15 million people are forcibly displaced every year by development projects as well.⁵ The overwhelming majority of internally displaced persons are women and children who are especially at risk of abuse of their basic rights. While States continue to be the primary duty bearer, in reality, different actors are needed to ensure the human rights to water and sanitation by IDPs.

Introductory remarks: IOM (5 min)

Guiding questions:

- What is the standard of water and sanitation services that governmental authorities apply/should apply to internally displaced persons?
- How do your organizations work with State who is the primary duty bearer to ensure special needs of IDPs?
- If IDPs are subject to different treatment from the host communities, how should humanitarian organizations address it?
- How do your organizations address tensions between IDPs and host communities over access to water and sanitation?
- What are the main challenges with the human rights to water and sanitation of people displaced by development projects?

Lunch break	13:00 – 14:30
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SESSION 4: Challenges to the realization of the human rights to water and sanitation during protracted displacement	14:30 – 16:00
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Protracted displacement is now commonplace, with the average length of displacement being currently 17 years and the average conflict lasting for seven years. 11.6 million refugees, representing some two-thirds of all refugees, were in protracted refugee situations at the end of 2016. Protracted displacement poses significant challenges to the delivery of sustainable solutions by States and organisations providing humanitarian assistance as services need to shift from a short-term minimum essential level to a longer-term sustainable solution.

⁵ IDMC, Dams and Internal Displacement, 2017. See also: <http://www.forcedmigration.org/research-resources/expert-guides/development-induced-displacement-and-resettlement/global-overview>

Introductory remarks: IFRC (5 min)
UNICEF (5 min)

Guiding questions:

- What are the main challenges for the realization of the human rights to water and sanitation during protracted displacement, particularly for those who are in vulnerable situations?
- What are the main obstacles your organizations face when moving towards a more sustainable and development-based approach to water and sanitation services in situations of protracted displacement?
- How do your organizations ensure the participation of forcibly displaced people in the processes?
- In situations of protracted displacement (within or across borders), how do humanitarian organizations cooperate with governmental authorities and development actors in planning, designing and delivering sustainable solutions for the human rights to water and sanitation?
- When and how do the main actors shift from humanitarian organizations to development organizations?
- How do the responsibilities and engagement of governments and humanitarian organizations shift in the period from emergencies to protracted displacement?

• Coffee Break	16:00 – 16:30
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SESSION 5: Enabling return through the progressive realization of the human rights to water and sanitation	16:30 – 17:45
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Some half a million refugees (3 per cent of the overall refugee population) returned to their countries of origin in 2016, the majority to Afghanistan, Somalia and Sudan. About 6.5 million IDPs returned to their areas of origin, representing 18 per cent of the population. However, the context in which many displaced people returned was complex, leading to concerns that many returns may not be sustainable.⁶ The return of displaced people tend to place a stress on already scarce resources and could create tension with host communities including over security of tenure. Ensuring economic and social rights both for returnees and host communities, including the human rights to water and sanitation, is one of the critical factors to encourage return and help returnees settle in in a smooth manner.

Introductory remarks: Mara Tignino, University of Geneva (5 min)

Guiding questions:

- In the context of rehabilitation and reconstruction efforts after disasters and conflicts, how do your organizations coordinate efforts with governments to plan and implement sustainable solutions for the human rights to water and sanitation that enable the return of forcibly displaced people?
- What role do your organizations play in situations where governments cannot ensure the human rights to water and sanitation to returnees?
- How has the return of forcibly displaced people affected current water and sanitation provision of local/host communities?
- How do your organization address tensions between returnees and local communities?
- Any examples where returns were not sustainable due to the lack of access to basic services? Any examples where returns were successful due to sustainable access to basic services?

⁶ UNHCR Global Trends, Forced Displacement in 2016.

17 May 2018 (Thursday)

SESSION 6: Building the resilience and the preparedness of water and sanitation services	9:00 – 10:30
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The human rights framework provides guidance for building the resilience and the preparedness of water and sanitation services. The principle of sustainability requires States to adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe access to water and sanitation for present and future generations. The stronger the human rights to water and sanitation are protected during times of stability, the more resilient communities and services will be in times of crisis. In many instances, the sudden onset of disasters, the adverse effects of climate change or the emergence of conflicts only exacerbate an already pre-existing situation of poor implementation of the human rights to water and sanitation. Refugees, internally displaced persons and migrants in vulnerable situations often bear the disproportionate impact of such crises as displacement reduces resilience, increases vulnerability, and serves ultimately to further compound the impact of crises.⁷

Introductory remarks: ICRC (5 min)

Guiding questions:

- What is your analysis of preparedness, resilience and adaptability of the existing water and sanitation services, including contingency plans and special budget, in the countries you are working?
- How does your organization's water and sanitation humanitarian policies and programmes integrate the human rights to water and sanitation? How does it contribute to improve preparedness?
- How are your organizations helping improve preparedness of States you work with?
- How does the resilience of economic and social rights contribute to prevention of displacement?

Coffee Break	10:30 – 10:45
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SESSION 7: Recommendations	10:45 – 11:30
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- What are the key recommendations you want the Special Rapporteur to address in his report?
- Who should the recommendations be addressed to?

SPECIAL SESSION: Accountability and humanitarian actors	11:30 – 12:30
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The need for accountability in humanitarian action stems from the fact that humanitarian actors exercise influence and power over the lives of crisis-affected individuals and communities particularly in the provision of drinking water and sanitation services. To address this, humanitarian organizations have developed an accountability mechanism to hold them to their commitment to respect the Humanitarian Charter⁸, known as the Humanitarian Accountability Project (HAP). The HAP defined accountability as involving two sets of principles and mechanisms:

⁷ Pinto et al (2014), Exploring the links between displacement, vulnerability and resilience.

⁸ Text of Humanitarian Charter found at: <http://www.spherehandbook.org/en/the-humanitarian-charter/>

- those by which individuals, organisations and states (referred to as duty bearers) are held to account for their actions and are held responsible for them; and
- those by which individuals, organisations and states may safely and legitimately report concerns, complaints and abuses, and get redress where appropriate.

The Project led to the establishment of the Humanitarian Accountability Partnership (HAP), a partnership of humanitarian and development organizations dedicated to ensuring greater accountability to people affected by crises through the promotion of a Standard on Quality and Accountability.⁹

Initiatives such as HAP illustrate that non-state actors can be held accountable for human rights responsibilities and obligations. Depending on the formal status of humanitarian organizations in international law, different accountability mechanisms can be put in place. Humanitarian organizations can be categorized into four: (1) governmental agencies, as organs of government (2) agencies established by two or more governments such as the international organizations; (3) ICRC which has a sui generis status due to its recognition as an entity with certain privileges under international law and (4) non-governmental organizations, if legal persons then in the similar position to corporation when it comes to human rights responsibility.

Introductory remarks: Special Rapporteur

Guiding questions:

- What challenges do humanitarian actors face to be held accountable, particularly, in the context of their policy and operation related to drinking water and sanitation?
- What are some good practices where accountability mechanisms provided guidelines and standards for humanitarian actors to be accountable for their roles and responsibilities?
- What are specific elements relevant for humanitarian actors to be held accountable to their commitment in undertaking their role to provide access to drinking water and sanitation services to crisis-affected individuals?
- How does the formal status of humanitarian organizations in international law impact ensuring and strengthening accountability measures and processes?

⁹ The 2010 HAP Standard in Accountability and Quality Management:
<https://www.chsalliance.org/files/files/Resources/Standards/2010-hap-standard-in-accountability.pdf>

LIST OF PARTICIPANTS

	Name	Organization	Position
1	Sophie Pouget	Committee for Refugee Relief	Fundraiser
2	Loan Torondel	Auberge des Migrants	Chargé de mission
3	Dominique Porteaud	UNICEF	Global WASH Cluster Coordinator
4	Antonio Torres	IOM	WASH Coordinator/Expert
5	Alexander Breitegge	ICRC	Legal Adviser
6	Helen Obregon Gieseken	ICRC	Thematic Legal Adviser
7	Michael Talhami	ICRC	Water and Habitat Unit
8	Angela Cotroneo	ICRC	IDP Protection ICRC institutional focal point
9	William Carter	IFRC & Red Crescent Societies	Senior Officer (WatSan)
10	Murray Burt	UNHCR	Senior WASH Officer
11	Mara Tignino	University of Geneva	Professor
12	Mr. Chukwuebuka Edum	University of Geneva	PHD student
13	Enrico Muratore	WSSCC	Technical Expert on Leave No One Behind, Equality and Non-Discrimination, and Gender
14	Prisicila Neves Silva	Fundação Oswaldo Cruz	Post-Doc Researcher
15	Léo Heller	United Nations	Special Rapporteur on the human rights to safe drinking water and sanitation
16	Madoka Saji	OHCHR	Human Rights Officer
17	Ahreum Lee	OHCHR	Human Rights Officer