UNIVERSITY OF AMSTERDAM

Strengthening the human right to sanitation as an instrument for inclusive development

Obani, P.C.

Publication date
2018
Document Version
Other version
License
Other

[Link to publication](#)

Citation for published version (APA):
Obani, P. C. (2018). *Strengthening the human right to sanitation as an instrument for inclusive development*. [Thesis, externally prepared, Universiteit van Amsterdam].

Chapter 6. Human Right to Sanitation in Humanitarian Situations

6.1 INTRODUCTION

Humanitarian situations occur where technical issues, human negligence, weak infrastructure in disaster prone areas, civil war, or a rare event, with retrospective predictability, results in system failures and the affected population have to rely on external assistance for their recovery (Labib & Read, 2015). Although international humanitarian law focuses on protecting vulnerable groups during armed conflicts, and limiting the methods and effects of warfare, natural hazards are also increasingly creating humanitarian situations and vulnerable groups that require some forms of humanitarian assistance and protections (Internal Displacement Monitoring Centre [IDMC] & Norwegian Refugee Council [NRC], 2017). Further, low and middle income countries account for significant new internal displacement resulting from conflicts and natural hazards and displacement will likely continue to hamper human rights realisation, social development and economic growth except the drivers of poverty, environmental change and state fragility are tackled (Bennett et al., 2017).

This chapter therefore broadly analyses the human right to sanitation (HRS) in humanitarian situations resulting from both armed conflicts and natural hazards, though it does not specifically distinguish between specific groups of vulnerable persons in humanitarian situations, like poor migrants, refugees and internally displaced persons. The preoccupation with humanitarian situations in this chapter is because humanitarian situations often obscure or escalate lack of access to basic infrastructure like sanitation and the inequities within a population as a result of destruction of the existing infrastructure or high influx of displaced persons creating additional stress on the infrastructure and the environment (ACF-France, 2009; Nicole, 2015). Further, humanitarian situations involve a variety of humanitarian actors, State actors, communities and their representatives, and the operation of multiple normative orders including human rights, humanitarian principles and local customs and practices. The plurality of rules inherent in humanitarian situations offers an avenue for investigating the fit between the HRS and other principles for sanitation governance, in this case humanitarian principles (see 2.4.2).

Humanitarian law principles are mostly discussed in connection with regulating the use of force in armed conflict but rarely in connection with the promotion of human rights like the HRS. This chapter therefore also relies on the human rights literature and content analysis to

address the subsidiary research questions: (a) how is sanitation defined in the context of humanitarian situations? (b) How is the human right to sanitation reflected in international humanitarian law and how can progress towards realising the right be monitored? (c) How do the humanitarian principles for sanitation governance promote inclusive development? (d) How does an understanding of the incoherence between the HRS and humanitarian principles, using legal pluralism theory (see 2.4.2), affect the design of sanitation governance frameworks in humanitarian situations?

The chapter analyses the meaning of sanitation as provided for in international humanitarian law (IHL) and the sources of humanitarian law (see 6.2), and principles (see 6.3) that support the HRS; the humanitarian instruments for sanitation governance (see 6.4); and the existing indicators for monitoring progress on the HRS in humanitarian situations (see 6.5). Section 6.6.1 analyses the humanitarian principles for addressing the drivers of poor domestic sanitation services, while Section 6.6.2 assesses humanitarian principles for sanitation governance for inclusive development and analyses the incoherence between humanitarian principles and the HRS principles. Finally, Section 6.7 highlights the key inferences from the chapter.

6.2　Legal Bases and Meaning of the Human Right to Sanitation in International Humanitarian Law

International humanitarian law (IHL) is the body of international law that protects specific vulnerable groups in situations of armed conflicts, and limits the methods and effects of warfare, especially as it applies to non-combatants. IHL also protects civilian objects from military attacks or use as weapons of war during conflicts, and mainly comprises of customs; treaties (like the Hague Conventions of 1899 and 1907 and their regulations, and the Four Geneva Conventions with the First and Second Additional Protocols); and soft law (see for instance, Baker, 2009). Though IHL is the *lexis specialis* for the protection of persons during armed conflicts, human rights (HR) law still operates as a complementary law for the protection of persons. Specifically, the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) from which the HRS is mainly derived in international law (see 5.2) does not permit derogation from its provisions, while the International Covenant on Civil and Political Rights 1966 (ICCPR) permits derogations under exceptional circumstances like war or public emergencies.[131] Nonetheless, contrary to the perception that

---

[131]　ICCPR, article 4.

HR derogations follow humanitarian situations or emergencies (Brookings-Bern Project on Internal Displacement, 2011), the literature suggests that modern democracies are strongly committed to observing HR obligations even during humanitarian situations (Hafner-Burton, Helfer & Fariss, 2011). In addition, soft law instruments like the Guiding Principles on Internal Displacement offer principles for the protection of internally displaced persons, which may be as a result of humanitarian situations, and humanitarian actors have rules of practise like the Sphere Handbook (see 6.2.4) which imposes moral obligations on them in delivering humanitarian assistance. Hence, this section explores IHL provisions that promote the HRS (see 6.2.1), before exploring the meaning of sanitation under the humanitarian law framework (see 6.2.2).

6.2.1 Treaties

Article 3 common to the Four Geneva Conventions provides that persons protected by the Conventions should "in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria". The Geneva Conventions III and IV further protect the rights of prisoners of war[132] and civilian populations in war times[133] to access sufficient water and soap for their daily toilet needs and doing personal laundry. Victims of international and non-international armed conflicts are also entitled to the protection of their drinking water installations and supplies and irrigation works as civilian objects, while the latter are entitled to additional health and hygiene safeguards.[134] These protections are remarkable especially as the Geneva Conventions have been ratified by at least 192 States and most of the provisions are considered part of customary international law.[135]

At the regional level, the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention),[136] which came into force in 2012, prohibits combatants from depriving internally displaced persons (IDPs) of their right to live in satisfactory conditions of dignity, with access to basic needs like sanitation.[137] It also obliges States to take necessary measures to ensure that IDPs are received in host

---

[132] Geneva Convention III – Treatment of Prisoners of War, article 29.
[133] Geneva Convention IV – Protection of Civilian Persons in Times of War, article 85
[134] Additional Protocol I – protection of Victims of International Armed Conflicts, articles 54 and 55; Additional Protocol II – Protection of Victims of Non-International Armed Conflict, articles 5 and 14.
[135] Customary International Law, Vol 1.
[136] The Kampala Convention is the first legally binding treaty for the protection of the rights and wellbeing of persons displaced by various forms of conflict, disasters, human rights abuses and violence.
[137] Article 7(5)(c). The Kampala Convention is yet to enter into force, subject to ratification.

communities without any discrimination, and provided adequate humanitarian assistance including sanitation services, to the fullest extent possible and with minimal delay.[138]

6.2.2 Customary International Humanitarian Law

There are 161 rules of customary international humanitarian law; at least 136 of these are based on the rules of the Additional Protocol 1 to the Geneva Conventions. These rules however also apply to non-international armed conflicts and include the rules relating to the principle of distinction, specifically protected persons and objects, specific methods of warfare, weapons, and the treatment of civilians and persons *hors de combat*, *inter alia* (Henckaerts & Doswald-Beck, 2005). The rules relevant for the HRS discussed in sections 6.2, 6.4.1 and 6.4.4 reveal two main limitations of customs as a source of international humanitarian law: (a) custom is constantly evolving and therefore provides a weak basis for the uniform application of law in humanitarian situations, and (b) custom also includes the actual practise of belligerents which would otherwise be considered unacceptable (Sassòli, Bouvier & Quintin, 2011).

6.2.3 Soft Law

The Guiding Principles on Internal Displacement obliges authorities undertaking displacements to ensure that IDPs are afforded satisfactory hygiene and other similar basic services.[139] All IDPs also have the right to an adequate standard of living, including safe access to sanitation.[140] Further, soft law instruments on the HRS, like the General Comment No 15 of the Committee on Economic, Social and Cultural Rights (CESCR) integrates the humanitarian law obligations of States during armed conflicts[141] to protect the rights of vulnerable groups like refugees and IDPs;[142] articulate the duty of States to adopt comprehensive and integrated strategies for emergency response;[143] prohibit the use of water (presumably also including sanitation and hygiene) infrastructure as a weapon of war or punishment;[144] promote the HRS and other ICESCR rights in disaster relief and emergency

---

[138]   Article 9(2)(a)(b).
[139]   Guiding Principles on Internal Displacement 1998, principle 7(2).
[140]   Ibid, Principle 18.
[141]   General Comment No. 15, paragraph 22.
[142]   General Comment No. 15, paragraph 16.
[143]   General Comment No. 15, paragraph 28(h).
[144]   General Comment No. 15, paragraph 21.

assistance efforts[145] and advance the central role of humanitarian actors in HR implementation. [146]

6.2.4 Defining the Human Right to Sanitation under a Humanitarian Law Framework

Although neither sanitation nor the HRS is expressly defined under IHL, sanitation, water and hygiene services are addressed in connection with the protection of civilian populations and objects during armed conflicts (see 6.2.1 and 6.2.2) and general HR protections for IDPs (see 6.2.1 and 6.2.3) (Maunganidze, 2016). Additionally, the Sphere Handbook prepared by the Sphere Project,[147] which is considered the most widely recognised and accepted set of principles and minimum standards for humanitarian assistance by the international humanitarian community, has provisions on water, sanitation and hygiene services (WASH) and contains seven related themes that are broadly relevant for sanitation in humanitarian situations: WASH, hygiene promotion, water supply, excreta disposal, vector control, solid waste management, and drainage (Obani, 2017). The sanitation theme in particular has five components: excreta disposal, vector control, solid waste management, and drainage (Obani, 2017). Humanitarian sanitation interventions also generally include direct provision, support for capacity building and preparedness, and response coordination at the international and domestic levels, and during recovery to support the development of the local water, sanitation and hygiene infrastructure (Ramesh, Blanchet, Ensink & Roberts, 2015; UNICEF, 2017). At the national level, some laws also permit the abstraction of water from any source for human consumption and fire fighting during emergencies without any license (see 5.4.1). Presumably, such provisions could be interpreted in order to extend the application of the human rights protection of access to sanitation (and water) to emergencies and humanitarian situations generally, depending on the express wording of the relevant statutory provision (see 2.3.5).

Further, humanitarian situations present additional nuances for operationalizing the HRS principles (see 5.3). In this regard, the Sphere Handbook provisions expatiate on the HRS principles of acceptability, non-discrimination, safety, accountability, participation and access

---

[145] General Comment No. 15, paragraph 34.
[146] General Comment No. 15, paragraph 60.
[147] The Sphere Project was established in 1997, by the representatives of global networks of humanitarian agencies, to improve accountability and the quality of humanitarian response. See further, http://www.spherehandbook.org/en/what-is-sphere/ accessed on 27 September 2017. The Sphere Handbook is however not legally binding but imposes moral obligations on humanitarian actors at various levels of governance, as an epistemic community.

to information (Sphere Project, 2011). To ensure the acceptability of humanitarian sanitation services, it is important for the humanitarian actors to understand the varied needs of the population based on disaggregated assessment data, embark on hygiene promotion to ensure proper use of the facilities provided, use appropriate technology options for different phases of emergency response, and integrate user preferences, the local culture, existing infrastructure, local conditions, and special needs of vulnerable groups in the decision support systems (see 6.4.2). Accountability requires: (a) coordinating and implementing effective response with other agencies and governmental authorities engaged in impartial humanitarian action; (b) conducting systematic assessments to understand the nature of the disaster, identify the impacts and the affected population, and assess people's vulnerability and capacities; (c) examining the effectiveness, quality and appropriateness of humanitarian responses; (d) recognising the obligation of humanitarian agencies to employ suitably qualified aid workers to deliver an effective humanitarian response and support the workers with effective management and support for their emotional and physical well-being, and (e) assisting the affected population with rights claims, access to remedies and recovery from abuse (Sphere Project, 2011).

Effective sanitation interventions require the active participation of the affected population, including through: (a) establishing explicit links between project strategies and community-based capacities and initiatives, (b) facilitating the active participation of the affected population in regular meetings on how to organise and implement humanitarian response, (c) increasing the number of self-help initiatives by the affected community and local authorities during the response period, and (d) establishing mechanisms for investigating complaints against humanitarian actors and taking appropriate action, including (e) a feedback mechanism through which the affected population can influence the planning and implementation of humanitarian interventions using tools like a balanced representative participation (Humanitarian Accountability Partnership [HAP], 2008; Sphere Project, 2011).

The affected population are entitled to accurate and updated information with special consideration of the local language, including adapted media for children and adults who cannot read for instance or people with visual impairments (HAP, 2008; Sphere Project, 2011), and the right to formal mechanisms for complaints and redress (Sphere Project, 2011). It is also necessary to disaggregate the data during assessment of humanitarian interventions, in order to capture the impact of humanitarian assistance on vulnerable groups (Sphere Project, 2011).

6.3   PRINCIPLES OF HUMANITARIAN ASSISTANCE AND PROTECTION OF PEOPLE IN HUMANITARIAN SITUATIONS

The discussion here mainly focuses on the seven principles of humanitarian assistance and the four principles for the protection of people in humanitarian situations (n=11) that are most relevant for sanitation governance in humanitarian situations, based on literature review, content analysis and an inductive analysis of the framework for humanitarian assistance. However, this section does not focus on the general principles of international humanitarian law that govern armed conflict, including: (a) prohibition on causing unnecessary suffering, (b) necessity, (c) independence of *jus in bello* (humanitarian rules to be respected in warfare) from *jus ad bellum* (legality of the use of force), (d) distinction between civilians and combatants, civilian objects and military objectives, (e) humanity (Meron 2000; Slim 1998),[148] and (f) proportionality of military action.[149] The principles of humanitarian assistance and protection principles discussed in this section are predominantly social principles, even though in practise they may also affect the economic and environmental pillars of sustainable development.

6.3.1 Principles of Humanitarian Assistance

Humanity

Humanity is established in the Additional Protocol (1) to the Geneva Conventions and soft law IHL instruments like the General Assembly Resolution 46/182 (see Table 6.1). It limits the suffering and destruction incident to warfare by generally prohibits the use of force, or infliction of any form of damage, suffering or injury that is not essential to realising the legitimate purpose of a conflict (Arai, 2011; International Committee of the Red Cross, 2014). It also requires humanitarian actors to take all steps possible to address all forms of human suffering (Sphere Project, 2011; United Nations Office for the Coordination of Humanitarian Affairs [OCHA], 2012). In relation to the HRS, humanity therefore prohibits damage to sanitation infrastructure that does not advance the legitimate purpose of conflicts and obliges humanitarian actors to take all possible steps to improve access to sanitation for persons living in humanitarian situations.

---

[148]   See Case No. 153, ICJ, Nicaragua v. United States, Para. 242.
[149]   See Case No. 123, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part B., paras 36-85]; Case No. 124, Israel, Operation Cast Lead [Part I, paras 120-126; Part II, paras 230-232]; Case No. 257, Afghanistan, Goatherd Saved from Attack; Case No. 290, Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia [Paras 28-30, 41-47].

Neutrality

Neutrality is enshrined in soft law instruments like the UNGA Resolution 46/182 (see Table 6.1). Neutrality imposes three duties on a State, to: abstain from providing military assistance to belligerents; prevent belligerents from using its territory for purposes that contravene neutrality; maintain impartiality in relating with the belligerents (Schindler, 1991). It also demands that a humanitarian actor desists from taking sides in hostilities or engaging in political, racial, religious or ideological controversies, in order to retain the trust of the parties (Harroff-Tavel, 1989; International Committee of the Red Cross, 2002; Schindler, 1991). There is a wide spectrum of approaches to neutrality by humanitarian actors, ranging from the classicists who believe that it is both possible and desirable to divest humanitarian assistance of all forms of political influences, to solidarists that abandon neutrality to pick sides and reject consent as a requirement for humanitarian interventions, and the minimalists and maximalists across the spectrum between classicists and solidarists (Minear, 1999; Weiss, 1999, cf. Tanguy & Terry, 1999). In relation to the HRS, some humanitarian actors may be inclined to provide sanitation services based on the needs of the victims, without regard for political considerations (classicists), take sides with the victims and on that basis provide them with the sanitation services they need (solidarists), only intervene to relieve the suffering of victims provided such intervention is sustainable and does not aggravate the conflict (minimalists), or offer sanitation services as part of a political strategy to tackle the causes of the conflict (maximalists) (Weiss, 1999).

Independence

Independence is contained in soft law instruments like the 1991 General Assembly Resolution 46/182 (see Table 6.1). It similarly entails expunging extraneous influences, such as political, economic or military objectives from the humanitarian system (OCHA, 2012). Independence is easily applied to non-State humanitarian actors like international and local NGOs, but is also relevant to the intricacies of how the foreign policy of Member States affects the operations of inter-governmental organisations (like the United Nations Children's Fund and the United Nations High Commissioner for Refugees) who also play a significant role in humanitarian interventions (OCHA, 2012). In relation to the HRS, impartiality requires that sanitation services are delivered as part of humanitarian assistance and without any constraints imposed by extraneous political, economic or military objectives, for instance.

Impartiality

Impartiality is contained in soft law instruments like the 1991 General Assembly Resolution 46/182 (see Table 6.1). It requires non-discrimination (see 4.3 and 5.3.1) and proportionality in humanitarian assistance, such that the most urgent and greater needs are to be prioritised and rendered the greatest assistance (Harroff-Tavel, 1989; Sphere Project, 2011). Impartiality enhances distributive justice in humanitarian assistance. Similar to neutrality, impartiality can be interpreted in different ways in practise: classicists deliver humanitarian assistance on the basis of non-discrimination and proportionality, while solidarists allocate humanitarian assistance on the basis of their support for the main victims of a conflict, and there are minimalists and maximalists across the spectrum between classicists and solidarists (Weiss, 1999). In relation to the HRS, impartiality obliges humanitarian actors to prioritise the most vulnerable members of the population for assistance, and provide sanitation services, in a non-discriminatory manner.

Proportionality

Proportionality, which is the second element of impartiality, is contained in the Additional Protocol (1) to the Geneva Conventions (see Table 6.1). It qualifies impartiality and non-discrimination on the basis of human needs, with the effect that: (a) the more urgent needs are prioritised in humanitarian assistance, (b) the greater need receives the greater amount of assistance, and (c) needs that are qualitatively different are nonetheless addressed in an equitable manner (Lensu, 2003; Sphere Project, 2011). In relation to the HRS, proportionality means that people who are likely to suffer the most injury or death as a result of lack of access to sanitation services are prioritised and receive the necessary amount of assistance to ensure their survival and those with greater needs also receive greater assistance that is equitable.

The right to give and receive humanitarian assistance

The right to give and receive humanitarian assistance is an emerging custom (see Table 6.1) that simultaneously obliges belligerent States to provide humanitarian assistance to citizens of enemy States within their jurisdiction, and grant access to humanitarian actors to operate (Lensu, 2003). The principle applies to both international and non-international armed conflicts,[150] but its relevance to other forms of humanitarian situations resulting for instance from natural hazards is unclear (Lensu 2003), while natural hazards significantly affects

---

[150] See Additional Protocol I, article 70 and Additional Protocol II, article 18.

internal displacement (Bennett et al. 2017). In relation to realising the HRS, the right to give and receive humanitarian assistance obliges States to grant humanitarian actors free access to provide sanitation services to the affected population, and obliges humanitarian actors to provide the necessary assistance.

Table 6.1 Legal status of the principle of humanitarian assistance

Humanitarian Principles	Source Documents	Legal Status
Humanity	1977 Additional Protocol (1) to the Geneva Conventions 1991 General Assembly Resolution 46/182 2004 UNOCHA Guiding Principles	Established in treaty and soft law
Neutrality	1991 General Assembly Resolution 46/182 2004 IFRCRCS and the ICRC Code of Conduct	Established in soft law
Impartiality	1991 General Assembly Resolution 46/182 2004 UNOCHA Guiding Principles	Established in soft law
Independence	2003 General Assembly Resolution 58/114 2004 IFRCRCS and the ICRC Code of Conduct	Established in soft law
Non-discrimination	1977 Additional Protocol (1) to the Geneva Conventions 2004 UNOCHA Guiding Principles	Established in treaty and soft law
Proportionality	1977 Additional Protocol (1) to the Geneva Conventions	Established in treaty and soft law
Right to give and receive humanitarian assistance	2004 IFRCRCS and the ICRC Code of Conduct	Emerging custom
Avoid causing harm	1977 Additional Protocol (1) to the Geneva Conventions	Established in treaty and soft law
Ensure people's access to impartial assistance	1977 Additional Protocol (1) to the Geneva Conventions 1991 General Assembly Resolution 46/182 2004 UNOCHA Guiding Principles	Established in treaty and soft law
Protect people from violence and harm	1977 Additional Protocol (1) to the Geneva Conventions 2011 Sphere Handbook	Established in treaty and soft law
Assist people claim their rights claims and remedies, and recover	1977 Additional Protocol (1) to the Geneva Conventions 1966 International Covenant on Civil and Political Rights 1966 International Covenant on Economic, Social and Cultural Rights	Established in treaty and soft law

Source: Compiled by the author, based on Harroff-Tavel, 1989; Hilhorst, 2005; Kälin, 2008; Lensu 2003; Sphere Project, 2011; Tsui, 2009; Weiss, 1999

6.3.2 Protection Principles

Avoid causing harm

To avoid causing harm is established in the Additional Protocol (1) to the Geneva Conventions (see Table 6.1). Also, the first protection principle adopted by Sphere is to: "avoid exposing people to further harm as a result of your actions" (Sphere Project, 2011). This requires that: (a) the nature of the humanitarian assistance and the environment where it is provided do not violate the rights of the recipients or otherwise expose them to physical hazards or violence; (b) humanitarian assistance and protection efforts do not compromise the capacity of the recipients for self-protection; and (c) humanitarian actors manage sensitive information to protect the security and anonymity of informants (Sphere Project, 2011). In relation to the HRS, this principle therefore requires humanitarian actors to offer sanitation services in a form and within an environment that does not expose the users to further harm, for instance by ensuring the safe management of wastewater generated from sanitation and hygiene uses.

Ensure people's access to impartial assistance – in proportion to need and without discrimination

The need to ensure access to impartial assistance is enshrined in treaty and soft law instruments (see Table 6.1). Additionally, the second Sphere protection principle requires that people be able to access humanitarian assistance based on need and without unlawful discrimination and that humanitarian actors are allowed access necessary to discharge their obligations in accordance with the Sphere standards. This principle therefore combines the principles of impartiality, non-discrimination, proportion, and the right to give and receive humanitarian assistance, already discussed above (see 6.3.1).

Protect people from physical and psychological harm arising from violence and coercion

The imperative to protect people from harm is enshrined in the Additional Protocol (1) to the Geneva Conventions (see Table 6.1). The third Sphere protection principle specifically requires that "people are protected from violence, from being forced or induced to act against their will and from fear of such abuse" (Sphere Project, 2011). This principle has three elements, including: (a) taking all reasonable steps to protect the affected population from violent attack and from coercion to act in ways that may bring them to harm or violate their rights; and (b) supporting local initiatives to ensure safety, security and human dignity (Sphere Project, 2011). In relation to realising the HRS, this protection principle requires the

design and management of sanitation facilities in a way that ensures the safety and dignity of users from physical and psychological harm arising from either violence or coercion.

Assist people claim their rights, access available remedies and recover from the effects of abuse

To assist people to get redress for human rights violation which they suffer is an established principle in treaties and soft law instruments (see Table 6.1). It is also the fourth protection principle under Sphere and requires that: "the affected population is helped to claim their rights through information, documentation and assistance in seeking remedies. People are supported appropriately in recovering from the physical, psychological and social effects of violence and other abuses" (Sphere Project, 2011). Though the principle *prima facie* reinforces the HRS principles of accountability and transparency and access to information (see 4.1 and 5.3.1), the effects may be limited in practice due to incoherence in the meaning of shared principles like participation and accountability as employed among humanitarian actors and human rights practitioners (Klasing et al., 2011). Nonetheless, in relation to realising the HRS in humanitarian situations, this principle obliges the humanitarian actors to assist the affected population with enforcing their HRS, and accessing available remedies and recovery mechanisms.

6.4   HUMANITARIAN INSTRUMENTS FOR SANITATION

Humanitarian WASH is delivered through the cluster approach. Box 6.1 describes how the WASH cluster works at the global and country levels, while the remainder of this section analyses economic (see 6.5.2), and suasive instruments (6.5.3) used by humanitarian actors. Nonetheless, the technologies for domestic sanitation (see 3.5) and the human right to sanitation instruments (see 5.5) earlier considered may also apply in humanitarian situations, depending on the context (ACF-France, 2009; Harvey, 2007; Johannessen et al., 2012).

Box 6.1 Global and country-level WASH cluster

Global WASH Cluster

Where the UN agencies are contacted to intervene in the aftermath of a disaster, the UN first decides internally whether it is a Level 1, Level 2, or Level 3 emergency and the necessary response based on an analysis of the scale, urgency and complexity of the response required, as well as the capacity and potential reputational risk to the UN and/or its agencies. The Under-Secretary General and the Emergency Relief Coordinator   (USG/ERC) act as the central point for the coordination of governmental, intergovernmental, and non-governmental humanitarian response. The USG/ERC may appoint a Humanitarian Coordinator to coordinate efforts at the level of the affected country. A major challenge to humanitarian agencies' response in emergencies used to be lack of proper coordination, until the adoption of the cluster approach in 2005 as a way of promoting smooth coordination and multi-sectoral participation of various international humanitarian actors (Heeger, 2011).

There are currently 11 Clusters identified by the Inter Agency Standing Committee, the inter-agency forum of the UN and non-UN humanitarian partners; each of these clusters is headed by a Cluster Lead Agency (CLA) responsible to the USG/ERC at the global level or the HRC at the country level. The global CLA, UNICEF in the case of the WASH Cluster, usually acts as the default country CLA except when it either lacks the necessary capacity or presence within the affected country or if another agency, NGO or humanitarian partner has comparative advantage, in which case the head of cluster (HC), the global CLA, and the humanitarian country team (HCT) can assign the role to another competent agency.

WASH Cluster partners share a strategic operational framework (SOF) which provides details about operational ways of working but allows sufficient flexibility for respective partners to develop their individual approaches in line with their respective mandates, capabilities, capacities, and comparative advantages. The global WASH Cluster generally adopts Sphere as its guidance for standards and indicators for humanitarian WASH interventions, including the principles of consultation, participation, and non-discrimination.

Country- level WASH cluster

The country level CLA appoints a WASH Cluster Coordinator (WCC) to establish the WASH cluster and improve coordination and equal partnership between the WASH Cluster Partners. Where there is no agency responsible to provide WASH services, the CLA automatically assumes the role as the 'Provider of Last Resort' (POLR). The in-country WASH Cluster collaborates with field staff from other clusters such as Education, Emergency Shelter, Health, Nutrition, and Camp Coordination, Camp Management (CCCM), in establishing, organising, and managing WASH in humanitarian situations. The collaboration clarifies responsibilities, improves the accountability of clusters, and prevents any operational overlaps among them. For instance, the 'WASH in Nut' strategy was employed in Niger in 2014 to reach over 118,000 malnourished child/mother pairs with WASH facilities and nutrition, simultaneously.

The in-country WASH Cluster is also responsible for integrating Early Recovery in WASH at the earliest possible stage, through the restoration of basic services, livelihoods, shelter, security and rule of law, governance, sustainability, capacity development for local and national ownership, participatory planning and implementation of programmes, disaster risk reduction, and cohesive multi-sectoral activities.

Source: Compiled by the author, based on expert interviews and literature review

6.4.1 Economic

Budgeting

The budgeting process benefits from financial standards like the International Public Sector Accounting Standards, and specialized Finance and Administration Dashboard which improve the accuracy and reliability of financial records for donor reporting and grants management, and also strengthen corporate financial risk management through closer monitoring of key financial and administrative performance areas (UNICEF, 2017). The budget heads for emergency WASH response include dedicated needs assessment teams, support of counterparts, coordination and the cluster management, adequate information management for the WASH Cluster, adequate technical and management support to WASH, personnel costs like daily subsistence allowance and rest and recuperation leave pay where appropriate, third party monitoring in areas with limited access, headquarter retention costs (5% for thematic funding), baseline surveys, evaluations, hygiene promotion, Non-Food Items and other supplies, logistics and transport, water quality monitoring and appropriate corrective action/alternative supplies, decommissioning of latrines and other temporary facilities, security, transport, and utilities, and waste disposal; at the minimum a realistic budget proposal would include a USD 5 to USD 10 investment per capita depending on the local context and type of emergency (United Nations Children's Fund [UNICEF] & United Nations High Commissioner for Refugees [UNHCR], 2014).

Flash Appeal

A Flash Appeal can be used to structure coordinated humanitarian response within the first three to six months of an emergency and incudes an overview of urgent lifesaving needs and early recovery (ER) projects (see for instance, United Nations Office for the Coordination of Humanitarian Affairs [OCHA], 2016; 2017). A Revised Flash Appeal is launched after 30 days of the initial appeal based on a more detailed assessment of the emergency situation and new or revised response plans.[151] The Consolidated Appeal Process (CAP) is coordinated by the OCHA in close collaboration with the UN agencies, NGOs, donors, government, and other relevant stakeholders to ensure a strategic approach to humanitarian response where an emergency lasts beyond the timeframe of a Flash Appeal and is declared to be 'complex' or

---

[151]   Interviewees 20 and 21.

'major' (OCHA, 2016; 2017). The CAP is launched annually, and depending on the scale of the emergency, UNICEF could also develop a proposal for funding from donors.[152]

Regular resources and Emergency Programme Fund

The operations of the WASH cluster (see Box 6.1) and UNICEF emergency response are generally largely funded by governments and intergovernmental organizations, at 80%, while the private sector and other inter-organisational arrangements provide 10%, respectively (UNICEF, 2017). The funds include regular resources, and earmarked or other resources like pooled funding modalities such as thematic funding for UNICEF Strategic Plan outcome areas, humanitarian action and gender. Regular resources are flexible and unrestricted contributions that are allocated to country programmes, based on under-5 mortality rates, child population, and gross national income per capita, for investment in the development priorities of the relevant country. The Emergency Programme Fund (EPF), on the other hand, is the fastest and most flexible source of immediate funding to enable the scaling up of humanitarian action within the first 24 to 48 hours of intervention. The EPF is currently an annual revolving fund of USD 75 million after the original biennial limit of USD 75 million was depleted in 2014 alone, with the declaration of six major emergencies mostly occurring simultaneously (UNICEF, 2015). Despite the importance, regular resources have continued to decline from 50% to just over 25% in the 2000s, and there was an 8% decrease in EPF from 2015 to USD 1.600 billion in 2016 (UNICEF, 2015; 2017).

Thematic funding

Thematic funding which has less restrictions than other resources and complements regular resources was just under 9% in 2014, compared to 42% in 2005; global thematic humanitarian funding which is the most flexible type of thematic funding because it can be invested where needs are greatest was less than 1% of total thematic humanitarian funding (UNICEF, 2015). WASH only received 6% of the thematic contributions to strategic plan outcome areas and humanitarian action in 2014, for instance despite its central importance to survival and recovery in emergencies, and 29% of the Other Resources Emergency contribution followed by Health and Nutrition (21% and 20%, respectively) (UNICEF, 2015). Similarly, thematic funding declined in 2016 and this threatens the shared commitment by UNICEF partners for more flexible and pooled funding (UNICEF, 2017).

---

[152]   Interviewees 20 and 21.

6.4.2 Suasive

Operational guidelines for humanitarian actors

Humanitarian actors work closely with relevant national government agencies and are guided by operational guidelines, such as the influential Sphere Standards (2011), the Operational Guidelines on Human Rights and Natural Disasters (2006), and the IASC Gender Marker launched by the Sub-working Groups on Gender and on the Consolidated Appeal Process to improve the impact of humanitarian programming on gender equality; these guidelines operationalize the principles of humanitarian assistance (see 6.3.1).

Decision support systems and other assessment tools

Decision support systems and other assessment tools used in humanitarian situations improve disaster preparedness, coordinated response by humanitarian actors, and early detection of the immediate needs of the affected population (Jahre, Ergun & Goentzel, 2015), and related technological options (Zakaria, Garcia, Hooijmans & Brdjanovic, 2015), provided they incorporate the perspectives of the affected population. Assessment tools generally enhance risk management and operational continuity (Veeramany et al., 2016), promote learning and theory development across different disciplines and multiple levels of governance (Zommer, 2014), and advance the evaluation of vulnerabilities and the impacts of emergencies (Zachos, Swann, Altinakar, McGrath & Thomas, 2016).

Disaster risk management

Disaster risk management (DRM) is "[T]he systematic process of using administrative directives, organizations, and operational skills and capacities to implement strategies, policies and improved coping capacities in order to lessen the adverse impacts of hazards and the possibility of disaster" (Luber & Lemery, 2015, p.67). The Sendai Framework for Disaster Risk Reduction 2015-2030,[153] paragraph 19(c), also emphasises that DRM "…is aimed at protecting persons and their property, health, livelihoods and productive assets, as well as cultural and environmental assets, while promoting and protecting all human rights, including the right to development." (United Nations 2015b:13). DRM assumes that (even natural) disasters result from a failure of human systems and aims to reduce vulnerability and exposure through addressing the drivers of risk and is therefore focused on minimising the causes of risks and enhancing the adaptive capacity of institutions and structures (Thomalla,

---

[153] This succeeds the Hyogo Framework for Action (HFA) 2005-2015: Building the Resilience of Nations and Communities to Disasters as a non-binding agreement recognising the primary role of States to reduce disaster in collaboration with other stakeholders including the private sector.

Downing, Spanger-Siegfried, Han & Rockström, 2006; United Nations 2015a), including through re-distributive mechanisms like insurance. Its seven elements include: (a) threat recognition and identifying risk and vulnerability, (b) risk analysis and assessment, (c) risk control options based on feasibility, effectiveness and cost/benefit analysis, (d) strategic planning with economic, political and institutional support considerations, (e) response, recovery, reconstruction and rehabilitation, (f) knowledge management and sustainable development, and (g) resilience building and community participation (Carreño, Cardona & Barbat, 2007; Nirupama 2013). DRM requires the participation of local communities in building their sanitation infrastructure to comply with the HRS principles (see 5.3.1), and ensure resilience to the impacts of hazards.

6.5 MONITORING PROGRESS ON THE HUMAN RIGHT TO SANITATION IN HUMANITARIAN SITUATIONS

The literature on access to water in humanitarian situations lists sanitation as a medium term use of water; falling behind other medium term water uses like subsistence agriculture, home cleaning, washing clothes, personal washing, and short term survival uses like cooking and drinking (Reed 2005). Based on literature review, content analysis and inductive analysis, I categorise the available indicators for sanitation in humanitarian situations into outcome and structural indicators for three HRS principles (accessibility, availability and safety). Table 6.2 illustrates outcome indicators for the availability of hygiene promotion services and the safety of toilets and soak away facilities, while Table 6.3 illustrates outcome indicators for the accessibility, availability and sustainability of sanitation facilities, including toilets, water for sanitation and hygiene and waste collection and disposal. Table 6.3 also distinguishes between indicators for the short and long terms.

Table 6.2   Outcome indicators for the availability of hygiene promotion and safety of toilets and soak away facilities

Principle	Sanitation Components	Indicators
Availability	Hygiene Promotion	2 hygiene promotors: 1000 community members
Safety	Toilets and soak away facilities	Site at least 30 metres away from any groundwater source
		Maintain a distance of at least 1.5 metres between the bottom of the facility and a water source

Source: Compiled by the author, based on Sphere Project, 2011

Table 6.3 Outcome indicators for measuring accessibility, availability and sustainability of sanitation facilities in the short and long terms

Sanitation Services	Locations	Minimum Standards	
	Locations	**Short term**	**Long term**
Access to toilets	Markets	1:50 stalls	1:20 stalls
	Hospitals	1:20 beds or 50 outpatients	1:10 beds or 20 outpatients
	Food Points	1:50 adults; 1:20 children	1:20 adults; 1:10 children
	Transit Points	1:50 individuals; 3:1 female to male	
	Schools	1:30 girls; 1:60 boys	1:30 girls; 1:60 boys
	Households	1:50 people, lowering the number to 20 users as soon as possible	1:20 people
	Offices		1:20 staff
Access to water for sanitation and hygiene purposes*	Public toilets	1-2 litres per user daily for hand washing 2-8 litres per cubicle daily for toilet cleaning	1-2 litres per user daily for hand washing 2-8 litres per cubicle daily for toilet cleaning
	All flushing toilets	2-5 litres per user daily for pour-flush toilets 20-40 litres per user daily for conventional flushing toilets connected to sewer	2-5 litres per user daily for pour-flush toilets 20-40 litres per user daily for conventional flushing toilets connected to sewer
	Anal washing	1-2 litres per user daily	1-2 litres per user daily
Solid waste management – refuse collection and disposal*	Households	Daily removal of waste from the immediate living environment and at least twice weekly from the settlement	Daily removal of waste from the immediate living environment and at least twice weekly from the settlement
	Shared refuse collection & disposal	Minimum of 100-litre:10 households (where domestic refuse is not buried on site and private refuse containers are not available); containers are ≤ 100 metres from a communal refuse pit and emptied at least twice a week	Minimum of 100-litre:10 households (where domestic refuse is not buried on site and private refuse containers are not available); containers are ≤ 100 metres from a communal refuse pit and emptied at least twice a week

*The Sphere Handbook does not distinguish between the minimum standards for short term and long term in relation to access to water for sanitation and hygiene purposes, and solid waste management. The distinction drawn in this table is for illustration only and mirrors the same standards for both long and short term scenarios for access to water and solid waste management services.

Source: Compiled by the author, based on Sphere Project, 2011

6.6   HUMANITARIAN FRAMEWORK, DRIVERS, INCLUSIVE DEVELOPMENT AND LEGAL PLURALISM

This section analyses whether humanitarian principles and instruments address the drivers of poor sanitation services (see 6.6.1). In doing so, I do not distinguish between the legally binding and non-legally binding principles as I already addressed the legal status of the principles in Section 6.3 and Table 6.1). Further, I discuss the wider implications for inclusive development (see 6.6.2) and legal pluralism (see 6.6.3), based on the literature and an inductive analysis of the humanitarian framework.

6.6.1 Humanitarian Framework and the Drivers of Poor Sanitation Services

The humanitarian assistance and protection principles address six direct and five indirect drivers of poor sanitation services, as illustrated in Table 6.4 and elaborated below.

Principles for addressing the direct drivers

The principle of avoiding causing harm has implications for the design of sanitation facilities and the distance from the users, as well as the safe management of human waste in order to prevent pollution (see 6.3.1 and 6.5). Nonetheless, the right to receive assistance, impartiality and non-discrimination address   are also relevant where people living far from the offices of the relevant government agencies or humanitarian actors are denied access to sanitation services (see 6.3.1). Humanity, impartiality, non-discrimination and the right to receive humanitarian assistance also protect against the exclusion of minorities (see 6.3.1). The principle of assisting people with their rights' claims further addresses negative social practices like discrimination and poor maintenance and improper use of facilities that affect access (see 6.3.1 and 6.3.2). This could also include the use of suasive instruments to improve the level of awareness about the HRS within the affected population, thereby addressing non-acceptance of the sanitation facility based on culture (see 6.3.2). Protection from violence also addresses negative social practices that lead to violence against minorities and other forms of insecurity affecting access to sanitation services (see 6.3.2). The remaining two direct drivers that are relevant for humanitarian situations (space constraints and challenging or inaccessible topography) are least affected by the principles for humanitarian assistance and require technological instruments suited to the local context (see 3.5). I further elaborate on addressing the remaining four direct drivers which are not covered by humanitarian assistance and protection principles (including space constraints, challenging or inaccessible

topography, natural disasters and high temperatures/turbidity in source water), *vis-à-vis* HRS principles, in Chapter 9 (see 9.2).

Principles for addressing the indirect drivers

Impartiality, non-discrimination and proportionality address poor targeting of sanitation funding by obliging humanitarian actors to allocate all available resources for sanitation services to the affected population based on their individual needs, and in a manner that ensures equity (see 6.3.1). Further, assisting people to claim their rights, including sanitation and hygiene education, tackles low awareness about sanitation and protects the target population from discrimination in the allocation of available resources for sanitation; it also enables them to seek redress for HRS violations (see 6.3.2). Humanity obliges States and non-state humanitarian actors to assist people living in humanitarian situations with basic services for their survival and recovery (see 6.3.1). Avoiding causing harm and protecting people from violence addresses poor sanitation services due to insecurity and conflicts (see 6.3.2). The outcome indicators for availability and accessibility address population density and growth where there are available resources to meet the minimum ratio of facilities required (see 6.5). I further elaborate on addressing the remaining four indirect drivers which are not covered by humanitarian assistance and protection principles (including huge foreign debts, sanctions, mass migration, and climate variability and change), *vis-à-vis* HRS principles, in Chapter 9 (see 9.2).

Table 6.4 Humanitarian principles for addressing the direct and indirect drivers of poor domestic sanitation services

Category of Drivers (see 3.4)	Details of Drivers (see 3.4)	Humanitarian Principles/Instruments (see 6.3)
Direct Driver		
Environmental	Distance to the facility	Avoid causing harm Impartiality Non-discrimination Right to give and receive assistance
	Pollution/water scarcity	Avoid causing harm
Social	Exclusion of minorities	Humanity Impartiality Non-discrimination Right to give and receive assistance
	Negative social practices	Assistance with rights claims Protection from violence
	Non-acceptance of sanitation facility	Assistance with rights claims
	Poor maintenance culture/ improper use of facilities	Assistance with rights claims
Indirect Drivers		
Economic	Insufficient/poorly targeted funds	Assistance with rights claims Impartiality Non-discrimination Proportionality
	National poverty	Humanity
Social		
	Insecurity, conflicts and poor social cohesion	Avoid causing harm Protection from violence
	Low awareness about Sanitation	Assistance with rights claims Right to get and receive assistance
	Population density/growth	Outcome indicators

Source: Compiled by the author, based on Harroff-Tavel, 1989; Hilhorst, 2005; Kälin, 2008; Lensu 2003; Sphere Project, 2011; Tsui, 2009; Weiss, 1999

6.6.2 Humanitarian Framework and Inclusive Development

The principles for humanitarian assistance for sanitation can lead to different outcomes for ID, depending on how the principles are interpreted, in relation to the HRS norm, and the choice of instruments for sanitation service provision in any given context. Figure 6.1 illustrates how the participatory disaster risk management can lead to different outcomes on social and relational inclusion, depending on whether the implementation process integrates environmental sustainability. Further, Figure 6.1 shows that indicators are value laden because expanding the social, relational and ecological values will also increase the cost of providing sanitation services with the least cost possibly arising from Q1 and the highest cost in Q4. Ordinarily, humanitarian situations exacerbate human vulnerabilities and inequities in access to WASH (see 6.1), thereby hampering social and relational inclusion (Akhter et al., 2015; Nakhaei et al., 2015). Humanitarian situations could also pose stress on infrastructure and deplete the available natural resources for sanitation services, thereby further hampering ecological inclusion (Obani, 2017). This makes it necessary to further analyse the impact of the humanitarian framework on ID components (social and relational, and ecological inclusion).

Social/Relational Exclusiveness

Q1
Instrument: Disaster risk management focused on providing pour-flush toilets only; designed without the participation of users (see 3.2, 3.5.1, and 7.3.3)
Indicator: Maximum toilet to user ratio of 1:50 short term, and 1:20 long term (see 6.5)

Q2
Instrument: Disaster risk management focused on providing pour-flush toilets with wastewater treatment services; designed without the participation of users (see 3.2, 3.5.1, and 7.3.3)
Indicator: Maximum toilet to user ratio of 1:50 short term, and 1:20 long term (see 6.5)

Q3
Instrument: Participatory disaster risk management focused on providing free access to pour-flush toilets without wastewater treatment services (see 3.2, 3.5.1, and 7.3.3)
Indicator: Maximum toilet to user ratio of 1:50 short term, and 1:20 long term (see 6.5)

Q4
Instrument : Participatory disaster risk management focused on providing free access to pour-flush toilets with wastewater treatment services (see 3.2, 3.5.1, and 7.3.3)
Indicator: Maximum toilet to user ratio of 1:50 short term, and 1:20 long term (see 6.5)

Ecological Exclusiveness

Ecological Inclusiveness
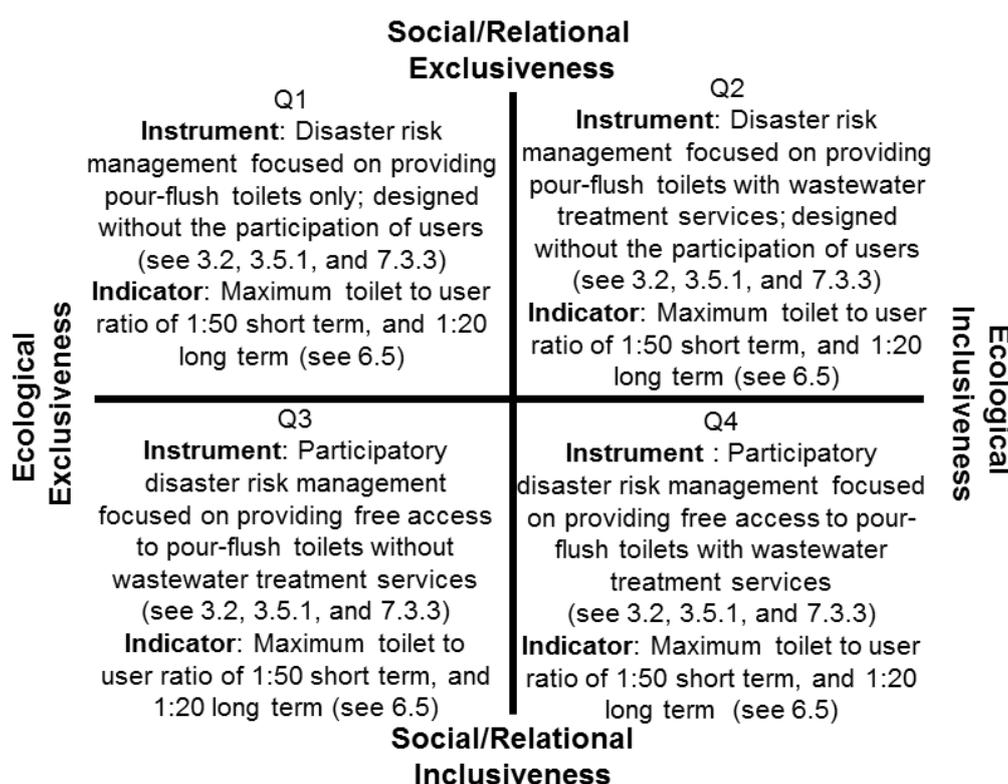
Social/Relational Inclusiveness

Figure 6.1 Assessing disaster risk management for inclusive development

Social and relational inclusion

Economic instruments (see 6.4.1) *prima facie* ensure social and relational inclusion (Q3 and Q4 of Figure 6.1), to the extent that the budgets and the application of emergency programme funds, regular resources, and thematic funding reflect the needs of the affected population and prioritise the most vulnerable people for assistance based on the right to receive humanitarian assistance, impartiality, non-discrimination and proportionality principles, for instance. Suasive instruments (see 6.4.2) can also enhance social and relational inclusion by highlighting vulnerabilities within the affected population and ensuring timely interventions to improve recovery. Specifically, assessment tools promote participation and enhance disaster preparedness and effective response (Obani, 2017). Participation can foster unity within the affected community during the recovery phase (Samaddar, Okada, Choi & Tatano, 2017). However, the overall effect on ID would also depend on the extent to which the WASH Cluster engages with the local population in the design of interventions, and how well the instruments promote environmental sustainability (see Figure 6.1).

Ecological inclusion

The protection of drinking water installations and supplies and irrigation work, as civilian objects, and during armed conflicts (see 6.2), though primarily designed to protect the affected population, also promotes ecological inclusion (Obani, 2017). Similarly, the integration of broader sanitation components beyond excreta management coupled with minimum indicators for sustainability under Sphere (see 6.5) and the principle of avoiding harm in humanitarian assistance (see 6.3.4) also enhances ecological inclusion by preventing the contamination of the environment (Obani, 2017). Nonetheless, environmental sustainability may also constrain the choice of technologies and modalities for service provision where necessary to avoid environmental pollution (Feris, 2015; Holden, Linnerud & Banister, 2016).

6.6.3 Humanitarian Framework and Legal Pluralism

The interactions between the HRS and the humanitarian framework may result in competition, indifference, accommodation, or mutual support (see Table 6.5).

Competition

Competition results where military action violates the HRS; for instance, where sanitation facilities are destroyed on the grounds of military necessity during armed conflicts. Tension could also arise where a traditional approach to humanitarian assistance situates sanitation as a competing priority, rather than a basic human need, against other basic needs like safety, shelter, food, water and healthcare (Breau & Samuel, 2016). For instance, although the WHO Technical Notes on Drinking-Water, Sanitation and Hygiene in Emergencies recommends 70 litres of water for sanitation and waste disposal during emergencies, this is listed as a medium term function for the maintenance of the affected population, whereas 10 litres of water for drinking and 20 litres of water for cooking are listed as short-term functions for the survival of the affected population (Reed & Reed, 2011). Another instance of competition is where DRM (see 6.4.2) is conducted without the participation of the affected local community. Conversely, the recognition of sanitation as a distinct human right underscores its critical importance for human dignity and survival, and the ICESCR rights also apply during emergencies (see 5.2 and 6.2).

Indifference

Indifference occurs where although the HRS principles are captured in the principles of humanitarian assistance, the principles are not implemented in humanitarian situations. Rather, humanitarian situations are governed as a general exception to the operation of HR norms and humanitarian assistance does not integrate HRS principles in practise.

Accommodation

Accommodation occurs where some efforts are made to adopt HRS principles in the humanitarian framework and encourage the participation of the affected population in humanitarian situations. However, there are marked differences in the application of principles like accountability and participation by HR practitioners and the humanitarian actors (Klasing et al., 2011). This hints at a mere accommodation of the HR principles in the operations of the humanitarian actors (Klasing et al., 2011).

Mutual support

Mutual support exists where IHL protects drinking water installations and supplies and irrigation work as civilian objects, and guarantees access to sanitation and hygiene facilities including access to water, toilets and soap for personal and domestic uses for protected persons during armed conflicts, and these provisions improve the realisation of the HRS in humanitarian situations. Mutual support also exists where there is a broad conception of sanitation that is supported by minimum indicators in the humanitarian framework, for instance under Sphere, enrich the development of the HRS norm.

Table 6.5 Types of legal pluralism relationship which arise between the human right to sanitation and humanitarian principles

Legal Pluralism Relationship	Description of the Relationship
Competition	Where sanitation facilities are destroyed as a military necessity
Indifference	Where the HRS principles like non-discrimination and accountability are captured in the humanitarian framework but humanitarian situations continue to be governed as an exception to the application of human rights principles
Accommodation	Where efforts are made to incorporate the HRS principles like participation in the domestic humanitarian framework
Mutual Support	When the humanitarian framework adopts a broad definition of sanitation which integrates environmental sustainability and thereby enhances the HRS

Source: Compiled by the author, based on Klasing et al., 2011; Obani, 2017; Obani & Gupta, 2014b

6.7 INFERENCES

There are eight inferences drawn from this chapter. First, IHL is the *lexi specialis* applicable to armed conflicts and related emergencies, and distinguishes between the rights and protections of combatants and non-combatants, though IHL customs also apply to humanitarian situations resulting from natural hazards. Human rights law on the other hand *stricto sensu* also applies to humanitarian situations and complements IHL in the general protection of vulnerable populations in humanitarian situations, without bias to their status as combatants or non-combatants. Further, while States may temporarily suspend civil and political human rights obligations, subject to some exceptions, during life threatening public emergencies, to the extent that is strictly required by the exigencies of the situation, the International Covenant on Economic, Social, and Cultural Rights 1966, which largely forms the legal basis for the HRS, does not provide for similar derogation. Rather, gross human rights violations which constitute war crimes, genocides, and crimes against humanity can be considered violations of customary international law and can be prosecuted either through the International Criminal Court or by national courts based on the principle of positive complementarity (see Chapter 4). Hence, HRS law can significantly complement IHL for the protection of vulnerable populations in humanitarian situations.

Second, within the humanitarian framework, Sphere, which is widely adopted in practice by humanitarian actors though not legally binding, offers a broad approach to sanitation (see 6.3) and minimum indicators (see 6.5) that can enrich the definition and implementation of the HRS even outside humanitarian situations. This is a paradox because although the definitions of the HRS in some national laws are more extensive than the definition under the international HRS framework (see 5.3.2), none goes as far as Sphere in addressing WASH components and stipulating minimum standards.

Third, there are ten humanitarian assistance and protection principles; six of these principles arise from the international humanitarian law framework and therefore focus mainly on armed conflicts and emergencies like political tensions, but do not extend to non-conflict related humanitarian situations. This is a limitation given the increasing numbers of non-conflict related humanitarian situations, caused by hurricanes for instance, that are nonetheless capable of disrupting sanitation systems both in the affected locations and host communities for the resulting internally displaced and refugee populations. Whereas, the four protection principles under Sphere offer much broader protection in humanitarian

situations resulting from both armed conflicts and natural hazards, they lack the binding legal status of hard law as such and are therefore of limited legal effect in advancing the HRS.

Fourth, the HRS may not be prioritised in the design of regulatory, economic and suasive instruments for the governance of humanitarian situations depending on whether sanitation is classified as a survival need to be provided immediately after a humanitarian situation arises or whether sanitation is classified as a medium term need to be satisfied after the provision of basic necessities like water for drinking and cooking. Failure to recognise sanitation as a survival need however undermines humanitarian assistance and jeopardises the chances of effectively addressing other basic survival needs like drinking water, human security, nutrition and healthcare (see 1.2).

Fifth, the humanitarian framework offers seventeen relevant outcome and process indicators that extend beyond the existing three HR indicators (see 5.5, 3.2?), which can strengthen the monitoring of progress on toilet availability especially for vulnerable groups like women, girls, children and the sick (see 6.5).

Sixth, humanitarian assistance and protection principles address eleven drivers of poor sanitation services. However, they may be ineffective because: (a) the crises situation may overwhelm the coping capacity of the responding institutions; (b) humanitarian situations are regarded as exceptional circumstances in which compliance with HR may not be feasible; (c) there is lack of shared understanding among humanitarian and HR practitioners of participation and accountability; (d) humanitarian actors adopt a predominantly technocratic approach to emergency response; or (e) sanitation is not prioritised as a basic human need in humanitarian situations. Further, the remaining ten drivers that are not addressed by humanitarian principles require complementary principles such as the existing HRS principles which can address sixteen drivers (see 5.6.1)

Seventh, although the humanitarian principles promote predominantly social and relational inclusiveness, they also address environmental sustainability since the principle of avoiding harm in delivering humanitarian assistance requires a safe environment (free of contamination) for the wellbeing of the affected population. The actual impact of humanitarian principles on the components of ID depends on the extent to which the affected population are involved in the design and implementation of interventions (which may be more feasible in the medium to long term than in the immediate aftermath of an emergency,

for instance), and the integration of environmental sustainability in the design of implementation instruments.

Eight, the apparent complementarity between HRS and humanitarian and protection principles and instruments, as illustrated throughout this chapter, is marred by strong forms of rules incoherence leading to HRS violations in humanitarian situations. This occurs where for instance, there is a lack of shared understanding of common principles like participation that are nonetheless applied both within the human rights and humanitarian frameworks. Rules incoherence in humanitarian situations hampers social and relational inclusion, where it compromises the HRS for the vulnerable or excludes the affected population from participating in sanitation governance, and ecological inclusion, where humanitarian assistance or military action compromises environmental sustainability.