

Comments and observations by FAO on the draft articles on protection of persons in the event of disasters adopted on first reading by the International Law Commission at its 66th session

Article 6 [8]. Human rights

Recognition of the human rights of persons affected by disasters is of the utmost importance. While this draft article refers only to the obligation to “respect” their human rights, a number of international instruments, including non-legally binding instruments endorsed by the Committee on World Food Security, recognize that States have a number of additional obligations, such as the obligation to “protect”, “promote” and “fulfil (facilitate)” (different instruments use different denominations). But it is clear that States’ duties are not restricted to avoiding interferences with people’s rights (respect); States should adopt a number of measures varying from passive non-interference to active ensuring of the satisfaction of individual needs, all depending on the concrete circumstances.

Moreover, in the context of disaster relief and the enjoyment of the right to food, the recognition of an obligation to “provide” would also be appropriate. The obligation to provide entails that the State, as a last resort, must provide food “whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal” (UN Committee on Economic, Social and Cultural Rights, General Comment No 12, para. 15).

The commentary to this Article could include some of these important elements and the Article itself could be modified to avoid giving the impression that state obligations are limited to ‘respecting’ human rights.

Article 8 [5]. Duty to cooperate

As indicated in the Commentary, the duty to cooperate is well established as a principle of international law that takes on special significance with regard to international human rights law.

FAO’s early warning experience has shown that the absence of “early listening” and “early response” may lead to unnecessary suffering. This is particularly the case with droughts and other events that may cause starvation, or at least increased food insecurity. FAO/WFP crop assessments provide an accurate forecast of future food shortages in particular areas. Nevertheless, there may not be sufficient international support forthcoming. While it is acknowledged that the obligation to cooperate does not amount to a general duty to provide assistance, it could be construed as an obligation to consider early warning reports and requests for assistance, without there being a duty to accede to such requests.

The commentary to this Article could go into more detail in this important matter.

Article 11 [16]. Duty to reduce the risk of disasters

The effect of a disaster depends on both the magnitude of the disaster and the existing vulnerabilities of persons affected. Resilience of local populations is therefore very important and should be worked on both pre-and post-disasters.

One of FAO's strategic objectives is to increase the resilience of livelihoods to threats and crises. FAO's work focuses on developing, protecting and restoring sustainable livelihoods so that the integrity of societies that depend on farming, livestock, fish, forests and other natural resources is not threatened by crises. It uses a "twin-track" approach, on the one hand taking immediate steps to protect and support agriculture, food and nutrition, and on the other addressing in the longer term the underlying factors driving risks, disasters and crises. Enhancing resilience also needs political will, investment, coordination, technical expertise capacities, innovation, and shared responsibility for disaster risk reduction and crisis management by countries, local authorities, communities, civil society, the private sector, and the international community.

In order to contribute to breaking the cycle of crises and humanitarian interventions that occur in many disasters, emergency programmes should aim at increasing resilience, i.e. the ability to prevent disasters and crises, to anticipate, absorb, accommodate or recover from them in a timely, efficient and sustainable manner and to adapt to new livelihood pathways in the face of crises. Responding to the long-standing call for synergy between emergency assistance and long-term development support, resilience oriented emergency programming promotes people-centred approaches that respect the inherent rights of affected individuals or groups and build the capacity to realize human rights, including the right to adequate food. Also relevant in this context is the work on social protection, which helps (re)build livelihoods by providing basic necessities or minimum services to vulnerable people and contributes to long-term development by improving levels of health, education, nutrition and social integration. The importance of human rights in resilience-building programmes lies in improving absorptive, adaptive and transformative capacities based on the recognition of the interests and rights of affected populations and the roles, duties and responsibilities of various actors in pre- and post-emergency situations (see FAO, *The Right to Adequate Food in Emergency Programmes*, Rome, 2014, available at: <http://www.fao.org/3/a-i4184e.pdf>)

The Commentary to this Article could benefit from an analysis of the relationship between reducing the risk of disasters and the concept of resilience.