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HUMAN RIGHTS-BASED APPROCHES TO PROTRACTED CONFLICTS

POLICY BRIEF

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THE ORIGINS OF THE HUMAN RIGHTS-BASED APPROACHES (HRBA)

In 1990s, development, peace and humanitarian sectors were all facing growing legitimacy concerns. Human rights-focused policymaking, which eventually became known as human rights-based approach (HRBA), was introduced as means of empowering individual aid recipients and local populations affected by conflict, thus addressing some of the shortcoming of previous strategies. Policies aimed at participation, non-discrimination and accountability – all of them principles of a HRBA - were promoted in order to create more inclusive, democratically legitimate and thus sustainable processes at the relevant institutions in the development sector, but also to a lesser extent in the fields of humanitarian assistance and peacekeeping.

However, the increased use of human rights language in policymaking in the three sectors seems to have developed in parallel yet separately to international human rights law, as understood in the case law of human rights bodies (e.g. HRC, ECHR, and others). This difference of what 'human rights' means in HRBA and human rights law, as well as the inter-institutional (dis-)connection between the respective approaches in each of the three sectors towards human rights, are the issues that need to be investigated further. This policy brief provides a synthesis of a workshop discussion which focused on this link between HRBA and human rights law, and the potential issues that might result from the distinction, but also the overlap between the two.

HRBA AND INTERNATIONAL HUMAN RIGHTS LAW

The main finding of the workshop was that HRBA and international human rights law must not be conflated. While the concept of HRBA is infused by some underlying ideas of international human rights law - like non-discrimination - adopting a HRBA does not mean adherence to international human rights law in the narrow legal sense.

BOX 1. WHAT IS HRBA? EXAMPLES OF CURRENT GOVERNEMENTAL POLICIES

All HRBA policies have in common an aim to bring into institutional decision-making processes input from the local population about their needs, vulnerabilities and priorities. For instance,

- The S*wedish International Development Agency* applies the 'PLANET' tool (Participation, Links to human rights obligations, Accountability, Non-discrimination and equality, Empowerment and capacity development, Transparency).
- The S*cottish Human Rights Commission* employs a similar 'PANEL' tool (Participation, Accountability, Non-discrimination, Empowerment and Legality).
- Some agencies, such as *BIO* in Belgium, aim to implement *UN Guiding Principles on Business and Human Rights* (UNGPs), particularly the obligation to conduct Human Rights Due Diligence, as part of their HRBA.

In contrast to this emphasis on particular qualities of decision-making processes, HRBA is also one of the six Guiding Principles of the United Nations Sustainable Development Cooperation Framework, which states that "[u]nder the HRBA, the plans, policies and processes of development are anchored in a system of rights and corresponding obligations established by international law, including all civil, cultural, economic, political and social rights, and the right to development" (p. 13). UN has also issued a more detailed guidance on the meaning of HRBA, to facilitate a 'common understanding among the UN agencies'.

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HRBA, PROTRACTED CONFLICTS, AND CONFLICT SENSITIVITY

Beyond the more general relationship between HRBA and human rights law, discussants highlighted the need for increased due diligence and a relevance of a 'do no harm' principle in settings of protracted conflicts, which can be seen as a 'bottom line' of the HRBA. In the past, development projects in conflict settings sometimes fuelled violence, e.g. when perceived of as 'government intervention' by armed groups, when provided for in a discriminatory way and thus spurring resentments, or when captured by parties and fed into war economies.

Thus, it is a welcome development in principle that institutional actors that increased their engagement in protracted conflicts, such as the World Bank, also reformed their Environmental and Social Frameworks to increase conflict sensitivity. In official cooperation projects between the World Bank, the UN, and the ICRC on the humanitarian-development-peace (HDP) Nexus, this framework is also applicable. However, what is missing so far is a conflict sensitive approach for Development Policy Financing (DPF) building on insights from peacebuilding. Equally it must be stressed that social safeguards are close to HRBAs but must not be foretaken as legal human rights accountability.

There remain tensions between human rights and each pillar of HDP. Each field has different reasons for adopting or avoiding HRBA, in addition to the general concern about increased accountability. For those working on peacebuilding, an emphasis on human rights brings a promise of guiding pragmatism and more principled reasoning in decision-making. In the humanitarian sector, human rights can be seen as state-centric or even political, and thus there is more reluctance to engage with HRBA. Similarly, for peacekeepers, human rights protection might put the mission at risk or raise neutrality concerns. For some development institutions, references to human rights are also potentially threatening their explicitly non-political mandate. It is important to remain aware of these tensions that can be hidden behind a formally adopted HRBA approach.

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KEY OUTCOMES FROM THE WORKSHOP DISCUSSION

- Many practitioners stressed that HRBA can be a useful tool to strengthen ownership and cooperation instead of top-down approaches, and to *try and understand and respect the 'lived realities' of the populations affected* by conflict.

- More closely linked to UNGPs than the rest of human rights law, HRBA is *more focused on improving decision-making processes*, rather than the substantive guarantees of rights protection. As a procedural framework, HRBA often competes with other institutional frameworks (e.g. gender mainstreaming, climate awareness, etc). How to best combine these different policy tools – and which one prevails in case of tensions or overlaps - is usually decided on a case-by-case basis.

- HRBA is a *malleable concept* that is perceived differently by different participants and actors. This can lead to siloed thinking (e.g. within development, humanitarian, and peacebuilding sectors). Furthermore, this in-built ambiguity and/or imprecision of the concept can be helpful but also problematic. The main risk is that HRBA does not have a 'bottom line' in the same way that HR law does: that HRBA cannot constrain institutional behaviour like legal rules could, but that the institutions freely decide on the degree of influence human rights norms can have on their practice.

- *HRBA does not guarantee HR accountability*. Implementing human rights obligations requires to go beyond HRBA. For example, the dimension of institutional actors' possibilities and requirements to protect human rights remains not fully explored (e.g., with regard to local staff). Although HRBA policies frequently mention the principle of 'do no harm' it remains often unclear how harm may be defined and whether this would also include human rights effects.

- *HRBA must also be seen as parallel to, rather than overlapping with, discussions on the right to development*. While HRBAs are more of a policy tool used within aid donor institutions, the right to development tends to be negotiated in the 'classic' sphere of inter-state international law. As noted by participants, the reluctance of proponents of HRBA, such as the EU, to negotiate a binding human right to development, needs to be further scrutinised.

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RECOMMENDATIONS GOING FORWARD

- More dialogue is required to further crystalise what 'HRBA' means beyond individual institutions. Especially if HRBA are envisaged as having a normative effect across sectors and serving to coordinate approaches from development, humanitarian and peace organisations, a common definition of a HRBA should be identified.

- A relationship between conflict sensitivity and HRBA is essential in the area of protracted conflict. Development sector could learn from the UN/peacebuilding on how to combine the two, and to protect human rights in the situations of limited statehood.

- There is a need for further guidance on how to implement HRBA appropriately, and a clarification of what HRBA cannot achieve. It is important to identify gaps left by HRBA which need to be filled in order to ensure human rights protection as understood by international human rights law.

- To move from process-based to more substance-based understanding of HRBA, human rights indicators (as those proposed by the Inter-American Commission of Human Rights or The Office of the High Commissioner for Human Rights) could be useful in creating further guidance. Nonetheless, participants highlighted that especially in a context of protracted conflict, data can be incomplete and therefore insufficiently reliable for the purposes of human rights indicators.

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ABOUT THIS BRIEF

This policy brief is an outcome of the knowledge exchange workshop "Human Rights Based Approaches to Protracted Conflict: An Empowerment, or a Slow Demise of Human Rights Law?" that took place on 27 March 2023, and was organised by the 'Endless Conflicts' project (see below), in collaboration with the 'International Law Under Pressure' research programme (PI Dr. Henry Lovat). The workshop took place at the University of Glasgow and brought together practitioners from state agencies, NGOs, and international organisations with international law and human rights scholars. The aim was to take stock of existing knowledge, evidence, and understanding in this area of research, and to share knowledge and insights across academic and practitioner communities to better navigate the relationship between HRBA and human rights law in protracted conflict.

ABOUT THE ENDLESS CONFLICTS PROJECT

Funded by the AHRC-DFG, The Law of Protracted Conflict: Bridging the Humanitarian-Development Divide ('Endless Conflicts') is a collaborative project between the University of Glasgow and Freie Universität Berlin.

It is the first project to approach the humanitarian-development-peace nexus from an international law perspective. The Endless Conflicts project provides a comprehensive analysis of the institutional and substantive legal frameworks within which humanitarian and development assistance are delivered. Its aim is to investigate the extent to which international law enables integrated and accountable humanitarian and development assistance in contexts of protracted armed conflict and towards sustainable peacebuilding. In this regard, human rights law could play a decisive role.

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