

Humanitarian Aid in Relatively Strong Host States

Colombia as a Case for Rights-Based Approaches

Given the transient nature of humanitarian assistance, durable solutions for forced displacement and exit strategies for humanitarian actors require careful engagement with a host state. This highlights a central challenge for the humanitarian sector: how to relate to states? Drawing on a case study of the Norwegian Refugee Council's use of rights-based approaches (RBA) in Colombia, this policy brief suggests that the importance of RBA in humanitarian aid lies in fostering the mutual dependency between beneficiaries and states. In this way, the humanitarian actor's work is focused on enhancing state capacity to provide for its citizens, as well as supporting and empowering community engagement. This is particularly relevant when humanitarian aid is provided in the context of relatively strong states with the capacity to provide humanitarian aid.

Brief Points

- Humanitarian actors should account for the capacity of the host state, and calibrate their response accordingly.
- State institutions capable of guaranteeing rights provide the best possible exit strategy for humanitarian assistance: durable solutions for beneficiaries.
- Humanitarian actors can navigate the principle of neutrality by choosing to engage with unarmed state institutions that redistribute goods and services to the poor, as well as by supporting policy-making mechanisms that involve beneficiaries.
- Rights-based approaches frame relationships between beneficiaries and states in ways that help facilitate beneficiaries to survive and thrive after the humanitarian emergency.

Introduction

The inclusion of rights-based approaches (RBA) in humanitarian action in the 1990s was part of a vigorous turn toward human rights frames of actions in international law, international institutions and across the NGO sector. In the humanitarian sector, the introduction of RBA was broadly intended to enhance the legitimacy of aid, by promoting the accountability and professionalization of U.N. institutions, as well as of the growing sector of non-state institutions and state international cooperation agencies financing and/or providing both development and humanitarian aid.

While there are multiple and divergent practices of RBA, they all share the goal of strengthening the beneficiaries' capacity to make claims from duty bearers. However, while many actors claim to be 'rights-based' under international law, it is states that are duty bearers, and not humanitarian actors. Given the transient nature of humanitarian assistance, any durable solution for people in crisis entails a state assuming duties that correspond to beneficiaries' rights. Otherwise, if humanitarian actors exit, beneficiaries are left just as vulnerable as they were before they received the humanitarian aid. This highlights a set of central challenges for humanitarian actors:

- What should their relationship with the state be, given the humanitarian principle of neutrality?
- What kind of specific issues arise with respect to a relatively strong host state?
- How to relate to and enhance host-state capacity, to ensure a responsible exit?

This policy brief addresses these questions through a case study of the Norwegian Refugee Council's programming in Colombia.¹

Rights-Based Approaches to Humanitarian Aid

A persistent criticism of the humanitarian turn to RBA is that it entails engaging with states. This, it is argued, often results in pandering to political actors: actors who

can promise rights protection, but who may be using humanitarian aid and actors for political ends. RBA have also been criticized for compromising the guiding humanitarian principles of neutrality and impartiality, by way of contributing to 'humanitarian politics'. Other critics view RBA to humanitarian aid as empty promises of empowerment and protection, underlining that while humanitarian action is rights-based, humanitarians are not duty bearers.

In spite of these criticisms, the fact remains that in a humanitarian crisis, it is the strength of the host state that ultimately guarantees the final goal of humanitarian aid: to secure a durable solution for crisis-affected communities. This brief argues for a conceptualization of RBA in humanitarian aid that is focused on:

- Enhancing the capability of the state to provide for its citizens (through redistribution)
- The opportunity for growing beneficiary involvement in their own survival, including in local politics (often phrased as 'resilience' or the ability to recover).

In this view, the importance of RBA in humanitarian aid is that they foster the mutual dependency between beneficiaries and states, so that through this relationship, states can then take over the humanitarian duties now reframed as rights, and serve beneficiaries now transformed into rights-bearers.

Relatively Strong Host States

While sovereign states are formally in international law, on the ground their capacity to exercise control and implement policies in their territory varies, and humanitarian actors need to adapt to this variation. In particular, challenges and opportunities arise when humanitarian actors operate in the context of a relatively strong host state, here defined as a state with an irregular territorial presence, but with otherwise substantial institutional presence and efficacy.

Case Study: The Norwegian Refugee Council in Colombia

Colombia is a good example of a relatively strong state. It is a solid constitutional democracy with a vibrant civil society, as well as a middle-income country that has suffered from the most acute humanitarian crisis of the Americas. Colombia has experienced decades of internal conflict, inherited from the Cold War, but also fueled by the war on drugs and by armed forces' violations of human rights. Years of internal conflict have caused a protracted humanitarian crisis; at the same time, they have also severely debilitated the state's capacity to respond to this crisis. The Colombian state has struggled to do so, and has engaged in massive legal and institutional reform in the attempt. With the groundbreaking Law 387 of 1997, internally displaced people were granted special rights to humanitarian assistance and poverty alleviation.

The implementation of Law 387, however, proved inadequate. In response to this, from 2004 the Colombian Constitutional Court has extended oversight powers to monitor and prompt state response to internal displacement. These powers coincided with a significant institutional and budgetary effort to register IDP and provide humanitarian aid. Transitional justice processes began in 2006, but more developed under a 2011 Victims' Law, which further strengthened registration and poverty alleviation, and added reparations to the rights of victims of armed conflict. The Colombian State has made a massive bureaucratic effort to respond to the rights of victims, under the Court's oversight. However, these efforts have proven to be insufficient. This is due to complex causes that include the persistence of armed conflict and internal displacement, as well as the incapacity and unwillingness of local and national bureaucracy to respond to IDP needs. Foreseeably, and in spite of the successful 2016 peace agreement with the FARC guerrillas, this situation will persist for some time given remaining insurgent and criminal armed groups vying for territorial control.

The Norwegian Refugee Council (NRC) has been present in Colombia since the early 1990s. Since becoming a direct provider of

aid in Colombia, the NRC has framed its programming on RBA, often in partnership with selected agencies and offices of the Colombian government. Legal assistance and legal orientation have been central to its work on the ground, through various projects over the years. It has also supported the Colombian State in the adoption of policies and programs to respond to victims of internal armed conflict, for example financing and producing amicus briefs and human rights reports for the Constitutional Court, and concluding agreements of collaboration with the Ministry of Education, the Victims' Unit and the Land Restitution Unit.

Globally, NRC has five areas of “core competencies”:

- Shelter
- Water, sanitation and hygiene
- Food security
- Education
- Information, counseling and legal assistance (ICLA).

While NRC Colombia has replicated the global NRC's activities, the focus has been on the competencies most relevant in collaboration with a relatively strong host state. Therefore, reflecting this prioritization, this policy brief focuses on ICLA and the uniquely Colombian Advocacy and Public Policy Program (APP) as examples of the potential and limitations of RBA when engaging a relatively strong host state.

Information, Counseling and Legal Assistance (ICLA)

The NRC provides support through its information, counseling and legal assistance (ICLA) programs. These programs provide legal assistance to IDPs, helping them to claim rights and benefits that they are legally entitled to. This is achieved through the provision of legal aid (information and training as well as legal assistance in cases and petitions).² Through both legal information and legal counseling, NRC officials and subcontractors frame

the humanitarian crisis as a violation of the human rights the state is meant to protect. In Colombia, the ICLA program has provided both subcontracted and direct legal assistance not only to individual victims, but also to organized communities. It has also subcontracted and realized workshops providing training for both public officials and victim leaders. The general intention – manifested in assistance to organized communities, and in the efforts to train both leaders and public officials – is to promote state responsibility. Through these activities, ICLA in Colombia focuses on goals such as protecting real property rights (housing, land and property or HLP) and obtaining IDP registration. These activities have helped thousands of displaced Colombians to access government services and the institutions described above, especially Colombians in sparsely populated rural areas. Clearly, all of these activities require the existence of a legal frame in domestic law, such as Law 387, the Constitutional Court decisions, and the Victims' Law. They also require the institutional presence of duty-bearers for the rights created by the laws and the courts, and, in localities of irregular state presence, they further require the intermediation of programs like the NRC's ICLA.

Thus, through ICLA programs, the NRC supports engagement between beneficiaries of humanitarian assistance and the state institutions charged with responding to the crisis, with a view to making the NRC eventually superfluous as the state effectively responds to the population's needs. This has already happened, for example, in some smaller cities where the NRC initially had ILCA programs where it provided legal assistance and orientation to IDPs on a walk-in basis in partnership with local law schools. This program was then terminated in the cities when the NRC identified a change in state capacity to provide similar assistance in its local Victims' Offices. Now, the NRC focuses on bringing this program to underserved municipalities through three-day intensive workshops known as “legal brigades.” This adaptation shows the potential for success of an RBA strategy.

Advocacy and Public Policy

For a short period in Colombia (2007 or 2008 to 2014), following the activism of the Constitutional Court, NRC Colombia developed a unique set of activities known as the Advocacy and Public Policy Program (APP). The APP grew out of the conviction that what was needed to address the humanitarian crisis was the implementation, through policy and through local government programs, of existing laws and court orders. The ultimate aim of implementing law and addressing gaps in public policy was particularly aligned with RBA, defined legalistically as holding duty-bearers accountable: this meant working with rights holders to demand protection, and with duty bearers to ensure they fulfill their responsibility. This was especially the case in engagement with those state institutions meant to respond to the humanitarian crisis, such as the Ministry of Education (education in emergencies), the Constitutional Court (in its ongoing vigilance of state compliance with its orders), the Victim's Unit (in the state's own humanitarian relief efforts), and beleaguered municipalities in conflict-torn areas.

The APP recognized the unique position of Colombia as a relatively strong host state with progressive legislation (and a legalistic culture); the existence of a humanitarian crisis; and an extended internal armed conflict. In this unique context, the NRC would have a new core competency: advocating for IDP rights, organizing IDP on the ground to claim rights, and heavily supporting the state, as duty bearer, to implement its own laws.

In 2014, however, the APP folded into ICLA after increased signs of cynicism the actual capacity of advocacy actions. This included the mounting evidence that the Constitutional Court's Autos (orders) were frequently not implemented, and the realization that, despite their significant legitimacy with victims, the APP carried little clout with local authorities. Frustration was particularly evident with the capacity of planning exercises and budgeting exercises to change local policy implementation, especially following changes in local governments after 2011. This failure shows the limits of RBA, which are the limits of a state's capacity to fulfill its obligations through its own democratic institutions.

Neutrality and Engagement in the NRC Colombia

Engagement with host states does present a challenge to the principle of neutrality. However, in a relatively strong state like Colombia, some level of engagement with the state cannot be avoided; humanitarian actors must therefore negotiate this challenge. A possible solution to be taken from this case study is for humanitarian actors to choose carefully which institutions it can interact with, without endangering neutrality in the eyes of beneficiaries of humanitarian aid, and without creating security risks for humanitarian actors. In relatively strong states, there are numerous agencies and programs for example that are not part of the war effort, and that are appreciated by beneficiaries of humanitarian aid.

In the case study, the NRC engages the state through its RBA activities. It provides legal assistance and counseling, as well as public policy advocacy, and it does so within the legal framework determined by the state, acting as an intermediary between IDPs and specific institutional duty-bearers. However, the NRC deliberately avoids collaboration with institutions perceived as part of the conflict. This goes beyond avoiding any appearance of collaboration with the Army's own humanitarian actions, and includes avoiding engagement with social programs funded for example by the United States foreign aid program (USAID) which also funds military aid. Collaboration and engagement is limited to institutions that are clearly civilian, such as for example the Ministry of Education or the local municipality in the examples above. This type of engagement protects neutrality, and can be considered a good practice for humanitarian actors in relatively strong states.

Conclusion

Four reflections emerge from the Colombian experience:

- Engagement with a relatively strong host state has a better chance of strengthening its capacity to respond effectively to the needs of its population than engagement with a weak or failed state. Consequently, humanitarian action should respond to state strength differently.
- It is impractical to eschew engagement with a relatively strong state undergoing a humanitarian crisis under the claim that it threatens humanitarian neutrality and impartiality. Engagement with such a state does not mean humanitarian actors need engage all state institutions, regardless of their role. Instead, they can navigate neutrality by choosing which state institutions and public officials to work with, as the NRC does on the ground.
- While humanitarian crisis does concern the more urgent matters of survival, it is also true that in relatively strong states, unlike weak or failed states, survival is embedded in economic and political relations regulated by the state. In these cases, humanitarians must engage states to negotiate terms that guarantee beneficiaries' survival, and rights-based approaches frame relationships between beneficiaries and states in ways conducive to beneficiary survival and thriving after the humanitarian emergency. This engagement requires practical knowledge of subnational power structures, and has clear limits in state capacity, as shown by the APP example.

- Finally, state institutions capable of guaranteeing rights provide the best possible exit strategy for humanitarian assistance. Hence, humanitarian studies must be able to conceptualize degrees of state capacity, and their relevance for humanitarian action in different contexts.

These answers help provide a better understanding of humanitarian contexts with relatively strong host states and capable national humanitarian aid officers like Colombia. Understanding this type of context is becoming ever more important as the humanitarian sector increasingly finds itself operating in host states that are both more able to identify and address emergencies, and that are more assertive in claiming jurisdiction in zones of humanitarian assistance. Likewise, relatively strong states are increasingly dealing with humanitarian crisis. ■

Notes

1. The research on which this paper is based is part of a larger study of rights-based approaches in Norwegian humanitarian aid carried out by the Norwegian Centre for Humanitarian Studies. The work was supported by the Norwegian Ministry for Foreign Affairs. The project title is "Aid in Crisis? Rights-Based Approaches and Humanitarian Outcomes," Project Number: 237716. Research was carried out in Colombia between January and June of 2016 through interviews, observations and a review of internal NRC documents. The author thanks the officers of NRC Colombia at their Bogotá, Cúcuta, Popayán and Santa Marta offices for their time and generosity as well as Emilio Lehoucq for indispensable research assistance.
2. See the Norwegian Refugee Council's website: www.nrc.no.

THE AUTHOR

Julieta Lemaitre is Associate Professor at Universidad de Los Andes, Bogotá, a PRIO Global Fellow, and an Associate Member at the Norwegian Centre for Humanitarian Studies.

E-mail: jllemaitr@uniandes.edu.co.

THE PROJECT

Aid in Crisis? Rights-Based Approaches and Humanitarian Outcomes aims to describe, understand and explain how rights-based approaches (RBA) to humanitarian action shape humanitarian assistance and contribute to humanitarian outcomes at different levels, in different conflict and disaster zones. The project is funded by the Norwegian Ministry of Foreign Affairs.

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