

Human Rights and State Fragility

Conceptual Foundations & Strategic Directions for State-Building

prepared for

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prepared by

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1. EXECUTIVE SUMMARY

This paper seeks to address a number of conceptual issues guiding the development of a human rights-based approach to state fragility. An initial section (Part 2) sets out the methodological assumptions underlying the study, and locates it with reference to international human rights law and the DAC “Principles on Good International Engagement in Fragile States and Situations”. This is followed by a review of key elements in the evolution of human rights standards and practice in relation to governance and state-building, particularly through their application in human rights-based approaches to development (Part 3) and human security (Part 4).

A programmatic framework for the role of international actors in the task of state-building in fragile settings is elaborated, focusing on three main elements: ensuring protection and security to individuals and communities; supporting the development of a culture of democratic governance; and strengthening the capacity for equitable access to essential public services (Part 5). Critical issues for further research are identified (Part 6), a selected bibliography is provided (Part 7), and an extensive set of endnotes offers additional commentary on subsidiary issues such as strategic dialogue, indicators for human rights performance, and justice and accountability in post-conflict settings.

The study examines the normative principles advanced in the UDHR and subsequent human rights instruments as they apply to and have implications for state-building. This is grounded in an understanding that the fundamental rights of individuals and communities do not derive from the state, but rather that the state is formed and functions on the basis of its primary role as “duty-bearer”. The normative authority of human rights standards within the international system, reinforced by policy innovations such as the Responsibility to Protect and programmatic initiatives such as the Poverty Reduction Strategies and the Millennium Development Goals, suggests that states should be structured, supported and assessed on the basis of their core purpose of ensuring the respect for and realization of fundamental human rights – including civil and political and economic, social and cultural rights.

Noting the correlation between conflict and poverty, and their integral link to human rights performance, it is argued that neither factor on its own is sufficient to provide a reliable analytical framework for guiding responses to state fragility. This suggests the need for a functional approach to state-building that is more contextually oriented to each case of fragility and able to accommodate a wider range of assessment factors. These factors must include those that directly relate to the core principles (equality and non-discrimination, participation and empowerment, and accountability) and the analytical criteria (deprivation, exclusion, vulnerability, and justice) of human rights standards.

The study recommends that an analytical model based on primary state functions and that is able to distinguish specific types of state fragility is most suitable to an

approach to state-building that integrates human rights in both design and implementation. Such an approach will recognize the priority of analyzing and addressing issues of social, economic and political exclusion, and will emphasize the importance of both process and outcome in developing the institutions required to foster and sustain cultures of democratic governance.

2. METHODOLOGY & ASSUMPTIONS

This paper has been prepared to assist policy makers and others responsible for Denmark's ODA to explore the interface of between support for human rights and state-building initiatives in relation to fragile states. It takes as its point of departure Denmark's commitment to "engagement in situations of state fragility and [to] developing strategic priorities for supporting democracy and justice." While undertaking to exercise a "broad view" and "general perspective", the paper seeks to address a number of questions identified as critical indicators to guide the development of policy and programming in this emerging field.ⁱ

This report has been prepared primarily as a desk study, examining a wide range of foundational documents, current analyses, and case studies in the fields of human rights, development assistance, and governance as they relate to state fragility and state-building. In addition, interviews were conducted with more than one hundred leading scholars and practitioners in key research institutions and partner organizations.ⁱⁱ

It is customary in the literature on state-building in post-conflict and fragile developmental settings to note at the outset the wide variation and important distinctions in the definitions of and approaches to some of the fundamental terms under consideration. While this wide range of understandings reflects in part the multi-disciplinary nature of the field of concern; in part, it also must be seen as a result of the different analytical points of reference and emphasis guiding the various political interests and positions involved.ⁱⁱⁱ

For our purposes, we assume that the current basic understandings adopted by the OECD/DAC constitute operative definitions. Set within the framework of the Paris Declaration's long-term vision of building "legitimate, effective and resilient state and other institutions",^{iv} these include:

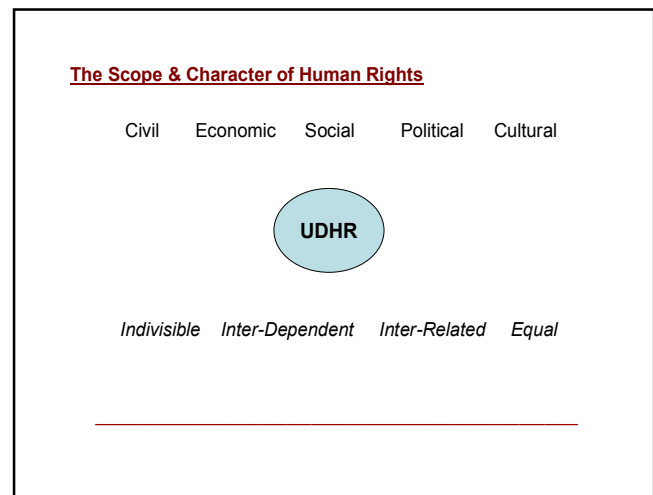
State: "... a broad ... concept which includes the executive branch of the central and local governments within a state but also the legislative and the judiciary arms of the government." (Principle 3, note 1)

State Fragility: "... when state structures lack political will and/or capacity to provide the basic functions needed for poverty reduction, development and to safeguard the security and human rights of their populations." (Principle 3)

State-Building: a sustained and collaborative process involving international actors, national and local authorities, and civil society, focused on strengthening the legitimacy and accountability of the state and its capacity and capability to provide "core functions ...in order to reduce poverty." (Principles 3, 7, 8 and 9)

Although these foundational documents frequently refer to human rights, including in the definition of state fragility and the recognition of non-discrimination as an essential "basis for inclusive and stable societies" (Principle 6), there is no apparent or explicit operating definition or common conceptual approach. In the Principles, human rights appear to be generally associated with issues such as social inclusion, participation of minority groups, and democratic governance, but a coherent approach or integrated perspective is not articulated.^v

We assume that "human rights" should be understood to encompass the full range of standards derived from the Universal Declaration of Human Rights (UDHR) and formalized in international legal instruments. We further assume that these standards include both individual, civil and political (ICP) rights and economic, social and cultural (ESC) rights, and that these two broad categories of rights are understood to be "indivisible, interdependence, interrelated and of equal importance for the dignity of all human beings".^{vi}



Finally, we assume that while human rights represent a critical and constructive element in the search for an effective response to the multi-dimensional challenges of state fragility, it does not offer a panacea. The cautionary observation offered by Paris and Fisk (2007) is salutary:

One explanation for the less-than-stellar results [of peace-building and state-building] may be that expectations for these operations have been too high. Institutional reform is a complex and arduous task even in the most favourable settings – and even more so in countries that are just emerging from civil wars, where social cohesion is shattered and existing governmental structures tend to be weak, factionalized, or even non-existent. Nor can state-building actors rely on any universally applicable, surefire formulas for creating the conditions for lasting peace in postwar societies, because there are none.^{vii}

While we do not propose to engage in the debate concerning matters of terminology and definition, it may nevertheless be useful for our purposes to regard the on-going effort to achieve clarity and consensus on issues of state fragility as indicative of an evolving field of practice and experience and, especially, of the need to recognize the importance of context in any discussion of program or strategy in relation to any specific “fragile state”. Indeed, the issue of context is repeatedly stressed by analysts, and deemed fundamental not only to questions of approach and practice but also to the identification and conceptualization of state fragility.

It is significant and perhaps instructive that the DAC Principles themselves do not define the “fragile state” on the basis of specific sets of characteristics or measures, established patterns of political or socio-economic development, or particular causal factors such as the prevalence of conflict, poverty, or human rights violations. This suggests the need for a holistic approach in considering the relation of human rights and state fragility, and it may therefore be useful to locate this concern within some of the broad conceptual trajectories that have shaped the current discussion, notably the relation between human rights and human development and between human security and state fragility.

3. HUMAN RIGHTS & HUMAN DEVELOPMENT

In the modern international community, human rights constitute normative standards that are expressed in domestic and international legal structures (procedures, laws, treaties, institutions, etc.). At the same time, it is important to remember that human rights are, first of all, an expression or function of moral authority. At the core of this distinction is the principled assertion that human rights are inherent to the humanity of all persons, rather than granted by or derived from the state or other instruments of society.^{viii}

3.1 Human Rights and the Normative Concept of the State

It is on the basis of this moral vision that we presume to assert the universality of human rights, freedom from fear and freedom from want, as entitlements which all persons may claim rather than as the privileges of circumstance or status. It is also on this basis that we proceed to define the role and function of the state, fundamentally, in terms of the promotion and protection of the rights of the members of society.^{ix} Hence, from the perspective of human rights, the state is recognized as being constituted in a dynamic relationship with the members of society that is essentially that of the exercise of the obligations of a “duty-bearer” towards the “rights-holders”. The central role of the state is to ensure that rights are respected and realized, that is, to act as the “social guarantor” of fundamental human rights that is established through both political processes and legal instruments.^x

The UN Charter and the UDHR, in effect the “constitution” of the contemporary international order, bring together this integral relationship between human rights and the state in their respective opening clauses by reaffirming “faith in fundamental human rights” and asserting the belief that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” Indeed, the UDHR reinforces this relationship between human rights and the state by identifying the entitlement to an appropriate and effective state as a right in and of itself.^{xi}

This construct of the state as an entity that is generated in a relationship with society and its members and centered on the recognition and fulfillment of internationally-defined human rights obligations is fundamentally modern in character, and indeed some ethicists argue that the modern era is defined by the emergence of the UDHR and the “official” global ethic that it represents.^{xii} To the extent that this vision and the principles that extend from it – notably, equality (of rights-holders) and accountability (of duty-bearers) – are embedded in the foundational documents of the modern international state system, human rights may be seen as the primary normative basis of states, and therefore for state-building.^{xiii}

Human Rights As Normative ... 1/

... by Defining the Nature & Role of the State

- recognizing fundamental rights as inherent in persons & communities (rights-holders)
- specifying fundamental rights (freedom from fear, freedom from want, freedom to live in dignity)
- the state serves to ensure that rights are protected, respected, & fulfilled (duty-bearer)
- state-building as facilitation of the relationship between rights-holders & duty-bearers

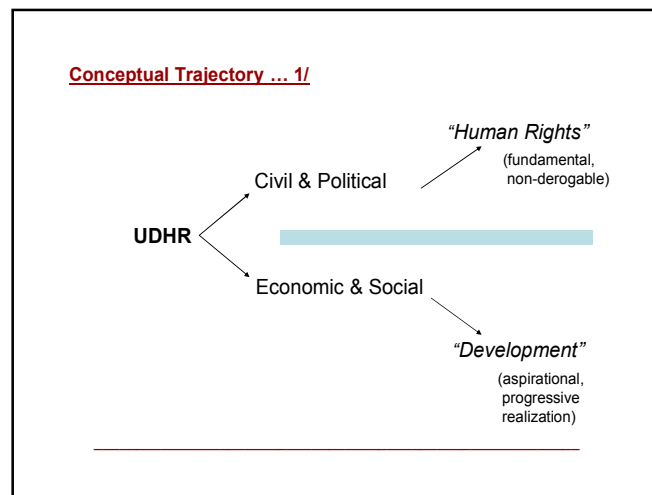
An initial challenge arises insofar as “... the debate about state-building has tended to be ‘functionalist’ and technocratic as well as linear; that is to say, it has focused on what states should be doing and then has attempted to work backwards and determine how donors ensure they get there.”^{xiv} Indeed, the determination of such needs – and therefore which state institutions are required to deliver them and in what manner – has often been primarily exercised by international actors. In contrast, a state-building approach guided by the values of the UDHR and directed toward the promotion and protection of human rights may well be supported by international agencies and accountable externally, but fundamentally needs to be driven and determined internally by the members and constituencies of the society itself. Uvin suggests that human rights provides a conceptual, normative and operational framework for engaging the complex challenges of institutional development from above (legal standards), from below (social mobilization processes) and from within (accountability instruments).^{xv}

3.2 State-Building and the Indivisibility of Rights

Although the task originally set for the newly-established UN Commission on Human Rights in 1948 was to draft a single Covenant to provide a unified and coherent

legal framework for advancing human rights, the ideological contentions of the Cold War made this intention impossible to realize. Instead, two parallel Conventions were developed and adopted in 1966 to address what was perceived as two distinct fields of rights: the International Convention on Civil, and Political Rights (ICCPR) and the International Convention on Economic, Social and Cultural Rights (ICESCR). A substantial network of standards was created to further elaborate the definition of human rights on the basis of thematic issues (e.g. racism, self-determination), types of violations (e.g. torture, disappearances), or vulnerable sectors (e.g. women, children).^{xvi}

While maintaining the language of “indivisibility” throughout this structure, as well as a consistent and coherent adherence to a core set of human rights principles, the era of human rights standard setting nevertheless resulted in the increasing separation of these two fields of rights, in both practical and theoretical terms. In particular, during the 1970s and 1980s the concept of legally mandated and enforceable “fundamental” rights tended to become identified in both popular and scholarly discussion with ICP rights, while ESC rights tended to be characterized as “aspirational” in nature, their achievement subject to “progressive realization”. Uvin helpfully analyzes the human rights and development movements as “two communities of principled social change”, and notes that the “human rights domain” focused 95% on civil and political rights, while the “development domain” focused 95% on SEC rights.^{xvii}



In general terms, it was understood that states could derogate from their obligations in relation to ICP rights only in extreme situations of crisis or national emergency, whereas the normative authority of ESC rights were seen as dependent on unspecified issues of capacity, and therefore to a larger extent determined and compromised by matters of political will, priority and ideology.^{xviii} The discourse and discipline of “human rights” was increasingly defined by ICP concerns, while the issues related to ESC rights were increasingly marginalized from the systems of international scrutiny and accountability and addressed in the distinct discourse and field of “development”. It is noteworthy, and perhaps instructive in relation to state-building, that the human rights standards arising in relation to vulnerable sectors, especially the CEDAW and the CRC, have been most effective in challenging the separation of human rights and development, in part because of the emphasis on participation and empowerment as core human rights principles that emerge from critical consideration of the human rights conditions of women and children.

The two domains became increasingly isolated from each other as disciplines, and were often treated as representing politically and operationally competitive or even conflicting interests and agendas. The relationship and distinction that grew between these two fields was profound and multi-dimensional. In terms of basic approach, for example, the human rights movement tended to focus primarily on the rights-holder, while the development sector tended to focus primarily on the duty-bearer.

These different orientations, and the traditional lack of conversation between the two perspectives, have significant implications for state-building and suggest the need for an integrated approach. The effective integration of human rights principles with development-based approaches implies a need for more than the inclusion of alternate policy language or the accommodation of different planning sensitivities. It will require, in addition, the practical incorporation of human rights principles throughout planning and implementation, including through the development of human rights-related benchmarks and indicators.^{xix} It will also require recognition of the methodological differences between the two fields.^{xx}

Although there is some value and utility to be derived from the conceptualization of human rights into different categories and approaches (positive vs. negative rights, first and second generation rights, etc.), it must be accepted that to a large extent these distinctions represented efforts to justify or make sense of an untenable theoretical division that was imposed by the political constraints of the time. With the end of the Cold War, a new opportunity arose to approach ICP and ESC rights, and the disciplines of human rights and development, in a unified manner – in effect, in real and authentic terms. The “human rights mainstreaming” initiative within the UN system in the mid-1990s, and the UNDP’s Human Development Reports beginning in 2000, set in motion serious efforts to bridge the division between the two fields of rights through a strategic focus on the practical realization of human rights. This strategic focus, which found expression in the “Human Rights Approach” to development and various “Poverty Reduction Strategies”, was increasingly grounded in the recognition of extreme deprivation and social exclusion as defining the critical environment for the development and human rights implementation agendas.

Inter-Agency discussions led by the UNDP resulted in a policy framework for integrating human rights and development. The “UN Common Understanding” constitutes full recognition that human rights principles and provisions are normative for development and is guided by the goal that all development programs should contribute “... to the development of the capacities of ‘duty-bearers’ to meet their obligations and/or of ‘rights-holders’ to claim their rights.”^{xxi} This process culminated in a new three-fold formulation or conceptual framework for human rights, articulated from the perspective of the rights-holder, as freedom from fear, freedom from want, and freedom to live in dignity.^{xxii} Perhaps the most useful conceptual approach to the relation of human rights and state-building is to hold this formulation alongside the parallel three-fold framework, articulated from the perspective of the duty-bearer, developed through the Maastricht Principles and advanced by the Office of the UN High Commissioner for Human Rights.

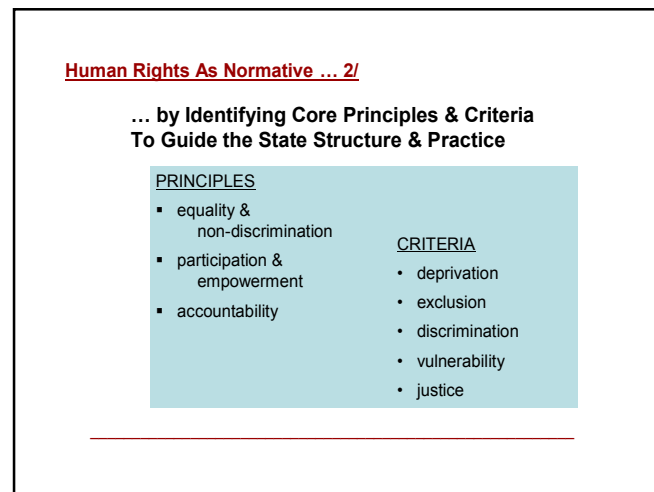
All human rights – economic, civil, social, political and cultural – impose negative as well as positive obligations on States, as is captured in the distinction between the duties to respect, protect and fulfil. The duty to respect requires that the duty-bearer refrain from interfering with the enjoyment of any human right. The duty to protect requires the duty-bearer to take measures to prevent violations of any human right by third parties. The duty to fulfil requires the duty-bearer to adopt appropriate legislative, administrative and other measures toward the full realization of human rights.^{xxiii}

This approach proceeds from a full recognition of the interdependence and indivisibility of human rights, that is, that all human rights are fundamental in terms of both entitlement and obligation, and interact within a social and political environment in which their implementation is subject to progressive realization.

3.3 Human Rights and the Structure of the State

The UN Secretary General's 2005 statement and subsequent policy guidance may be seen as an attempt to restore and renew the original vision and normative authority of the UDHR as an integral concept with universal application. The core body of human rights standards are deemed to be normative in relation to state-building insofar as they serve to:

- Define the role and purpose of the state (to promote and protect human rights as a means of means of ensuring dignity, justice and peace);
- Establish the core principles that guide the relations between the state as duty-bearer and the members of society as rights-holders (equality, non-discrimination, participation and empowerment, and accountability);
- Prescribe a framework of obligations or duties to shape the application of these principles through the functions of the state (respect, protect, fulfil);
- Provide a set of key analytical criteria assist in identifying contextual priorities for implementation or fulfillment of obligations (deprivation, exclusion, discrimination, vulnerability, and justice).



As a form of development cooperation, the normative elements that derive from the experience and elaboration of the human rights approach are incumbent on and

instructive to the practice of state-building. While human rights standards do not describe an ideal form of state structure, the normative elements reflected in the human rights approach do suggest a number of key criteria with structural or institutional implications. We will address the question of state functions further below but, fundamentally, from a human rights or "... from the human development perspective, good governance is democratic governance", which is understood to be identified by eight criteria or practices that provide guidance to the work of institution-building:

- People's rights and fundamental freedoms are respected, allowing them to live with dignity;
- People have a say in decisions that affect their lives;
- People can hold decision-makers accountable;
- Inclusive and fair rules, institutions and practices govern social interactions;
- Women are equal partners with men in public spheres of life and decision-making;
- People are free from discrimination based on ethnicity, gender, or any other attribute;
- The needs of future generations are reflected in current policies;
- Economic and social policies are responsive to people's needs and aspirations.^{xxiv}

As is often noted in the literature, democracy must be understood as a developmental process as well as a structure or outcome. This observation underlines the critical importance of recognizing the interdependence of rights in designing strategies for state-building in politically and developmentally fragile settings.^{xxv} While some form of democracy is clearly mandated by human rights norms, as an ideal form it does not necessarily offer a resolution to state fragility. Indeed, research appears to indicate that the potential for state fragility to deteriorate into conflict is greater in formally democratic and especially in semi-democratic, state structures than in autocratic ones.

Political institutions are not sufficient to ensure peace. ... The combination of two factors seems to be of utmost importance in mitigating conflict. The first factor is the establishment of politically inclusive government which incorporates representatives from all the major identity groups at the political level. The second factor is the realisation of a social system which widely spreads the benefits of progress, providing socioeconomic growth among all the significant regional, religious and ethnic groups in society. In other words, what seems to be required in order to ensure peace ... is the combination of politically and economically inclusive government.^{xxvi}

This underlines one of the key challenges in the relation between state-building and human rights. Nations, and the state structures they generate, are often described as being organized on the basis of or deriving cohesion from either the principle of civic

nationalism (shared equal rights) or the principle of ethno-nationalism (shared common identity). Although not explicitly stated, human rights standards assume a state structure that is predicated on or progressively moving toward the civic principle. State functions and institutions are envisioned as being directed towards promoting, both domestically and internationally, an inclusive political and social environment characterized by tolerant multiculturalism.^{xxvii} This task has posed difficulties even for highly developed and stable states in recent years, but is particularly challenging for fragile states often characterized by a resurgence of ethnic or other identity-based tensions.

4. HUMAN SECURITY & FRAGILE STATES

The decade of the 1990s was a period of massive change in the field of human rights. As noted above, the end of the Cold War created a vital opportunity to remove the ideological barriers that had served as the perennial excuse for not moving forward in the practical implementation of human rights and realizing a safer and healthier world for all humanity. In some ways, the so-called “peace dividend” did make a meaningful contribution to fulfilling these hopes. A range of positive measures were initiated: a formal reaffirmation of the UDHR (Vienna Declaration – 1993); the UN “human rights main-streaming” initiative and the establishment of the OHCHR; a commitment to the promotion and protection of the rights of children and women (Convention on the Rights of the Child – 1990; Beijing Action Plan – 1995); and movement towards addressing impunity, through the creation of an International Criminal Court (Statute of Rome – 1999).

During this period the international community also began to open up some important new fields for policy debate and decision-making, such as the question of the responsibility and accountability of business, trans-national corporations, armed opposition groups and other non-state actors in relation to the promotion and protection of human rights. Some nations, such as the post-apartheid South Africa, began to include elements of ESC rights, such as the right to education, explicitly within their constitutions.

4.1 Human Rights and the Responsibility to Protect

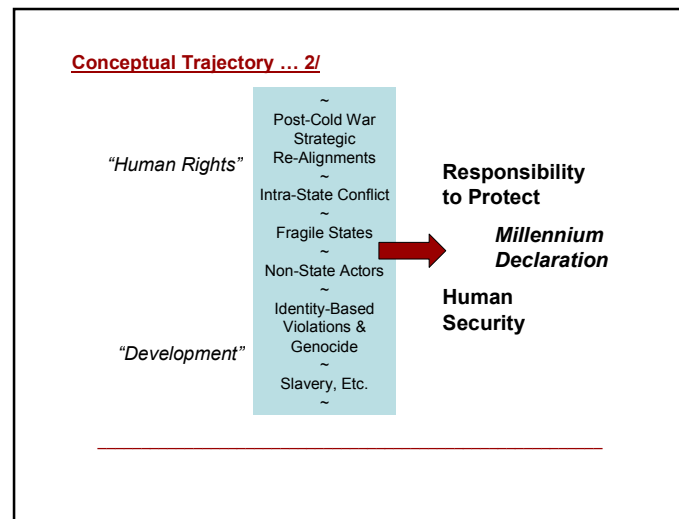
The end of the Cold War also meant, however, that whole regions of the world – notably sub-Saharan Africa and Central Asia – ceased overnight to hold global strategic interest and were summarily marginalized and then abandoned. Just as suddenly, warlords and dictators who had served as superpower surrogates – created, sponsored and to some extent controlled by either the Soviet Union or the United States – were loosed to pursue private interests or local grievances without restraint, sometimes acting as agents of convenience for corporations and other forces of globalization in an increasingly de-regulated world. As governing structures in many countries weakened or collapsed as a

result of diminished capacity or legitimacy, or the emergence of new competitive forces or elites, the number of “hot” domestic conflicts proliferated from about 30 to more than 80 within the first five years of the decade. In many of these situations, a rapid and radical politicization was a “primary consequence” of the war, and a “primary characteristic” of the politicization was “ethnicization”.^{xxviii}

These developments brought a significant change to the nature of the human rights violations experienced by ordinary people around the world. Over the course of the 1990s, human rights violations escalated in severity and scale, and changed from being focused on the repression of beliefs to an assault on identities – whether gender, language, religion or ethnicity. Violations occurred less as a strategy to achieve political hegemony or institutional control, and more as a characteristic of situations of social, structural and environmental breakdown. In the war that increasingly defined the lives of more and more people, the key question changed from being “what side are you on?” to simply “who are you?”^{xxix}

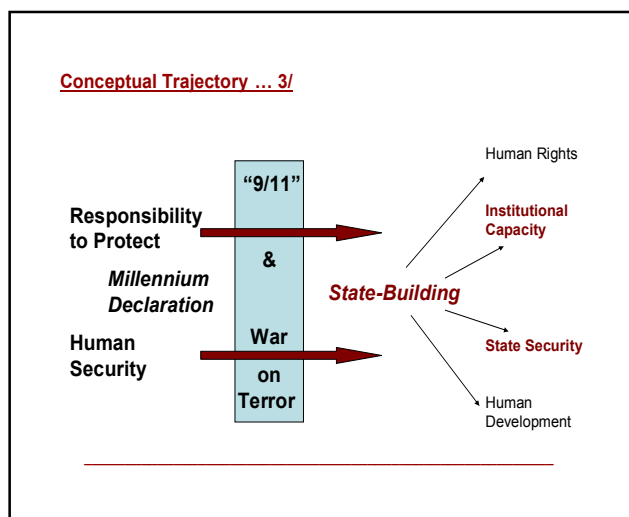
Instead of seeking primarily to control or repress their enemies, the perpetrators of human rights violations increasingly sought to eliminate them. The forms of mass terrorism that the whole body of international human rights law was created to ensure would “never again” be part of the human experience erupted again throughout the world: genocide in Central Africa, ethnic cleansing in Eastern Europe, the slavery of women and children in large parts of Africa and Asia. This conjuncture of institutional collapse, civil conflict and mass violations has been described as a human rights crisis of identity and exclusion; it resulted in and was characterized by, in particular, in a preponderant attack on the human rights of women.^{xxx}

In direct response to this emergent context of state crisis or fragility and human insecurity, international experiments in peace-building were carried out, notably in Angola, Cambodia, Mozambique and elsewhere. These missions moved beyond the traditional peace-keeping role of monitoring and maintaining cease-fires and securing demobilization to include efforts directed at the reconstruction of political infrastructure and the promotion of societal reconciliation.^{xxx1} This movement may be said to have been formally initiated in policy terms with the UN-SG’s 1992 report *Agenda for Peace*, and to have culminated in 2001 with the formulation of the *Responsibility to Protect* (R2P). In addition to consolidating state-building as a legitimate and primary focus for international cooperation and assistance, R2P represented a major new development in the normative framework of human rights.^{xxx2}



Effectively reinforcing the initiatives to re-integrate ICP and ESC rights referred to above, R2P represented a further integrative innovation in that it undertook to bring together the principles of the human rights standards with those of international humanitarian law. In advancing the “right to humanitarian intervention” in cases in which “... a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it”, R2P effectively sets out the international community’s doctrine in relation to “fragile states”, including its role in state-building. Assuming the role of duty-bearer, the obligations of “the broader community of states” are understood to comprise the responsibilities to prevent, to react, and to rebuild.^{xxxiii}

Although proceeding from a clear and explicit human rights and human security motivation and approach, it has proven difficult to maintain this focus in the application and development of the R2P policy. Despite the stated priority on prevention, R2P has perhaps naturally tended to focus primarily on issues of conflict and intervention, thereby focusing on the narrower framework of humanitarian obligations – the distinction and protection of civilian populations in armed conflict. To some extent this may have been an appropriate response to the immediate demands of emergency situations, but it may also be due in part to a growing reluctance of the international community to undertake longer-term commitments in crisis or conflict situations. In any case, this orientation has understandably led to a greater emphasis on a human security-based approach, focused on defining a narrower sets of prioritized rights and guided by needs-satisfaction rather than rights-fulfilment. While both human security and human rights perspectives require prioritization in the context of strategic planning for reconstruction, and both proceed from a people-centred approach in defining targets and indicators, a human rights-based approach is more likely to include both long and short term objectives and attention to both process and outcomes.^{xxxiv}



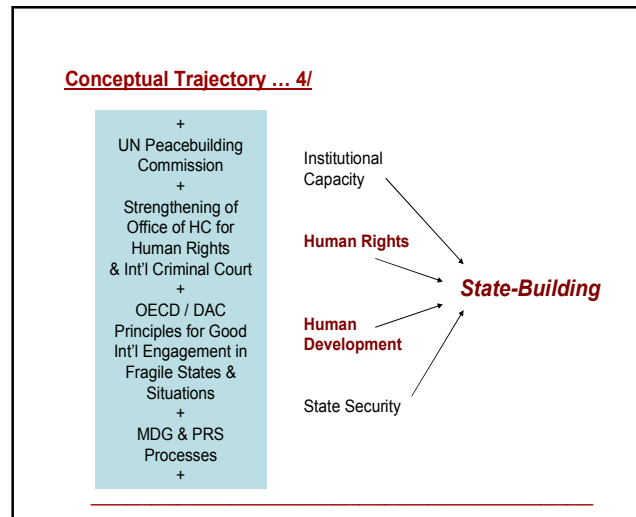
The concept and practice of R2P has been further limited in terms of its ability to function effectively as mechanism promoting an integration of human rights within the response to fragile states in that, following the terrorist attacks of 11 September 2001 and subsequently, the policy base shifted from a focus on human security towards an increasing emphasis on state security. Such a shift naturally has an impact on both process and outcome.^{xxxv} Intervention, whether military or developmental, was no

longer seen as being shaped solely or primarily by the needs or rights of vulnerable populations in fragile, crisis or underdeveloped states, but in a balance or conjunction

with the distinct strategic and security interests of the donors, international parties and the international community as a whole.^{xxxvi}

To the extent that R2P has increasingly referred to analytical and programmatic contexts emphasizing an anti-terror and international security agenda, as in Iraq and Afghanistan, it has also been associated with legislative and other initiatives directed toward restricting or derogating from long-established fundamental rights and international systems of accountability.^{xxxvii} Just as significantly, state-building initiatives within such contexts have demonstrated a tendency to reflect a more instrumental, centralized, and externally directed approach to the development of state functions and institutions.^{xxxviii} Recent initiatives appear to be directed toward a renewal of R2P as an organizing principle for

the international community, including by restoring the primacy of its preventive role and emphasizing its basis in human rights norms.^{xxxix}



4.2 State Fragility and Human Rights

Emerging from these trends, situations of state fragility are typically defined in terms of the nexus of security and development agendas; human rights rarely feature as a core factor, or even an ancillary component, of either the analytical framework or the strategic response.^{xl} As a result, much of the literature tends to continue to focus on largely unproductive issues of classification and causality which reflect a basic struggle over the question of the predominant analytical paradigm for approaching state fragility – conflict or poverty. On the one hand, a security-based approach suggests that a pre-conflict / conflict / post-conflict analysis offers a logical and functional framework for understanding fragile states. On the other hand, significantly disproportionate levels of extreme poverty and its political and developmental consequences are a primary characteristic of fragile situations, and provide an indicator that is more familiar to and coherent with the DAC principles and definitions.

A considerable body of policy and research indicates an integral and mutual correlation between conflict and poverty, and that neither factor on its own is sufficiently robust to provide a reliable analytical framework across the range of experiences and types of state fragility.^{xli} In view of the fundamentally relational character of the state and the social contract within which it functions, efforts that are based on determining the linear causality of a single or limited number of factors (poverty, inadequate political processes, conflict, etc.) are not likely to be especially useful. This suggests the need for a

functional approach to the state and state-building that is more contextually oriented to each case of fragility and able to accommodate a wider range of assessment factors.

The factors analyzed should include those that relate directly to the core principles of human rights (equality and non-discrimination, participation and empowerment, and accountability) and the analytical criteria (deprivation, exclusion, vulnerability, and justice) that guide implementation of human rights-based approaches. While a number of theoretical frameworks have been advanced during the past decade, the analytical approaches employed by the Country Indicators for Foreign Policy (CIFP) fragility index project or by Oxford's Centre for Research on Inequality, Human Security and Ethnicity (CRISE) appears to offer models that can accommodate the diversity and complexity of state fragility and support a programmatic response that is oriented towards human rights concerns. In order to illustrate the application and implications of such analyses in framing a human rights-based approach to state fragility it may be useful to examine the CIFP and CRISE models and their outcomes in greater detail.^{xiii}

While Ghani and others identify ten core functions as the basis for assessing and addressing situations of state fragility, primarily with a view to institution-building, the CIFP approach proceeds from a more socio-political understanding that the functionality of a state is determined by its ability to exercise effectiveness in relation to three "fundamental properties: authority, legitimacy and capacity [ALC]."^{xliii} Fragility is determined by analysis of a number of cross-cutting indicators (gender, governance, economics, security and crime, human development, demography, environment) which are measured by a wide range of variables, including some that are explicitly referenced to human rights (such as independence of the judiciary, restrictions on civil and political rights, the gender development index, the human rights empowerment index, etc.). Each of the three properties is understood to be "inextricably interlinked" in a manner that can be measured empirically, thereby enabling not only the identification of fragility, but also some precision with respect to its source, severity, outcomes, and the nature of appropriate support or intervention.^{xliv}

Thus, for example, the CIFP model suggests that situations of state fragility that are indicated as primarily related to problems of authority are more likely to be vulnerable to violence, especially as a result of external or non-state actors. Situations in which issues of legitimacy are the primary factor are more prone to coercive and conflictive social relations, limitations on participation by minority groups or marginal sectors, and the erosion of civil and political rights. Situations in which issues of capacity are the primary conditions of fragility are more likely to require support directed toward fulfilling state obligations in relation to ESC rights or providing basic state infrastructure.

The results of analyses which are clearly set within a human development framework that actively includes human rights indicators are significant and compelling. First, they tend to identify a somewhat different and more diverse list of "most fragile states" and, more importantly, they provide an empirical platform for distinguishing different types of fragility.^{xlv} Second, it allows for greater recognition of regional

dynamics that may be influential factors in exacerbating or reducing state fragility. Third, they emphasize that each situation of state fragility contains its own mix of strengths and weaknesses and provides a means of exploring that particularity. This feature may help planners move beyond deficit-based approaches to addressing fragility and towards a balance with asset-based approaches – a key ingredient in the practice of effective human rights advocacy and programming. Fourth, in addition to supporting more focused identification of where human rights-oriented interventions may be appropriate, and which areas of human rights are most relevant, these analyses lead to a number of conclusions that are key guides to strategy in relation to state fragility: that there is, in particular, a “close relationship between state stability, and human development, gender empowerment, and per capita income”, and that “countries with better human rights records tend to be less fragile”.

Considerable research has been undertaken into the links between poverty and/or human rights violations and violence and/or conflict, or between democratization and state fragility, but there is not as yet a substantial research base on the relationship between human rights and state fragility per se. To the extent that extreme poverty constitutes a failure or inability by a state to ensure the fulfilment of ESC rights, then the extensive research on the relationship between poverty and fragility may be said to apply. However, while the whole field of international human rights research may be said to represent a tacit body of “customary” evidence predicated on this assumed relationship (most analyses of and policy statements on fragile states assume both a “global and local impact” on human rights as a result of various aspects of state fragility) there has in fact been little systematic and empirical investigation on the relation between state fragility and human rights.^{xlvi}

The research that does exist is not conclusive but, again, appears to encourage caution in seeking causal relations. However, there are clear indications that while extreme violations of ESC rights within populations in general are unlikely in and of themselves to directly result in civil conflict or state fragility, discrimination or perceived discrimination in relation to the realization of ESC rights within a society is likely to be associated with, and perhaps to generate, violations of civil and political rights, civil conflict and violence, and state fragility.^{xlvii} Statistical analyses conducted by CRISE also conclude that “across all dimensions of fragility, the average level of discrimination is higher in the failing states than in the non-failing states” and indicate a “significant relationship between social exclusion and state fragility across all dimensions. ... Thus the category of countries that are fragile and those that fail significantly on human rights could be argued to be one and the same.”^{xlviii} It is only reasonable to infer that, given the right conditions and appropriate forms of intervention or support, programs to promote human rights would be an essential element in state-building initiatives, and that effective state-building should intrinsically serve to strengthen human rights.

While the CIFP framework articulates an approach to state function and fragility from the vantage point of the “duty-bearer”, the CRISE approach may be said to re-frame the model in terms of the perspective of the “rights-holder”. That is, while the CIFP approach defines the “three properties” as fields and measures of state effectiveness, the

CRISE approach considers them as dimensions of state failure in relation to the fulfillment of its obligations toward the members of society and their communities.^{xlix} As with the CIFP, this enables a more nuanced diagnosis of the various types of state fragility, but the change of focus also allows for the identification of a set of criteria or characteristics of state fragility that may be more directly referenced to human rights standards.

Thus, for example, in the CRISE approach fragility related to authority is less about the structural or institutional ability of the state to exercise control over all of its territory, and more about the way that lack of control is experienced as vulnerabilities and violations by the population (e.g. organized political violence, periodic communal violence, high levels of criminal impunity, inaccessibility to justice). Similarly, fragility related to legitimacy is less related to the ability of the state institutions to command public loyalty, and more about the ability of members of society to exercise their civil rights, to enjoy a free media, to experience equity and inclusion in public life.

These two analytical models offer a useful foundation in that, from their different perspectives, they generate contextual analysis and policy directions that reflect the needs of both the “duty-bearers” (the issues of state effectiveness), on the one hand, and of the “rights-holders” (the expectations of rights fulfilment) on the other. Along with the social dialogue approach that appears to be emerging from the work of the Peacebuilding Commission – which emphasizes a preventive orientation and the role of public participation in the design, negotiation and monitoring of state-building strategies – these approaches taken together may provide the basis for an integrated conceptual and practical framework addressing for developing a human rights-based approach to state fragility.

Towards a Human Rights-Based Approach ... 1/

<i>Fundamental Rights</i>	<i>State Obligations</i>	<i>Core Principles</i>	<i>State Needs / Properties</i>	<i>Strategic Directions</i>
Freedom from Fear	Duty to Protect	Equality & Non-Discrimination	Authority	Ensure Security
Freedom from Want	Duty to Fulfil	Participation & Empowerment	Service Delivery	Strengthen Capacity
Freedom to Live in Dignity	Duty to Respect	Accountability	Legitimacy	Support Democratic Governance

4.3 Inclusiveness and Non-Discrimination

Exercising both the perspectives of the duty-bearer and the rights-holder, a human rights approach emphasizes that state-building is both a political and a developmental undertaking that needs to be seen in terms of both product and process. The CRISE analysis points to two additional criteria which are helpful in considering the identification of state fragility and the development of strategic responses to it in terms of human rights. That is, they serve an integrative role in providing a platform for bringing together ICP and ESC rights, the discourses of development and human rights, and issues of capacity – or service delivery – and legitimacy.

One criterion is the degree to which the delivery of basic needs or services is below the average for countries of comparable income levels or capacity. To the extent that this may provide a point of reference for defining a reasonable base-line for fulfilment of ESC rights, it allows for a rudimentary assessment in relation to issues of political will and capacity. This approach is broadly coherent with the “capability approach” used by the OHCHR in conceptualizing and addressing poverty in human rights terms.¹

The second criterion is the degree to which social and economic exclusion on the basis of discrimination is present. In light of the research findings that link conflict and fragility with the combination of deprivation and discrimination, and the pre-eminence of equality and non-discrimination as guiding human rights principles, these analyses point toward the critical role of horizontal inequalities in constructing a framework for approaching state fragility and human rights. Further, analysis focused on discriminatory exclusions underlines the importance of recognizing conflict, including that of a low-level and on-going nature, as not only a political dynamic but also as a key structural factor in development and state-building.

As distinct from the overall levels of disparity within a country, horizontal inequalities refer to systemic inequalities between culturally defined “...groups with shared identities. These identities may be formed by religion, ethnic ties or racial affiliations, or other salient factors which bind groups of people together.” By “systemic” we mean that these inequalities are not only historically entrenched, but that they are reinforced and perpetuated by institutionalized patterns and practices, including a lack of accountability.

Horizontal inequalities are characterized by restrictions to both goods and services and to the means to participate with freedom and dignity in society. They may be manifested across a wide range of socio-economic dimensions of public life, which Stewart organizes into four main categories: political participation (including effective franchise, participation in government, representation in police, military, public service, etc.), economic assets (including access to land and capital, aid and government infrastructure, etc.), income (including employment in key sectors), and social access (including education, health services, housing, etc.). Each of these categories, of course, refers to both a field of analysis and a domain of human rights.ⁱⁱ

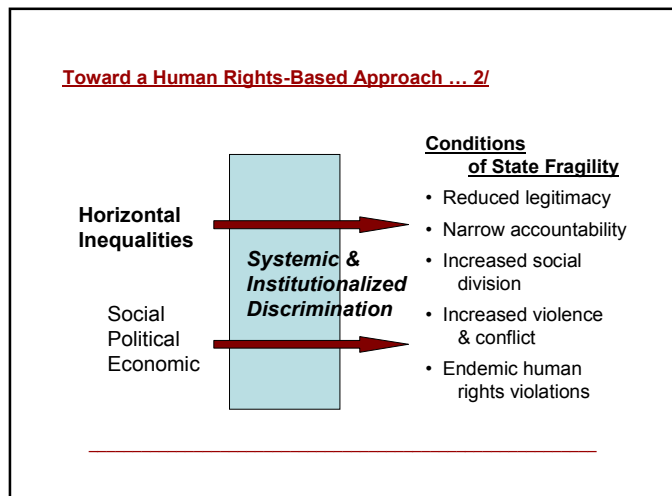
What is most at stake in horizontal inequalities is not the level of absolute disparity but the degree to which the disparities are based on or perceived to be due to discriminatory exclusions, and are therefore unjust. To the extent that these inequalities exist, they constitute or are indicative of human rights violations. Research demonstrates that they are a significant source of fragility (diminished legitimacy and potential civil conflict) and further human rights violations (increasing discrimination and suppression of civil and political rights), especially when the horizontal inequalities are locally or regionally concentrated.

Horizontal inequalities, when driven by systemic or institutionalized identity-based discrimination describe, in effect, the dynamic conditions in which violations or

non-fulfilment of civil and political rights and economic, social and cultural rights converge and proliferate. As such, they are a major determinate of human rights performance, as well as a primary source of the diminished legitimacy and increased social violence and civil conflict that are conditions of state fragility.

Noting the importance of contextual analysis and the need for caution in relation to the potential for de-stabilization inherent in changes to the structure of power in a situation of state fragility, and drawing particularly on analyses of Guatemala and Mozambique, Stewart proposes a

policy approach to overcome political, social and economic exclusion and inequality that places an emphasis on “human rights and process”. Building on a requisite framework of legislative and other institutional protections and guarantees, such policies will emphasize empowerment, participation, and accountability; that is, they will be practically oriented toward promoting awareness and developing skills among rights-holders to facilitate making claims, and providing support for duty-bearers in accommodating demands and ensuring fulfillment.^{lii}



As noted above, extensive research demonstrates the inter-relation among conflict, poverty and human rights violations, “being both a cause and consequence in both directions”. Insofar as this inter-relation of factors largely describes the nexus of state fragility, and insofar as this research increasingly focuses on the core human rights principle of equality and non-discrimination as the central issue, it may be useful to regard the emerging analyses of human rights and poverty reduction strategies as being generally parallel to and informative of the development of strategic approaches to state-building. These studies, exemplified by the work undertaken by Sakiko Fukuda-Parr for the OHCHR in relation to Guatemala, Liberia and Nepal, found that:

All three countries have a historical legacy of elite rule and subordination which continued over the centuries. In all three countries, development efforts were not pro-poor and entrenched inequalities. In all three countries, these patterns of unequal development, reflected in horizontal inequalities and group exclusion are widely believed to be one of the root causes of armed conflict. In all three countries, gender discrimination is institutionally entrenched, evident not only in such indicators as literacy but also in the absence of women in decision making positions in government and all sectors of society at all levels. The widespread impunity for rape and other violence against women is another symptom of discrimination and subordination that is apparent in all three countries.^{liii}

A human rights approach based on inequality and exclusion naturally focuses on the situation and needs of the poorest and most vulnerable, thereby creating in most contexts a clear policy platform for addressing issues of gender equality and the participation of women, and of the protection of children from violence and exploitation. In this manner, an approach to poverty reduction strategies – and arguably to state-building in fragile settings – that integrates a human rights approach should be fundamentally preventive in nature,^{liv} and bring:

... a strong normative framework emphasizing principles of equality, non-discrimination and concern for the most vulnerable, and a social justice agenda to policy priorities. It would also bring a new perspective on poverty focussing on poverty as a cause of human rights violations and the absence of social arrangements to guarantee rights as a cause of poverty. It would bring new approaches to analysis of causes of poverty focussing on institutionalized discrimination, lack of political voice, institutional failures to guarantee human rights including weak protection for civil and political rights as causes of poverty. It also brings new dimensions to the analysis of economic and social policy against human rights agendas for pursuing social justice. ... Thus addressing group-based discrimination, horizontal inequality and social exclusion ... is not only an end in itself as a human rights goal, but is instrumentally important as a means to preventing conflict which in turn reduces risks of both violence and increase in poverty. Both poverty and violence undermine human rights.^{lv}

5. KEY DIRECTIONS & FIELD OBSERVATIONS

In light of this perspective on the normative properties of human rights standards as they apply to the nature and function of the state and the condition of state fragility, a human rights approach to the role of international actors in the collaborative task of state-building should focus on and derive from three key elements^{lvi}:

- ensuring protection and security to individuals and communities;
- supporting the development of a culture of democratic governance;
- strengthening the capacity for equitable access to essential public services.

Each of these programmatic directions applies, in a different manner and with different levels of priority, in each phase of state-building, and each should be characterized by a human development approach guided by the principles of equality and non-discrimination, participation and empowerment, and accountability.

While these directions and principles may provide the basis for a policy and programmatic framework, they should not be taken to suggest the possibility of a

formulaic approach to state-building and human rights. The importance of undertaking adequate contextual analysis cannot be over-emphasized in identifying the type of fragility, the nature of social and political exclusion, the appropriate blend of immediate and long-term interventions, and the unique set of contradictions and trade-offs that inevitably define any particular situation.^{lvii}

Contextual analysis itself should be based as much as possible on participatory processes in order to ensure that of key constituencies are included from the outset and that substantive strategies are led from the ground. Involving key civil society partners in the initial assessment activities, as well as in the subsequent development of political instruments (see 4.1 below), tends to shift the identification of intended targets and priorities from high-level political and structural concerns toward outcomes and indicators that are more practical and linked to people's lives and well-being (and rights). These, in turn, are more likely to provide a secure basis for promoting dialogue, collaborative negotiation and agreement, and for building trust – perhaps the single most critical element in reconstruction in post-conflict settings.^{lviii}

5.1 Ensuring Protection and Security

In the context of conflict or its immediate aftermath, efforts should naturally focus on the protection of vulnerable populations, including refugees and displaced persons, through negotiation of cease-fire and de-militarization processes. As noted above (3.2.1), this will likely require measures to protect civilians from arbitrary killings or detentions, torture, disappearance, rape and other assaults on the security of the person, as well as the provision of all aspects of humanitarian assistance, especially for the most economically and socially marginalized groups (notably children and women) and other specifically targeted groups. Furthermore, the case of Nepal suggests that an active human rights presence by the international community can itself serve as an effective means of enhancing security at the community level, while at the same time contributing to the building of social expectations with respect to the role of the state in relation to human rights (see 4.2).

Human rights defenders (HRDs) are likely to be particularly vulnerable in such conditions, for two reasons. First, although often critical of and politically threatening to existing power elites or traditional authorities, in many situations HRDs represent the basis of an independent civil society that will be essential to facilitate and empower broader participation in state-building processes – in other words, “Protect one, empower a thousand.” Second, the transition from a conflict is when it becomes apparent to armed elements that the period of impunity may be coming to an end. HRDs play a critical role in the monitoring and documentation of human rights violations that will serve as a key component in establishing the public expectation for and the means to implement systems of accountability, both for the past and in relation to the future state.^{lix}

On the question of impunity, the need for accountability for grave violations and crimes against humanity is a fundamental requirement of international human rights law. It is also a practical necessity for successful state-building in that, according to Amnesty

International and others, the failure to bring perpetrators to justice is the single most influential factor in perpetuating human rights violations. In other words, establishing effective accountability mechanisms is one of the critical means by which state-building can have a preventative role in relation to human rights abuse.

At the same time, in almost all cases the prospect of accountability for past violations is a significant impediment to the conclusion of a durable peace settlement among parties to a conflict, and only a minority (and declining proportion) of peace agreements include specific accountability measures. Indeed, the most common component included in peace agreements – general amnesty – is the measure least associated with justice, accountability, or the rule of law.^{lx} However, the evidence seems to clearly indicate that avoidance of the issue is not an option, and offers only a temporary reprieve and an insecure agreement at best.^{lxi} Where there do appear to be options with significance to state-building is in terms of the form that justice should take, the equity with which accountability is applied to all parties implicated, the degree to which non-discrimination is exercised by not attributing blame to the groups or communities deemed to be “represented” by the perpetrators, the extent to which the needs of the victims and survivors have primacy in shaping and directing the process, and the extent to which the accountability process is treated as a basis for promoting reconciliation in a context of societal trauma.^{lxii}

Appropriately and necessarily, much of the institution-building investment during a post-conflict phase will be directed toward training and re-orientation of the military, police and other components of security sector reform in order to provide the means to establish the rule of law.^{lxiii} Although focused on specialized technical sectors and militarized sectors, experience indicates that the success of such development depends in part on the inclusive participation by civil society in setting the terms for all aspects of the transition. This includes the need to proactively involve, and to provide protection for, key constituencies such as women, cultural minorities, and political opponents in the negotiation and planning processes for settlement agreements (including a component on human rights), reform programs, budget formation and other foundational elements of the emergent state.^{lxiv}

5.2 Supporting Democratic Governance

While there is general agreement that elections are essential to state-building, there has been considerable debate on the role and timing of elections in the process of establishing legitimacy in situations of state fragility. Debate surrounding these issues has been highly positional, reflecting in part the different perspectives of those concerned with the more immediate needs of managing transition from conflict and those preoccupied with the longer-term challenge of fostering a pluralistic democratic culture.

The non-correlation between democracy and stability, particularly in transitional situations, has been noted previously. However, experience in Cambodia, Liberia, Sierra Leone and elsewhere suggests that the success of electoral processes are dependent on whether the human rights accountability issues noted above (4.1) have been addressed,

and on the degree to which there has been engagement by civil society in the non-formal institutions that support the electoral process as distinct from the mechanisms directed at producing an electoral outcome. In this sense, as recognized in the discussions leading to the formulation of the UN Common Understanding on the human rights-based approach to development, “participation is both a means and a goal.”^{lxv}

Much state-building theory has been focused on the reformation or replacement of elites, and to a considerable extent non-participatory and non-consensual in approach. However, in order to be effective from a human rights point of view and as an instrument for promoting human rights, democratic institutions such as electoral processes must be designed and organized in an inclusive manner, ensuring and facilitating the involvement of and participation by socially and economically marginalized and vulnerable groups. This will include measures to support the ability of such groups to exercise their freedoms of association, assembly and expression. Clearly, this underscores the importance of programs to support the functioning of a free and diverse media, as well as other means for promoting basic political awareness and capacity in civil society. “Success”, then, must be understood not only as the conclusion of peaceful, free and fair elections that confer a greater measure of legitimacy on the state, but also as the various elements of the process that help to “create the conditions for mutually empowering state-society relations.”^{lxvi}

This is no small challenge. In effect, state-building often involves generating new awareness and expectations on the part of previously excluded sectors of society and supporting the development of a political space in which reasonable strategies and priorities can be negotiated and agreed among competing expectations, while at the same time creating the institutions and leadership capable of managing their fulfillment.^{lxvii} In this sense, democratic state-building is fundamentally a human rights project; state-building is the establishment of governance institutions grounded in human rights and dedicated to making human rights normative in the lives of people and communities. The development of a democratic culture depends on the ability of civil society to gain awareness of their rights, to express and exercise the expectation that their rights will be respected and realized, and to exercise an on-going accountability relationship with the state by monitoring fulfillment. “The most fundamental way in which empowerment occurs is through the introduction of the concept of rights itself.”^{lxviii}

5.3 Strengthening Capacity

The key contribution of a human rights approach to addressing state capacity to deliver essential services is its insistence on the need to base strategic interventions be based on identifying, prioritizing, and addressing economic disparity based on institutionalized discrimination. Without an adequate analysis of exclusion, and disaggregated data to support its implementation, general approaches measured against performance in relation to MDGs or such targets will provide only a rough indication of fulfillment of SEC rights, and will not likely address the core sources of fragility.^{lxix}

Since the central objective of a human rights agenda for state-building is social justice, the strengthening of institutional capacity must not only serve to reduce discriminatory exclusion and disparity; the means by which this end is achieved should also contribute to the empowerment of excluded groups and enhancement of their ability to participate in decision-making processes. Enhancement of the ability of civil society and specialized NGOs to play an active role in monitoring the budgeting and spending of ODA and other state resources in support of SEC rights should be emphasized.^{lxx} In addition, state-building efforts in support of capacity development will emphasize anti-corruption measures and a critical means of advancing an institutional culture of human rights.^{lxxi}

6. EMERGENT ISSUES & CHALLENGES

6.1 Strengthen Perspective from the South

To a very large extent, the research and policy dialogue on state fragility has taken place among scholars and officials in the North. Efforts are required to diversify the perspective of analysis and decision-making, in part to include thinking beyond the model of the Western liberal state, and in part to strengthen the credibility of the state-building project itself. In particular, research on the potential role of the emerging powers, especially the BRICS, as integral collaborators should be considered.

As is evident from recent events in Kenya and elsewhere, the capacity of the traditional donors to exercise political influence in critical situations is limited, and this appears to apply increasingly to human rights advocacy and programming as well. At the same time, the role of the BRICS is becoming more significant, both politically and as donors, in a number of regions of state fragility. In some cases, the role of the BRICS may be at variance with or run contrary to the human rights priorities of the DAC partners. At the same time, it is important to recognize that the BRICS may have relevant and credible contribution to make on the basis of their respective experience and leadership in certain areas of human rights.^{lxxii}

6.2 Meta-Analysis of Human Rights Best Practices

The main international human rights organizations have generally not engaged in the research and policy dialogue on state-building and state fragility.^{lxxiii} Their role in relation to crisis situations has primarily been to document the human rights impact of deteriorating conditions on civilian populations, and to advocate for protective and preventive action by domestic and international authorities. In post-crisis situations, they have tended to focus on issues of impunity and accountability for past violations rather than the broader questions of reconstruction.

Perhaps the primary asset of the international human rights NGOs lies in their consistent support for local and national civil society leaders and human rights defenders through all stages of conflict. In addition, the major human rights agencies possess extensive data and experience in identifying patterns of violations and in proposing detailed institutional reforms to advance human rights across a wide range of state structures and country situations, including in transitional states. However, this information and analysis tends to be country-specific, and the agencies have generally not had the capacity to develop broader cross-cutting analyses in a systematic manner. A meta-analysis of human rights data across a set of fragile states should be undertaken with a view to identifying primary strategic and tactical factors relevant to state-building and, especially, best practices for promoting and sustaining civil society participation.^{lxxiv}

6.3 Co-relations between Civil-Political and ESC Rights

The inter-dependence and indivisibility of the two primary sets of rights are established as matters of fundamental principle throughout international human rights law. This doctrinal position is supported by wide variety of case examples, both actual and theoretical. These examples are often presented as means of illustrating the inter-dependence of rights, with a view to encouraging policy-makers and programmers to include the “other side” in their considerations. This continuing exercise of translation between the “two discourses” reflects the fact that there is not yet a systematic analysis or framework for demonstrating the practical linkages between respect for civil and political rights and the realization of economic, social and cultural rights.^{lxxv}

6.4 The Role of Local and Customary Practice

Human rights standards tend to focus on the individual and the state, but not on the community. The presence and capacity of centralized state institutions, and access to them by a significant portion of the population will inevitably remain limited for most fragile states for the foreseeable future, regardless of how successful state-building initiatives may be in any particular situation. For many people, the primary relationship with and opportunity to participate in the state will continue to be through local institutions, which in some cases will be organized on the basis of traditional customary practices.^{lxxvi} This may especially be the case in relation to access to justice (dispute resolution, civil matters, etc.) and to social services (housing, employment, etc.).

While there are strong arguments in support of recognizing and legitimizing such customary and community-based systems – indeed, respect for such traditional cultural practices may be seen as a human rights matter – in most cases there will also be serious concerns with respect to accountability and respect for international human rights standards (e.g. gender equity). Research is required to develop an approach to supporting and incorporating customary arrangements for local governance and justice within state-building in a manner that adequately respects and advances human rights and reinforces the state judicial system.^{lxxvii}

6.5 The Impact of Climate Change and Other Factors

The severity and pervasive character of climate change and other environmental factors are such that many argue that it represents a paradigm shift with respect to all systems of international relations. The most highly developed countries can be seriously challenged in terms of governance and capacity by disasters or economic adjustments resulting from changes in weather conditions and related health and other issues. Consideration of these issues should also take into account related and parallel trends, such as demographic shifts (e.g. urbanization, youth unemployment) and increasing levels of economic disparity at both national and global levels.

Situations of state fragility are logically even more vulnerable to the destabilization effects arising from climate change, such as migration, food security and commodity price escalation, etc., yet this consideration is largely absent from the literature on state-building. The impact of the 2005 Tsunami on governance and peace processes in Sri Lanka and Aceh may be instructive. The Government of Sweden has established a Commission on Climate Change and Development to report early in 2009, but its objectives do not specifically address the concerns of human rights and state fragility.^{lxxviii}

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8. NOTES

ⁱ MFA Denmark, “Terms of Reference: Issue Paper on Human Rights and State Fragility” (Copenhagen, December 2007). In order of priority, the ToR identifies the following indicative questions:

a) Human rights and state-building

Human rights are a set of normative standards with strong international legitimacy. To what extent do they cover the need for a normative model of the state in state-building processes? To what extent are human rights standards open with regard to different state models? What is the relationship between civil and political rights, economic, social and cultural rights and state-building?

What is the role of human rights standards in promoting inclusiveness and non-discrimination in state-building processes, in particular with regard to gender equality and the participation of women?

What is the relationship between human rights, accountability mechanisms and legitimacy in state-building processes? How do human rights elements of political settlements, peace-agreements and constitutional design contribute to core ‘constitutive’ capacities of the state and its resilience to changes in the social contract?

b) Human rights violations and state fragility

To what extent is state fragility a direct or an indirect source of human rights violations? What is the relationship between the responsibility of states and the capacity of states to respect and protect human rights? Can state-building be viewed as a preventive remedy for human rights violations?

c) Human rights as a motivation and strategic objective of the international community’s engagement in fragile states

The promotion and protection of human rights is very often quoted as an objective for international engagement in fragile states. To what extent is this in agreement with other objectives, including peace-building and security, humanitarian concerns, state-building, as well as development objectives and to what extent are there tensions between these objectives?

What is the relationship between state-building and peace-building interventions with regard to strengthening respect for and promotion of human rights?

What is the relationship between the immediate protection of human rights and the need to support for stabilization and peace in post-conflict and crisis situations?

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- Canadian Int’l Development Agency – CIDA (Democratic Institutions & Conflict Division, Human Rights & Participation Division, Ottawa);

- Canadian Peacebuilding Coordinating Committee (Ottawa);
- Carleton University (Ottawa);
- Centre for International Cooperation – CIC, NYU (New York)
- Centre for Research on Inequality, Human Security & Ethnicity – CRISE (Oxford);
- Christian Aid (London);
- DANIDA and MFA, Denmark (Copenhagen);
- Department of Foreign Affairs & Int’l Trade – DFAIT Canada (Human Security & Human Rights Bureau, Ottawa);
- Dept. for International Development – DFID (London);
- Faculty of Law – NYU (New York);
- Human Rights Watch – HRW (New York);
- International Development Research Centre – IDRC (Ottawa);
- Int’l Fdn. for the Protection of Human Rights Defenders – Frontline (Dublin);
- International Peace Academy – IPA (New York);
- Make Poverty History (Ottawa, London);
- New School for Social Research (New York);
- North-South Institute – NSI (Ottawa);
- Office of the High Commissioner for Human Rights – OHCHR (New York);
- Overseas Development Institute – ODI (London);
- Simon Fraser University – SFU (Vancouver);
- UNDP (New York);
- UNICEF (New York);
- University of British Columbia – UBC (Vancouver);
- University of Ottawa (Ottawa).

ⁱⁱⁱ A useful overview of these issues is provided in: Jonathan Di John, “Conceptualizing the causes and Consequences of Failed States: A Critical Review of the Literature” (London: LSE Crisis States Research Centre, January 2008). See also David Carment, Stewart Prest and Yiagadeesen Samy, “State Fragility and Implications for Aid Allocation: An Empirical Analysis”, MS (Ottawa: November 2007) for a discussion of the “... three dominant policy-inspired research streams that have contributed to the concept of fragility. Broadly speaking, they are development-oriented, conflict-oriented, and stability-oriented.”

^{iv} High Level Forum, “Paris Declaration on Aid Effectiveness” (Paris, March 2005). OECD/DAC, “Principles for Good International Engagement in Fragile States and Situations” (April 2007).

^v Principle 6 (“Promote non-discrimination as a basis for inclusive and stable societies”) arose as a proposed “new human rights principle”, one of several measures intended to address the concern that the initial draft was “...virtually silent on questions of equity, inclusion and human rights.” The original proposal recommended the promotion of

“non-discrimination and respect for human rights.” See: OECD/DAC Task Team on Human Rights and Development, “Response to the Fragile States Group on the Draft Principles” (2006).

^{vi} UN General Assembly, A/CONF.157/23 (New York, July 1993), “Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993”.

^{vii} Roland Paris and Timothy Sisk, “Managing Contradictions: The Inherent Dilemmas of Postwar Statebuilding” (New York: International Peace Academy, November 2007).

^{viii} Thus, for example, the UDHR was originally a moral statement without legal standing, in the sense that it was a declaration of the General Assembly rather than a convention or treaty ratified by Member States. Proclaimed, like the UN Charter, in the name of “the peoples of the United Nations”, it advanced a set of objectives which then served as the basis for the formulation of the conventions and other instruments that define state obligations and comprise International Human Rights Law. Most scholars argue that the general use and acceptance of the UDHR during the past 60 years, and its affirmation in repeated UN Human Rights Conferences, has made it an integral part of international customary law.

^{ix} Definitions of human rights are usually set within a legal construct, and therefore refer to “citizens”. For example, “human rights are internationally agreed values, standards or rules regulating the conduct of states towards their own citizens and towards non-citizens.” (Peter Baehr, Human Rights: Universality in Practice (London: MacMillan, 1999). However, citizenship is a status that derives from the state, and we use the term “members of society” in this case – including, in general, both citizens and non-citizens – to emphasize the principle of inherency.

^x Of course, “rights-holders” also have duties or responsibilities in relation to the rights of others. See M.E. Winston, The Philosophy of Human Rights (Belmont, 1995) and Jack Donnelly, “Human Rights, Individual Rights and Collective Rights”, in J. Berting, ed. Human Rights in a Pluralistic World: Individual and Collective (Roosevelt Study Centre, 1990):

Human rights are a social practice that aims to realize a particular vision of human potential through the institutionalization of human rights. ... There is thus a constructive interaction between moral vision and political reality. There is also a constructive interaction between the individual and society (especially the state), which shape one another through the practice of rights.

^{xi} UDHR, Article 28: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

^{xii} Canadian philosopher and politician Michael Ignatieff uses the term “rights revolution” to describe the way human rights have become, since the late 1940s, “the

dominant language of the public good around the globe” – the surviving and defining ideological formulation of our time. Michael Ignatieff, *The Rights Revolution* (Toronto: Anansi, 2000). Of course, this approach has clear antecedents in classical western philosophy and elsewhere, such as in Aristotle’s notion (in the *Nicomachean Ethics*) of justice as intrinsically linked to the fostering of social relationships that are free, equitable, and capable of generating self-sufficiency.

The approach reflected in the UDHR and the subsequent human rights discourse stands somewhat at variance with the conceptual traditions of the state rooted in Durkheim’s emphasis on the “monopoly on the legitimate use of physical force” or the more functionalist approaches focused on the provision and delivery of essential services. Although not incompatible, they suggest different emphases in relation to the task of state-building and, to some extent, different approaches to human rights – for example, as a set of mutual “expectations” to be negotiated and satisfied by citizens and the state rather than normative obligations to be fulfilled by the state. See: Bruce Jones, et al, “From Fragility to Resilience: Concepts and Dilemmas of Statebuilding in Fragile States” (Paris: OECD Fragile States Group, November 2007).

^{xiii} The UN Charter and most instruments of international law are careful to attempt to balance responsibilities and rights, that is, the normative power of human rights with the principle of sovereignty. However, sovereignty must be seen as a secondary norm in that it pertains mainly to the question of relations between states rather than the primary constitutive relationship between the state and the members of society. Furthermore, sovereignty is an historically variable and somewhat elastic concept rather than a fundamental principle. During the past two decades, in particular, there has been an increasing shift in the locus of sovereignty, largely away from the central structures identified with the nation state. Thus, some scholars refer to the tendency of sovereignty to “seep” upward (toward supra-national entities, such as the EU), downward (toward sub-state entities, such as armed movements), and sideways (toward multi-national entities, such as corporations). This variability and mobility of sovereignty has important implications for state-building, and reinforces the need to recognize the role of civil society as a foundation for negotiating state structures and functions.

In practical terms, states become members of the international community by acceding to the UN Charter and the UDHR, that is, by recognizing that their sovereignty is constrained by human rights principles and international obligations. In ratifying human rights conventions, they further undertake to bring domestic legislation and procedures “into conformity” with international standards. Set against the Westphalian framework of state relations that truly represented a “rights revolution”, and it was understood from the outset that the establishment of the normative primacy of human rights was “... destined sooner or later ... to revolutionize the structures and institutions [of the sovereign state].” See Antonio Cassese, *Human Rights in a Changing World* (Philadelphia: Temple, 1990). Notwithstanding, in the context of the Cold War, the Commission on Human Rights operated during much of its first two decades according to a policy which continued to give practical priority to principle of sovereignty.

^{xiv} Verena Fritz and Alina Rocha Menocal, “Understanding State-Building from a Political Economy Perspective: An Analytical and Conceptual Paper on Processes, Embedded Tensions and Lessons for International Engagement” (London: ODI, September 2007). See also: Torun Wimplemann, “The Aid Agencies and the Fragile States Agenda” (Oslo: CMI Working Paper # 21, 2006):

There is little evidence that state formation historically has been achieved through the simultaneous establishment of a set of functions associated with the modern state. ... state-building should be understood as a constantly negotiated process driven and impeded by a variety of social and political interests, rather than the attainment of a set of formal state qualities assumed to be in a linear relationship.

^{xv} Peter Uvin, “The Emergence of the Human Rights-Based Approach to Development” (Harvard: Conference PowerPoint Presentation, April 2006).

^{xvi} Although International Human Rights Law comprises a wide and comprehensive array of standards, it has become common to refer to a few as constituting “the core UN human rights treaties”. These include: the UDHR, the ICCPR and ICESCR, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), and the Convention on the Rights of the Child (CRC). As some 80% of states have ratified at least four of these instruments, which therefore enjoy high normative authority. See: UNDP, “Poverty Reduction and Human Rights – A Practice Note” (New York, 2003).

^{xvii} Peter Uvin, “The Emergence of the HRBA” (2006).

^{xviii} Derogation of certain fundamental rights, as set out in Article 4/2 of the ICCPR, are not permitted even in times of national emergency. See especially: Henry J Steiner and Philip Alston, International Human Rights in Context: Law, Politics, Morals (Oxford: Clarendon, 1996) and Theodor Meron, Human Rights in International Law: Legal and Policy Issues (Oxford: Clarendon, 1984).

^{xix} For an analysis and critique of the continuing consequences of this division of human rights and development into separate communities and discourses, see Philip Alston, “A Human Rights Perspective on the Millennium Development Goals: Paper Prepared as a Contribution to the Work of the Millennium Project Task Force on Poverty and Economic Development” (New York: Office of the High Commissioner for Human Rights, 2005). Despite significant advances in integration in recent years, the persistent separation of these two discourses is usually to be found on the “bottom-line”. To illustrate, the Paris Declaration arguably represents a paradigmatic shift in the approach to ODA, and explicitly intends to forge a partnership dedicated to achieving the MDGs and to “reducing poverty and inequality”, the Indicators of Progress appear to be almost

entirely administrative and actuarial in nature, and include no measures related to governance, participation, or human rights in general.

^{xx} See: Sakiko FUKUDA-PARR, “Human Rights and National Poverty Reduction Strategies: Conceptual Framework for Human Rights Analysis of PRSs and Reviews of Guatemala, Liberia and Nepal” (New York: The New School for Social Research / OHCHR, April 2007):

The tools of operational work that have been developed in the two communities are quite distinct: human rights depends on legal litigation to enforce human rights, legal reforms to protect people, and public advocacy to raise awareness and change behaviour and social institutions. Human rights principles articulate a normative framework with the authority of international law. Human rights communities use tools of international and national law and the tool of advocacy and social mobilization to advance their agendas for human rights of poor people. In contrast the development community uses the tools of public policies in economic, social and governance areas. These policies include incentives, investments, and institutional reforms.

^{xxi} UNDP, “Poverty Reduction and Human Rights: A Practice Note” (New York, June 2003).

^{xxii} UN-SG, “In Larger Freedom: Towards Development, Security and Human Rights for All” (UNGA A/59/2005; March 2005). It may be argued that this is the first doctrinal statement addressing fully the development agenda and the context of state fragility. Significantly, it locates both within framework that reinforces the normative authority of human rights: “No security agenda and no drive for development will be successful unless they are based on the sure foundation of respect for human rights.”

^{xxiii} Office of the UN High Commissioner for Human Rights, “Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies” (Geneva: HR/PUB/06/12, 2006). Para 48 goes on to note:

*Resource implications of the obligations to respect and protect are generally less significant than those of implementing the obligation to fulfil, for which more proactive and resource-intensive measures may be required. Consequently, resource constraints may not affect a State’s ability to respect and protect human rights to the same extent as its ability to fulfil human rights. Para 82 adds: *The human rights approach to poverty reduction demands that appropriate monitoring and accountability procedures be established in respect of all these elements.**

This work, which offers useful linkages between key human rights principles and the core covenants, as well as recommended targets and indicators, complements and builds on the UNDP “Practice Note”, and “Human Rights and Poverty Reduction: A Conceptual Framework” (New York and Geneva: OHCHR, 2004).

^{xxiv} UNDP, “Practice Note” (2003).

^{xxv} See OHCHR, “Principles and Guidelines” (2004), para 27. “Although poverty may seem to concern mainly economic, social and cultural rights, the human rights framework highlights the fact that the enjoyment of these rights may be crucially dependent on the enjoyment of civil and political rights.”

^{xxvi} Gudrun Østby, “Horizontal Inequalities, Political Environment and Civil Conflict: Evidence from 55 Developing Countries”, (Oxford: CRISE Working Paper # 28, August 2006). See also Jack Snyder and Edward Mansfield, “Risking Civil War By Promoting Democracy”, *id21 insights* # 66 (U Sussex, May 2007), arguing that a number of “the preconditions of democracy” need to be in place before promoting the formal and open exercise of democracy:

The most fundamental cause of war in transitional states is the gap between demands for political participation and the political institutions and organisations necessary to meet those demands.

See also: Ashraf Ghani, Clare Lockhart and Michael Carnahan, “An Agenda for State-Building in the 21st Century”, *Fletcher Forum on World Affairs* 30:1 (Winter 2006):

Loss of legitimacy is the primary cause of the fragility and failure of states. The vicious cycle begins with loss of trust in the state to create an inclusive political, social and economic order made predictable by rule of law.

^{xxvii} See especially the International Convention on the Elimination of All Forms of Racial Discrimination (1969), prohibiting “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life” (Article 1); and committing states “to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups” (Article 7).

Of course, although positive examples exist in all world regions, this is not to suggest that the civic principle has predominated as the basis or orientation of state-building or state formation. Indeed, Muller argues that “Ethnonationalism ... corresponds to some enduring propensities of the human spirit that are heightened by the process of modern state formation.” See: Jerry Muller, “Us and Them: The Enduring Power of Ethnic Nationalism”, *Foreign Affairs* 87:2 (March 2008).

^{xxviii} Gilles Dorransoro, *Revolution Unending: Afghanistan – 1979 to the Present* (London: Hurst, 2005).

^{xxix} See Samuel Huntington, “The Clash of Civilizations?”, *Foreign Affairs* 72.2 (Summer 1993). See also: DG Evans, “Human Rights: Four Generations of Practice and

Development”, in AA Abdi and Lynette Shultz, Educating for Human Rights and Global Citizenship (Albany, SUNY Press, 2008).

^{xxx} It has long been recognized that women are particularly vulnerable to human rights violations in both total war and civil conflict conditions. This vulnerability is multi-dimensional, with violations occurring both in the immediate situations of conflict (e.g. rape, killings, etc.) as well as in the circumstances subsequent to open conflict (e.g. as sexual slaves, refugees, etc.). In addition, there is an extensive research base analyzing the use of sexual violence and terror as deliberate weapons of war targeting women in the civil conflicts emerging since the early 1990s, and of the political exclusion of women from peace processes.

It is noteworthy that perpetrators of such human rights violations against women are especially likely to benefit from impunity, and that gendered violence during war results in most societies in increased levels of domestic violence in the initial period of stabilization. See: Amnesty International’s global campaign to “Stop Violence Against Women”; Human Rights Watch’s thematic programs on “Women and Armed Conflict” and “Refugees and Internally Displaced Women”; UNDP Executive Board, “UNDP Strategic Vision on Assistance to Crisis-Affected Countries” (New York: DP/2007/20, April 2007); NGO Working Group on Women, Peace and Security, “SCR 1325 and the Peacebuilding Commission” (New York: NGOWGWPS, October 2006).

^{xxxii} Paris and Sisk, “Managing Contradictions” (2007) refer to “two generations” of the development of peace-building during the 1990s and the first half of the current decade. The first generation experiments were characterized by a “quick and dirty” approach: “... too brief, too limited, and too focused on speedy political and economic reforms to consolidate peace in the host states.” The consequent failures (Angola, Rwanda, Cambodia, Liberia) led a second generation of experiments characterized by longer-term deployments with broader mandates within an on-going international administration (e.g. Bosnia, Kosovo, Timor Leste, Sierra Leone).

^{xxxiii} International Commission on Intervention and State Sovereignty, The Responsibility to Protect (Ottawa: IDRC, 2001). The term “normative” is used with a degree of caution. The R2P report was endorsed by the UN Heads of State, but it does not have legal standing as a treaty or convention. It may be premature to argue that R2P has achieved standing as customary law, but the key policy principles are generally operative within the international system, in part through the establishment of the UN Peacebuilding Commission. Some scholars argue that the internationalization of responsibility for realization of fundamental human rights logically extends to internationally agreed development objectives, such as the MDGs. Although the internationalization of legal obligation remains debatable, there is growing acceptance (such as through MDG8, the Human Rights Council movement to comprehensive periodic review of country performance) of the notion that states are collectively responsible “... to uphold the principles of human dignity, equality and equity at the global level.” See: Commission

on Human Rights, “Summary of Submissions: Working Group on the Right to Development” (Geneva: E/CN.R/2005/WG.18/TF/CRP.3, November 2005).

^{xxxiii} “The responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.” The Commissions goes on to cite the UN-SG’s 1998 report on The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa to describe a basic agenda for rebuilding in post-conflict fragile states:

Societies which have emerged from conflict have special needs. To avoid a return to conflict while laying a solid foundation for development, emphasis must be placed on critical priorities such as encouraging reconciliation and demonstrating respect for human rights; fostering political inclusiveness and promoting national unity; ensuring the safe, smooth and early repatriation and resettlement of refugees and displaced persons; reintegrating ex-combatants and others into productive society; curtailing the availability of small arms; and mobilizing the domestic and international resources for reconstruction and economic recovery. Each priority is linked to every other, and success will require a concerted and coordinated effort on all fronts.

^{xxxiv} See Sabina Alkire, “A Conceptual Framework for Human Security: (Oxford: CRISE Working Paper # 2, 2003). A human security approach may be complementary but not equivalent to a human rights approach. Both seek to identify a “... set of universal concerns that span poverty and violence.” However:

Human security is constrained in scope. It does not cover all necessary, important, and profound aspects of human living. Rather, it identifies and protects a limited vital core of human activities and abilities. ... The rights and freedoms in the vital core pertain to survival, to livelihood, and to basic dignity. ... Human security focuses on a limited core of individual activities and abilities, on a minimal subset of human development and human rights.

^{xxxv} See, for example, USAID, “Fragile States Strategy” (Washington: January 2005), reflecting the inclusion in 2002 of development as a “third pillar” of the United States’ national security strategy, based on the recognition that “America is now less threatened by conquering armies than by failing ones.”; Ian Anderson, “Fragile States: What is International Experience Telling Us?” (Canberra: AusAID, June 2005). This focus on state security, whether of the fragile state or the donors or both, may be said to reflect a “threat-centred” approach, and to be preoccupied with “reinstating the state” as an end, rather than as a means of human development. See: Mark Duffield and Nicholas Waddell, “Securing Humans in a Dangerous World”, International Politics 43, 2006. Critically, both human security and human rights are fundamentally intended as “people-centred, not threat-centred” approaches. As Alkire, “Human Security” (2003) notes:

In this way the human security approach parallels the movement in economic development and international law to shift the emphasis from instrumental objectives (such as growth, or state rights) to human development and human

rights. In doing so the human being becomes the 'end' of development, not only a 'means' to increased economic productivity or legal coherence...

^{xxxvi} See, for example: Kwesi Aning, "Security, the War on Terror and Official Development Assistance" (Ottawa: North-South Institute, September 2007).

^{xxxvii} See, for example, Mark Duffield, "Human Security: Linking Development and Security in an Age of Terror" (London: EADI, September 2005).

^{xxxviii} For example, from their primary experience in Afghanistan, Lockhart and Ghani propose an approach to state-building based on a "multi-functional concept of the state". The ten core functions identified tend to be highly instrumental in character and centralized in application. Thus, one of the state functions is defined as "the creation of citizen rights and duties". While this inclusion of rights is welcome, the approach runs contrary to the fundamental nature of and transactional approach to human rights reflected in the UDHR and international human rights law. See: ODI Opinions # 44 (July 2005) and elsewhere. It is interesting to note that in a number of other critical cross-cutting areas of development concern, such as the AIDS pandemic and MDG 6, strategies for overcoming weaknesses related to state capacity or political will, particularly in Sub-Saharan Africa, are increasingly recognizing the importance of strengthening local community and family systems as a basis for ensuring political accountability and protection of rights. See: UNICEF and Global Action for Children, AIDS Free Generation: Joint Advocacy Action Plan 2007-2008 (New York: UNICEF, 2007).

^{xxxix} These include the appointment of a UN-SG Special Advisor (Professor Ed Luck) on R2P in February 2008.

^{xi} For a very useful and comprehensive overview see: Diana Cammack, Dinah McLeod, Alina Rocha Menocal and Karin Christiansen, "Donors and the 'Fragile States' Agenda: A Survey of Current Thinking and Practice" (London: ODI, March 2006). In summary: *... the FS agenda may be divided into three basic objectives: (i) promoting human security, basic needs and peace in recipient countries (humanitarian aid and peacebuilding); (ii) improving development and governance in those countries; and (iii) ensuring global (especially donor countries') security.*

^{xli} See, for example: Rasheed Draman, "Poverty and Conflict in Africa" Explaining a Complex Relationship" (Addis Ababa: Experts Group Meeting on Africa-Canada Parliamentary Strengthening Program, May 2003); Sakiko Fukuda-Parr, et al. "Conflict-Development Nexus: A Survey Of Armed Conflicts In Sub-Saharan Africa 1980-2005" (New York: New School for Social Research, November 2007); and World Bank, "Toward a Conflict-Sensitive Poverty Reduction Strategy: Lessons from a Retrospective Analysis" (Washington, DC: WB Report # 32587, June 2005). Consistent with a number of the themes advanced in this study, the World Bank study concludes: *Empirical evidence shows that poorer countries are more likely to experience violent conflict, while conflict-affected countries tend to experience higher levels*

of poverty. ... The interrelationship between conflict and poverty is often affected by group-based inequalities, i.e. those that develop between and among distinct social groups on the basis of their ethnic, social regional or other characteristics. These horizontal inequalities may serve to escalate conflict into violence when ethnicity is politicized and social capital, defined as associations within and between groups in a society, is distorted via the strengthening of intra-group bonds at the cost of weakening ties between groups.

^{xlii} For a broad survey of analytical approaches to state fragility used by major donor and programmatic agencies see: Diana Cammack, et al, “Donors and the ‘Fragile States’ Agenda” (2006). The CIFP is a joint project of the Canadian Government, Carleton University, NGOs and the private sector operating since 1997, and several subsequent analytical models on state fragility are based on or modifications of it. The CIFP model consists of a set of analytical tools bringing together structural data and event-based data to enable “monitoring, forecasting, and evaluation of failed or fragile states, as well as the assessment of supporting policies intended to address the development, security and economic challenges they represent.” See: David Carment, Souliema El-Achkar, Stewart Prest and Yiagadeesen Samy, “The 2006 Country Indicators for Foreign Policy: Opportunities and Challenges for Canada”, Canadian Foreign Policy 13:1 (2006).

For research on the validity of the model see: David Carment, Stewart Prest and Yiagadeesen Samy, “State Fragility and Implications for Aid Allocation: An Empirical Analysis”, MS (Ottawa: November 2007). The recently launched Assessing Democracy and Governance: A CIFP Handbook (Ottawa: Carleton University, March 2008) provides a useful practical guide to the use of the model, analytical comparisons with other models, and a focus on its application of human rights indicators. On the approach used by CRISE, see: Frances Stewart and Graham Brown, “Fragile States” (Oxford: CRISE Policy Paper, July 2006).

^{xliii} In the CIFP framework:

- Authority refers to “... the ability to enact binding legislation over its population ... to provide a stable and secure environment to its citizens and communities ... to exercise control over the full extent of their legal territory”;
- Legitimacy refers to “... the ability to command public loyalty to the governing regime, and to generate [voluntary] domestic support for that government’s legislation and policy ... [and international recognition of that support]”;
- Capacity is “... the power to mobilize public resources toward productive ends.”

^{xliv} Further, the model indicates a relatively strong correlation between the properties of authority and capacity, suggesting that the impact on human rights in situations of incursion or insurgency are more likely, in addition to the threats to the right to security of the person arising from violent conflict, to be in relation to failure to fulfil basic ESC rights rather than repression of civil liberties. Statistical application of this model indicates that most international aid and attention addressing state fragility is currently directed in response to situations concerned with authority or capacity, while issues of

legitimacy – the key factor in addressing issues of governance and promoting long-term stability, that is the institutional dimensions of state-building – are “largely ignored”.

This echoes, however, the observation by Jones et al (“From Fragility to Resilience”, 2007) that:

...the first priority of statebuilding must be a form of political governance and the articulation of a set of political processes or accountability mechanisms through which the state and society reconcile their expectations of one another. A focus on governance structures that address inequities and inequalities, and promote accountability are likely over time to promote stability.

Much of the conceptualization of the state in the post-WWII period has been based on the exercise of three primary functions (security, representation, and welfare) within relatively homogeneous social or strong constitutional contexts. It has frequently been observed that states formed in the context of colonial dependency have, in particular, been hampered in achieving these bases of legitimacy. See: Christopher Clapham, “The Challenge to the State in a Globalized World” *Development and Change* 33:5 (2002). Carment offers the hypothesis that “states become fragile because the question of legitimacy may not be factored into aid programming.”

In light of the multi-faceted nature of the model this can be seen as only one factor. An extensive set of proposals for political and economic policy and aid interventions related to human rights in response to different types of primary sources of fragility is contained in the CIFP papers, as well as in Stewart and Brown, “Fragile States” (2006) and Sakiko Fukuda-Parr, “Human Rights and National Poverty Reduction Strategies” (2007).

^{xlv} A sampling of the 2007 CIFP analysis demonstrates the diversity of the results, depending on category or indicator considered (Gender, Governance, and Human Development rankings are for 2006).

	<i>Overall</i>	<i>Authority</i>	<i>Legitimacy</i>	<i>Capacity</i>	<i>Gender *</i>	<i>Governance</i>	<i>Human Dev</i>
1	Afghan'tan	Sudan	Saudi Ar'a	Burundi	Chad	Afghan'tan	Chad
2	Sudan	Afghan'tan	Libya	Afghan'tan	Mauritania	Liberia	DRC
3	Burundi	Iraq	DPRK	Ethopia	Niger	Somalia	Mali
4	Somalia	DRC	Yemen	Niger	Mali	Haiti	Angola
5	DRC	Palestine A.	Somalia	S'rra Leone	Yemen	Bangladesh	Mozam'que

* no data for Afghanistan or Somalia

^{xlvi} See, for example: Magüi Moreno Torres and Michael Anderson, “Fragile States: Defining Difficult Environments for Poverty Reduction” (London: DFID – PRDE Working Paper # 1, August 2004); DFID, “Why We Need to Work More Effectively in Fragile States” (London: DFID, January 2005).

^{xlvii} See: Oskar Thomas and James Ron, “Do Human Rights Violations Cause Internal Conflict?” (Ottawa: CIDA, February 2006). See also: Stewart and Brown, “Fragile States” (2006):

- ... we find strong causal connections among the different dimensions of fragility.
- Conflict weakens service delivery and undermines legitimacy; it also causes human rights failures, MDG failures and social exclusion. ...
 - There are also strong connections going in the opposite direction – from failures in legitimacy, including human rights violations, to conflict; and from failures in service delivery, especially if exclusionary, to conflict; ...
 - Social exclusion provokes conflict, particularly if there is political as well as economic exclusion.

^{xlviii} See: Stewart and Brown, “Fragile States” (2006). The approach adopted by CRISE reflects a modification of the CIFP model, and refers to “service delivery” rather than “capacity” as a fundamental dimension of state function in order to include failures that may result from lack of political will as well as lack of basic capacity. Thus, CRISE defines fragile states as “... states that are failing, or in danger of failing, with respect to authority, comprehensive service delivery or legitimacy.”

^{xlix} Thus, per Stewart and Brown, “Fragile States” (2006):

Authority failures. These are cases where the state lacks the authority to protect its citizens from violence of various kinds;

Service Failures. These are cases where the state fails to deliver basic services to its citizens – including education, health services, water, prevention of destitution, infrastructure for transport and energy;

Legitimacy failures. [these] occur where the state has only limited support among the people, is typically not democratic, often with the military ruling directly or strongly supporting and dominating the government.

¹ See: OHCHR, “Human Rights and Poverty Reduction: A Conceptual Framework” (New York and Geneva: HR/PUB/04/1, 2004). Drawing from Amartya Sen, the OHCHR defines poverty as “... the absence or inadequate realization of certain basic freedoms, such as the freedom to avoid hunger, disease, illiteracy, and so on.”

ⁱⁱ Frances Stewart, “Policies Towards Horizontal Inequalities in Post-Conflict Reconstruction” (Oxford: CRISE Working Paper # 7, March 2005):

At a general level, it seems that concern with correcting this is not part of the policy mix advocated by major donors. From an economic perspective, reconstruction policies have mainly concerned the restoration of infrastructure and the (re)establishment of a market economy. ... Politically, the emphasis has been on multi-party democracy and the ‘usual’ governance reforms, such as improved transparency and accountability.

See also: Frances Stewart, Graham Brown and Alex Cobham, “Promoting Group Justice: Fiscal Policies in Post-Conflict Countries” (New York: Centre on International Cooperation, 2007).

ⁱⁱⁱ Stewart, “Policies” (2005).

Three types of policies can be adopted to achieve greater group equality in economic entitlements (although the distinctions are not watertight). First, policies towards changing processes which are either directly or indirectly discriminatory. Secondly, assistance can be directed to particular groups, such as training people for interviews and subsidising housing. Thirdly, targets and quotas can be introduced for education, land distribution, financial and physical assets. ... It must be re-emphasised that policies to address HIs are not the only policies needed. Policies to assist with the resumption of economic growth and the reconstruction of economic and social infrastructure are also needed, as are policies to promote demobilisation. Particular emphasis is needed on promoting employment for unskilled labour, since lack of employment among young men is a common feature of conflict economies as well as constituting an important factor raising the risk of conflict.

^{liii} Sakiko Fukuda-Parr, “Human Rights and Nat’l Poverty Reduction Strategies” (2007).

^{liv} See: UNGA, “Conflict Prevention and Peacebuilding: Reinforcing the Key Role of the UN” (New York: A/61/703, January 2007). Some argue that efforts to promote gender equity should be regarded as a priority that is preventative in nature even in post-conflict stabilization processes. See, for example: Jennifer Erin Salahub, “Canada, Haiti, and Gender Equality in a ‘Fragile State’”, in Canadian Development Report 2008: Fragile States or Failing Development? (Ottawa: North-South Institute, 2007):

If we fail to address key issues such as the equitable negotiation of power relations – of which the division of power between genders is a key component – in the initial stages [of reconstruction] ... we risk building a structure that will be unable to support the requirements of democracy over the long term.

^{lv} Sakiko Fukuda-Parr, “Human Rights and National Poverty Reduction Strategies” (2007). See also: CIDA, “On the Road to Recovery: Breaking the Cycle of Poverty and Fragility – An Internal Guide for Effective Development Cooperation in Fragile States” (Ottawa: CIDA, November 2007):

Breaking the cycle of poverty and fragility in a country means paying close attention to institutional and regional power structures and inequities; being aware of vested interests among local and regional elites in maintaining systems of inequality; and seeking opportunities to support a more equitable distribution of power and resources. Poverty, inequality, exclusion, social deprivation, lack of voice, and economic stagnation or decline exacerbate fragility. Addressing these complex processes of structural inequality helps to reverse these forces. ... Protecting human rights is an integral part of strengthening fragile states, rebuilding countries devastated by conflict, and ensuring sustainable and effective development. The human rights principles underlying the internationally agreed human rights framework are key in this context.

^{lvi} These three strands reflect a basic framework common in much of the literature on state fragility. See for example, Mariska van Beijnum and Luc van de Goor, “The

Netherlands and its Whole of Government Approach on Fragile States: Case Study Sudan” (The Hague: Clingendael Institute, August 2006):

... distinguishes three dimensions in a reconstruction process, which are considered to be intertwined:

- a. security and stability, encompassing the consolidation of peace and security through a widely-supported political agreement, the presence of international peacekeeping missions, demobilization programmes, the reconstruction of security sectors, return of refugees and transitional justice;*
- b. governance, concentrating on the restoration of governance and public services, as well as the (re)construction of civil society organizations, democratic political institutions, justice and police forces;*
- c. social and economic development, defined as the reconstruction and provision of basic services, as well as the rebuilding of the economy and employment possibilities by stimulating both the private and the financial sector.*

^{lvii} The importance of contextual analysis is stressed in the OHCHR Guidelines and Principles (2006). In addition to the CFP and other analytic tools referred to above, a number of useful models that incorporate a human rights approach have emerged in relation to the MDGs, the PSRs, and the Peacebuilding initiatives. See for example: UN Development Group, “Common Country Assessment and UN Development Assistance Framework: Guidelines for Country Teams” (2004). See also the relevant research agenda of the Research Partnership on Postwar Statebuilding – Paris and Sisk, “Managing Contradictions” (2007):

Conceiving of postwar statebuilding as an inherently contradiction-filled enterprise, rather than as a linear sequence of cumulative or mutually reinforcing steps, allows us to think more carefully about the characteristics of the tensions and contradictions themselves. ... Issues such as coordination and coherence, local ownership, legitimacy, capacity building, dependency, accountability, and exit are now commonly discussed in meetings of the UN Peacebuilding Commission and elsewhere. But each of these problems emerged from deeper tensions and contradictions that are less well understood: outside intervention occurs in order to create self-government; international control is required to affect local ownership; universal values clash with local peculiarities; long term goals may contravene short term imperatives; and peace may require both a break with the past and a reaffirmation of local history.

^{lviii} See: Anders Tang Friberg and Hugh Riddell, “UN/WB PCNA Review – Annex V: State Functions and Stabilization” (Washington DC: World Bank, January 2007). In addition to indicating the critical priority of contextual analysis and establishing an early strategic dialogue between international and domestic stakeholders, this document provides a helpful review of capacity building, accountability and other key elements of state-building initiatives in Haiti, Liberia, Sudan, Timor Leste and elsewhere, together with an identification of lessons learned.

See also: Molly den Heyer, “The Temporal Logic Model: A Concept Paper” (Ottawa: IDRC Evaluation Unit, July 2001) and Terry Smutylo, “Crouching Impact, Hidden Attribution: Overcoming Threats to Learning in Development Programs” (Ottawa: IDRC, May 2001) which emphasize the formulation of priorities and indicators on identifying changes “... in the situation and the relationships that constitute t.”; also DG Evans, “Building Peace: Lessons from Sri Lanka”, *The Activist*, November 2002.

Although the TRM framework provides a basis for dialogue, this has been primarily oriented to state-donor relations, and appears to have addressed specifically human rights related outcomes only in terms of capacity building. See: UNDG/World Bank, “An Operational Note on Transitional Results Matrices: Using Results-Based Frameworks in Fragile States” (Washington, DC: January 2005). The early work of the UN Peacebuilding Commission appears to provide a good model in this regard. Emphasizing a preventive and collaborative approach, the Commission seeks to identify “critical priority areas” that will be the basis of integrated strategies centered on the nexus of state-building and human rights. In Burundi, for example, these priorities are: promoting good governance, strengthening the rule of law, reform of the security sector, and ensuring community recovery. While each of these areas, especially the first three, includes human rights outcomes related to the development of state institutions (e.g. a national human rights commission), the Commission observes that the fourth may be the most crucial:

Peacebuilding efforts should result in peace dividends for the most vulnerable populations, including by addressing hunger and poverty. ... The community recovery principles of reducing inequality, providing tangible ‘quick-wins’, and increasing participation are central.

The Peacebuilding Commission’s approach in advancing this work, supporting the development of a dialogue involving the government and civil society in setting the strategic framework for preventive initiatives, may also be seen as a positive model for state-building in situations of state fragility.

^{lix} See: UNGA, “Declaration on Human Rights Defenders” (New York: A/RES/53/144, 2000), and the work of the Special Representative of the Secretary-General on the Situation of Human Rights Defenders (Ms. Hina Jilani); also EU, “Ensuring Protection - European Union Guidelines on Human Rights Defenders” (Brussels: 2004). See also: Jens Narten, “Dilemmas of Promoting Local Ownership: Statebuilding in Postwar Kosovo” (Hamburg: Research Partnership on Postwar State-Building, 2006). Narten notes that one of the critical initial programs in Kosovo was the training of ten human rights officers, who in turn trained “strategic multipliers” – teachers, NGO workers, etc. If guided predominantly by a short-term perspective,

... statebuilders might, at most, succeed in establishing technically functioning state structures in the postwar society, but they will not likely be able to develop the needed civic culture underpinning the state’s overall social fabric of democracy and the rule of law, tolerant pluralism and civic reconciliation. ... A train-the-trainers approach seems to be equally important both for building

postwar state institutions and for outreach activities to promote a corresponding civic culture within the host society.

^{lx} See: Centre for Humanitarian Dialogue, “Charting the Roads to Peace: Mediation Data Trends Report 2007” (Geneva: CHD, 2007), and Leslie Vinjamuri and Aaron Boesenecker, “Accountability and Peace Agreements: Mapping Trends from 1980 to 2006” (Geneva: Centre for Humanitarian Dialogue, September 2007).

Overall, many of the most common provisions in agreements concluded during 1980–2006 do not correspond to common notions of justice and accountability. The inclusion of provisions for trials and truth commissions is comparatively rare, as are compensation measures. Instead, there is far more frequent provision for amnesty (especially general amnesty), prisoner release and reintegration, police and military reform, and even the establishment of long-term human rights commissions. This suggests that mediators may find it easier to include (and participants may find it easier to accept) provisions focused on moving beyond the immediate causes and aftermath of the conflict and towards rebuilding societies and creating economic and political stability. ... Many of these more forward-looking provisions are loosely defined and lack detail on the specifics of implementation. ... A great deal of activity concerned with justice and accountability often takes place outside formal peace agreements.

^{lxi} Sierra Leone offers a good example of an initial settlement that did not include accountability and which led to a renewal of conflict, followed by a second settlement that provided for accountability and appears to be more durable. While post-conflict political settlements may provide an important basis for the development of subsequent state-building processes, it is important to recognize that they usually have limited utility in establishing actual legitimacy with long-term sustainability. This is because they are often focused on interest-based compromises that are, in effect, oriented toward avoidance or accommodation of issues or forces that may potentially destabilize the agreement – such as human rights and accountability.

^{lxii} The guiding objective must be truth and justice, rather than justification or retribution. Justice may take various forms: retributive, restorative, compensatory, etc, each of which poses serious challenges in relation to grave human rights violations. See: Colleen Duggan, “Reparations for Sexual Violence” (Ottawa: IDRC, March 2007). The standards for accountability are set out in the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”, adopted by the UN General Assembly in December 2005. They provide for, where possible, “restitution, compensation, and rehabilitation” for victims and survivors. Most significantly for state-building agendas, they also provide for “satisfaction” and “guarantees of non-repetition”:

22. Satisfaction should include, where applicable, any or all of the following:
(a) *Effective measures aimed at the cessation of continuing violations;*

- (b) *Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;*
- (c) *The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;*
- (d) *An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;*
- (e) *Public apology, including acknowledgement of the facts and acceptance of responsibility;*
- (f) *Judicial and administrative sanctions against persons liable for the violations;*
- (g) *Commemorations and tributes to the victims;*
- (h) *Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.*

23. Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention:

- (a) *Ensuring effective civilian control of military and security forces;*
- (b) *Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;*
- (c) *Strengthening the independence of the judiciary;*
- (d) *Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;*
- (e) *Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;*
- (f) *Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;*
- (g) *Promoting mechanisms for preventing and monitoring social conflicts and their resolution;*
- (h) *Reviewing and reforming laws contributing to or allowing gross violations of int'l human rights law and serious violations of int'l humanitarian law.*

lxiii The human rights considerations related to SSR are well addressed in the relevant DAC materials. See: The OECD DAC Handbook on Security System Reform: Supporting Security and Justice (Paris: OECD, 2007) and “Security System Reform and Governance” (Paris: DAC Guidelines and Reference Series, 2005).

^{lxiv} See, among others: UNSC Resolution 1325 on “Women, Peace and Security” (New York: October 2000) providing measures that, in Article 8:

... involve women in all of the implementation mechanisms of the peace agreements ... [and] that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary.

The case of Liberia appears to provide a case example of the effective application of this new normative human rights principle. See also: UN-MINUGUA, “Final Report on Fulfillment of the Peace Accords in Guatemala” (Guatemala: August 2004):

The active social participation and the projects implemented by civil society organizations were the main instruments that actively interacted with members of the National Defence Ministry ... generating spaces for dialogue which increased the trust between parties and diminished historical ideological confrontation. ... The Government also continued to close outmoded counterinsurgency bases, presented a new human rights-based military doctrine developed in discussions with civil society groups and inaugurated a civilian Advisory Council on Security tasked with advising the President on national security matters. ... Another salient feature of the Guatemalan peace accords is the extensive opportunities they created for participation by civil society in the implementation process. Multiple commissions created under the agreements brought nongovernmental representatives, popular organizations and indigenous leaders to the table with government officials in unprecedented consensus-building exercises that resulted in draft legislation or the design of new programmes. The result has been largely positive in making the exercise of Government more democratic and transparent.

See also: Interpeace, *Towards a Security Policy for Democracy* (Geneva: 2001).

^{lxv} UNDP, “Report of the Second Inter-Agency Workshop on Implementing a HRBA” (Stamford: May 2003). See also: Marina Ottaway, “Rebuilding State Institutions in Collapsed States” *Development and Change* 33:5 (2002), who distinguishes between organizations from institutions. The latter are more likely to be the result of negotiation rather than design, and to be invested with a greater sense of ownership and accountability by society “... if they are seen as solutions to real time problems.”

^{lxvi} See: Timothy D. Sask, “Pathway of the Political: Electoral Processes After Civil War”, (Denver: Research Partnership on Post-War State building, November 2006).

^{lxvii} See: Jones, “From Fragility to Resilience” (2007). See also: OHCHR, “Principles and Guidelines” (2006). Referencing “the poor” as the principal sector vulnerable to political and economic exclusion:

States should organize public information campaigns directly addressing the poorest sectors of society and informing the poor about their rights as well as relevant governmental services aimed at poverty reduction, including free access to education, health and social security services, the administration of justice and other services. ... People living in poverty should also be informed of their right to participate actively in the poverty reduction strategy process and in the conduct

of public affairs in general. People living in poverty should be encouraged and enabled to participate actively in the formulation, implementation and monitoring of poverty reduction strategies and in the conduct of public affairs in general, at both the central and local levels of political decision-making structures

^{lxviii} Frontline, “The EU Guidelines on Human Rights Defenders: What Lessons Learnt So Far?” (Dublin and Brussels: 2007). Effective human rights advocacy has traditionally depended on the formation of issue-based coalitions linking domestic human rights actors with international human rights NGOs and agencies, bringing together internal and external pressure and access to relevant protection and oversight mechanisms. Programmatic support for the development of democratic governance should encourage and facilitate such relations.

^{lxix} See Stewart, “Fragile States” (2006):

Aid cannot achieve comprehensive social and economic rights nor social inclusion in countries with strong exclusionary tendencies, unless these are specifically addressed. This does not follow automatically from a focus on the MDGs – which can often be achieved most cheaply by reducing poverty and extending services to the already relatively privileged groups and regions. For example, abundant aid to Guatemala since the peace accords has not achieved much in the way of reducing social exclusion, while aid to Ghana has reduced poverty significantly in the South but rather little in the North. To be effective then policy needs to be directed at the main source(s) of the problem. In the Guatemalan case this appears to be a matter of raising government revenue, of redirecting expenditure towards indigenous people and areas, and of introducing land reform. For the most part, generous aid to Guatemala has done little on these fronts, despite a strong focus on the MDGs.

^{lxx} See UNGA, “Report of the Independent Expert on the Effects of Economic Reform Policies and Foreign Debt on the Full Enjoyment of All Human Rights” (New York: A/61/464, September 2006).

^{lxxi} Maina Kiai, “How Human Rights Principles & Approaches Can Help In Fighting Corruption” (New York: OHCHR, HR/POL/GG/SEM/2006/BP.2, November 2006).

^{lxxii} For example, Brazil in relation to challenges of land reform and rural employment, China in relation to areas of ESC rights, India in the role of the judiciary in championing minority rights, etc.

^{lxxiii} This is due in part to the issues addressed in section 3.2.1 above, but also because there is no standing for the concept of “fragile states” in international law. Because of its basis in a strong normative tradition, the human rights movement tends to be highly guided by and oriented toward legal foundations for its work.

^{lxxiv} This includes organizations such as Amnesty International and Human Rights Watch (HRW). HRW has commenced a review of its recommendations for institutional and legislative reform across the range of its country work. Frontline (the International Foundation for the Protection of Human Rights Defenders) has been more engaged in critical fragile state situations due to its focus on emergency assistance to human rights defenders (HRDs), and has undertaken more work on sharing experiences and approaches among HRDs in different situations. See: Frontline, “Lessons Learnt” (2007).

^{lxxv} The OHCHR “Principles and Guidelines” (2006) takes an important step in this direction in its effort to set out “the content of a human rights-based poverty reduction strategy.” Taking a “right by right” approach, the guide brings together the relevant standards that apply to each ESC right, identifies the key features of a strategy designed to realize the right, and proposes key targets or indicators of its fulfillment.

^{lxxvi} See: Alan Whaites, “States in Development: DFID and State-Building” (London: DFID Discussion Paper, October 2007):

What is clear is that local government is often the first point of contact between citizens and state, and therefore has a profound impact on the trajectory of state-building.

^{lxxvii} See, for example: Ingrid Massage, “Nepal: Justice in Transition” (Geneva: International Commission of Jurists, February 2008), including reference to the UNDP’s “Access to Justice Project” to support community-based mediation and other services.

^{lxxviii} The objectives of the Commission include “... contributing to increased awareness of the need to integrate climate-proofing, risk reduction and adaptation measures into development and poverty reduction strategies. The focus is to be on weather-related disasters and climate-related impacts on development.” See also: Ian Kearns and Ken Gude, “The New Front Line: Security in a Changing World” (London: Institute for Public Policy Research, Working Paper # 1, February 2008), and Dan Smith and Janani Vivekananda, “A Climate of Conflict: The Links between Climate Change, Peace and War” (London: International Alert, November 2007).

Developing competence on climate change issues, including adaptation, needs to be seen henceforth as an integral part of good governance in all the states facing the combined risk of climate change impact and violent conflict or instability.

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