

Human Rights and State Fragility: Conceptual Foundations and Strategic Directions for State-Building

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Abstract

This article addresses a number of conceptual issues guiding the development of a human rights-based approach to state fragility. An initial section sets out the methodological assumptions underlying the study, and locates it with reference to international human rights law and the 'Principles on Good International Engagement in Fragile States and Situations' drawn up by the Development Assistance Committee of the Organisation for Economic Cooperation and Development. 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 and human security. 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.

The study is grounded in an understanding that fundamental rights 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 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 contextually oriented to each case of fragility and able to accommodate a wider range of assessment factors. These factors should 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. Such an approach will recognize the priority of analysing 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.

Keywords: conflict; development; fragile states; inclusion; participation; poverty

Methodology and Assumptions

This article has been prepared to assist policy-makers and others responsible for international development assistance to explore the interface between support for human rights and state-building initiatives in relation to fragile states.

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 some of the fundamental terms under consideration. For our purposes, we assume that the current basic understandings adopted by the Organisation for Economic Cooperation and Development/Development Assistance Committee (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' (OECD/DAC, 2007; also see High Level Forum, 2005), 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 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.¹

We assume that 'human rights' should be understood to encompass the full range of standards derived from the Universal Declaration of Human

1 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'. See OECD/DAC 2006 Task Team on Human Rights and Development (2006).

Rights (UDHR) and formalized in international legal instruments. We further assume that these standards include both individual, civil and political (CP) rights and economic, social, and cultural (ESC) rights, and that these two broad categories of rights are understood to be ‘indivisible, interdependent, interrelated and of equal importance for the dignity of all human beings’.² 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 Sisk (2007: 1) is salutary:

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.

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, multi-disciplinary field of practice and experience and, especially, of the need to recognize the importance of context in any discussion of programme or strategy in relation to any specific ‘fragile state’ (for an overview, see Di John, 2008). 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 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.

2 UN General Assembly, ‘Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993’, A/CONF.157/23 (New York, July 1993).

Human Rights and Development

In the modern international community, human rights constitute normative standards that are expressed in domestic and international *legal* instruments (procedures, laws, treaties, institutions, etc.). At the same time, it is important to remember that human rights are an expression or function of *moral* authority. Although now recognized as an integral part of international customary law, the UDHR was originally a moral declaration of the General Assembly rather than a convention or treaty ratified by Member States. 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.

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.³ 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, to act as the ‘social guarantor’ of fundamental human rights that is established through both political processes and legal instruments.

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’. The UDHR reinforces this relationship by identifying the entitlement to an appropriate and effective state as a right in and of itself (Article 28).

This construct of the state as an entity that is generated in a relationship with society and its members and centred on the recognition and fulfilment 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

3 Definitions of human rights are usually set within a legal construct, and therefore refer to ‘citizens’. However, as citizenship is a status that derives from the state, we use the term ‘members of society’ to emphasize the principle of inherency.

represents.⁴ 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.⁵

An initial challenge arises insofar as ‘... the debate about state-building has tended to be “functionalist” and technocratic ... focused on what states should be doing and then has attempted to work backwards and determine how donors ensure they get there’ (Fritz and Rocha Menocal, 2007: 42). The determination of such needs and the means for addressing them has often been exercised primarily by international actors. In contrast, a state-building approach guided by the values of the UDHR and directed towards 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 (2006) 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).

4 Ignatieff (2000: abstract) describes human rights as constituting, since the late 1940s, ‘the dominant language of the public good around the globe’. 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 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 Jones *et al.* (2007).

5 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 relations between states rather than the primary constitutive relationship between the state and the members of society. Furthermore, sovereignty is historically a somewhat elastic concept rather than a fundamental principle. During the past two decades, for example, there has been an increasing shift in the locus of sovereignty away from the central structures identified with the nation state. Thus, some scholars refer to the tendency of sovereignty to ‘seep’ upward (towards supra-national entities, such as the EU), downward (towards sub-state entities, such as armed movements), and sideways (towards multinational entities, such as corporations). This reinforces the need to recognize the role of civil society as the primary foundation for negotiating state structures and functions. In practical terms, states become members of the international community by recognizing that their sovereignty is constrained by human rights principles and international obligations. In ratifying human rights conventions, they undertake to bring domestic legislation and procedures ‘into conformity’ with international standards. 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 Cassese (1990: 13).

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 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 finally adopted in 1966 to address what was perceived as two distinct fields of rights: civil and political rights (ICCPR) and 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).

While maintaining the language of ‘indivisibility’ and adherence to a core set of principles throughout this structure, the era of human rights standard setting nevertheless resulted in the increasing practical and theoretical separation of these two fields of rights. 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 CP rights, while ESC rights tended to be characterized as ‘aspirational’ in nature, their achievement subject to ‘progressive realization’. Uvin (2006) describes the human rights and development movements as ‘two communities of principled social change’, and notes that the ‘human rights domain’ focused 95% on CP rights, while the ‘development domain’ focused 95% on SEC rights.

In general terms, states could derogate from their obligations in relation to CP 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 by matters of political will, priority, and ideology. The discipline of ‘human rights’ was increasingly defined by CP concerns, while the issues related to ESC rights were increasingly addressed in the distinct discourse 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 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (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 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. It will also require recognition of the methodological differences between the two fields.

Although there is some value and utility in the conceptualization of human rights into different categories and approaches (positive vs. negative rights, first- and second-generation rights, etc.), to a large extent these distinctions represented the efforts to 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 CP and ESC rights, and human rights and development, in a unified manner. The ‘human rights mainstreaming’ initiative within the UN system in the mid-1990s, and the *Human Development Reports* beginning in 2000, set in motion serious efforts to bridge the division between the two fields 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 to be addressed.

Inter-Agency discussions led by UN Development Program (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 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’ (UNDP, 2003a, b). 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.⁶ Perhaps, the most useful conceptual approach

6 UN Secretary General, ‘In Larger Freedom: Towards Development, Security and Human Rights for All’ (UNGA A/59/2005; March 2005). This is the first doctrinal statement addressing fully the development agenda and the context of state fragility. Significantly, it locates both within a 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’.

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 and advanced by the Office of the UN High Commissioner for Human Rights (OHCHR, 2006).

All human rights . . . 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.⁷

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.

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 mean 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 fulfilment of obligations (deprivation, exclusion, discrimination, vulnerability, and justice).

As a form of development cooperation, the normative elements that derive from the human rights approach are incumbent on and instructive to the practice of state-building. While human rights standards do not prescribe an ideal form of state structure, the normative elements reflected in the human

⁷ 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 (2003) and OHCHR (2004).

rights approach do suggest a number of key criteria with structural or institutional implications. From a human rights or ‘... human development perspective, good governance is democratic governance’, which is identified by eight practical criteria that should guide institution building:

- People’s rights and 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 in public spheres of life and decision-making;
- People are free from ethnic, gender, or other discrimination;
- The needs of future generations are reflected in current policies;
- Economic and social policies respond to people’s needs (UNDP, 2003a, b).

Democracy should 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.⁸ 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. (Østby, 2006: 21)

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 either civic nationalism (shared equal rights) or ethno-nationalism (shared common identity). Although not explicitly stated, human rights standards assume a state

8 See OHCHR (2006: paragraph 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’.

structure that is predicated on or progressively moving towards the civic principle. State institutions are envisioned as being directed towards promoting, both domestically and internationally, an inclusive political and social environment characterized by tolerant multiculturalism. This task poses difficulties even for highly developed and stable states, but is particularly challenging for fragile states often characterized by a resurgence of ethnic or other identity-based tensions.

Human Security and Fragile States

The decade of the 1990s was a period of massive change in the field of human rights. 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 mainstreaming’ 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 accountability, through the creation of an International Criminal Court (Statute of Rome, 1999).

During this period, the international community also began to open important new fields for policy debate, 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.

Human Rights and the Responsibility to Protect

The end of the Cold War also meant, however, that entire regions of the world – notably sub-Saharan Africa and Central Asia – suddenly ceased to hold global strategic interest and were summarily marginalized and then abandoned. Warlords and dictators who had served as superpower surrogates – created, sponsored and, to some extent, controlled by 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 thirty to more than eighty within the first five years of the decade.

These developments brought a significant change to the nature of human rights violations. Over the course of the 1990s, violations escalated in severity and scale, and shifted focus from the repression of beliefs to an assault on identities – especially targeted on gender, language, religion, and ethnicity. Violations occurred less as a strategy directed at 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?’ (see Huntington, 1993; Evans, 2008).

Instead of seeking primarily to control or repress their enemies, perpetrators 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 our experience erupted throughout the world: genocide, ethnic cleansing, and the enslavement of women and children. 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.⁹

In 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 roles 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. This movement may be said to have been formally initiated with the UN Secretary General’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 primary focus for international assistance, R2P represented a major new development in the normative framework of human rights.¹⁰

9 Women are particularly vulnerable to human rights violations in conflict. 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 subsequent circumstances (e.g. as sexual slaves, refugees, etc.). An extensive research base indicates 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 usually results in increased levels of domestic violence in the initial post-conflict period. See NGO Working Group on Women, Peace and Security (2006).

10 See International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (2001). Although it may be premature to argue that R2P has achieved standing as customary law, the key policy principles are generally operative within the international system, in part through the establishment of the UN Peacebuilding Commission. There is a growing acceptance of the notion that states are collectively responsible ‘... to uphold the

Effectively reinforcing the initiatives to re-integrate CP and ESC rights, R2P represented a further 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 ... 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.¹¹

Although proceeding from an explicit human rights and human security motivation, it has proven difficult to maintain this focus in the application 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 addressing the narrower framework of humanitarian obligations – the distinction and protection of civilian populations in armed conflict. This orientation has led to a greater emphasis on a human security-based approach, defining a narrower set 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.¹²

The concept and practice of R2P has been further constrained in its human rights effectiveness 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 had an impact on both process and outcome.¹³ Intervention, whether

principles of human dignity, equality and equity at the global level’ (page number?). 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).

11 ICISS (2001: xi): ‘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’.

12 See Alkire (2003). A human security approach is 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 ... on a minimal subset of human development and human rights. (p. 4)

13 See USAID (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’. This focus on state security,

military or developmental, was no longer determined primarily by the needs or rights of vulnerable populations in fragile or underdeveloped states, but in a balance with the strategic and security interests of the donors and the international community as a whole (see Aning, 2007).

To the extent that R2P has increasingly referred to analytical and programmatic contexts emphasizing an anti-terror and state security agenda, it has also been associated with legislative and other initiatives to restrict or derogate from fundamental rights and international systems of accountability (see Duffield, 2005). 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. Recent initiatives appear to be directed towards 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.¹⁴

State Fragility and Human Rights

Situations of state fragility are now 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 (for a comprehensive overview, see Cammack *et al.*, 2006). As a result, the literature tends to continue to focus on largely unproductive issues of classification and causality which reflect a basic struggle over the question what should be 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 framework for understanding fragile states. On the other hand, significantly disproportionate levels of extreme poverty and its political and social consequences are a primary characteristic of fragile situations, and provide an indicator that is more familiar to and coherent with the DAC principles.

In fact, 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 (see, for example, Draman, 2003; Fukuda-Parr, *et al.*, 2007; World Bank, 2005). In view of the

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 Duffield and Waddell (2006). Critically, both human security and human rights are fundamentally intended as ‘people-centred, not threat-centred’ approaches (Alkire, 2003).

14 These include the appointment of a UN-Secretary General’s Special Advisor (Professor Ed Luck) on R2P in February 2008.

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 analysed 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 and by Oxford's Centre for Research on Inequality, Human Security and Ethnicity (CRISE) appear 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.¹⁵

While commentators identify core functions as the basis for assessing 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]'.¹⁶ 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 CP rights, the gender development index, the human rights empowerment index,

15 For a broad survey of analytical approaches to state fragility used by major donor and programmatic agencies, see Cammack *et al.* (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 (see Carment *et al.*, 2006). For research on the validity of the model, see Carment *et al.* (2007). The recently launched *Assessing Democracy and Governance: A CIFP Handbook* (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 Stewart and Brown (2006).

16 In the CIFP framework (Carment *et al.* 2006: 6–7):

- Authority: '... 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: '... 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: '... the power to mobilize public resources toward productive ends'. Source?

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.

Thus, for example, the CIFP model suggests that situations of state fragility that are 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 CP rights. Situations in which issues of capacity are the primary conditions of fragility are more likely to require support directed towards fulfilling state obligations in relation to ESC rights or providing basic state infrastructure.¹⁷

The results of analyses which are clearly set within a human development framework and that actively includes human rights indicators are significant and compelling. First, they tend to identify a different and more diverse list of fragile states and, more importantly, they provide an empirical platform for distinguishing different types of fragility. Second, they allow for greater recognition of regional dynamics that may be influential factors in exacerbating or reducing state fragility. Third, they provide a means of exploring the particularity of each case of state fragility, a feature that 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’ (source?).

17 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. Much of the conceptualization of the state in the post-World War II 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 Clapham, 2002). 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 (2006) and Fukuda-Parr *et al.* (2007).

Considerable research has been undertaken into the links between poverty and/or human rights violations and violence and/or conflict, but there is not as yet a substantial research based 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, there has in fact been little systematic and empirical investigation on the relation between state fragility and human rights (see, for example, Torres and Anderson, 2004; DFID, 2005).

The research that does exist 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 CP rights, civil conflict, and violence, and state fragility (Thomas and Ron, 2006).¹⁸ 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’ (Stewart and Brown, 2006: 19). It is suggested that programmes 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

18 See also Stewart and Brown (2006: 25), stating that:

. . . 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.

them as dimensions of state failure in relation to the fulfilment of its obligations towards the members of society and their communities.¹⁹ 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, and 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 models offer a useful foundation in that, from their different perspectives, they generate contextual analyses and policy directions that reflect the needs of both the ‘duty-bearers’ (issues of state effectiveness) and of the ‘rights-holders’ (expectations of rights fulfilment). Along with the social dialogue approach 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 a practical and integrated conceptual framework for developing a human rights-based approach to state fragility.

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 CP and ESC

19 Thus, per Stewart and Brown (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.

rights, the discourses of development and human rights, and issues of capacity 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. This may provide a point of reference for defining a reasonable base-line for fulfilment of ESC rights, and allow 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 (OHCHR, 2004).

The second criterion is the degree to which social and economic exclusion on the basis of discrimination is present. In light of 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 towards 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’ (Stewart, 2005: 6). By ‘systemic’ we mean that these inequalities are not only historically entrenched, but are also 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 (2005) 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.

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, or therefore injustice. To the extent that such 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 CP rights), especially

when the horizontal inequalities are locally or regionally concentrated. Horizontal inequalities, when driven by systemic or institutionalized identity-based discrimination, in effect, describe the dynamic conditions in which violations or non-fulfilment of CP rights and ESC rights converge and proliferate. As such, they are a major determinant 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 (2005) 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 framework of legislative and other institutional protections, such policies emphasize empowerment, participation, and accountability; that is, they will be practically oriented towards promoting awareness and developing skills among rights-holders to facilitate making claims, and providing support for duty-bearers in accommodating demands and ensuring fulfilment.

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 (Fukuda-Parr *et al.*, 2007).

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 for 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, 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. (Fukuda-Parr *et al.*, 2007: 7)

Key Directions and 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:

- 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.²⁰

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.

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, tends to shift the identification of intended targets and priorities from high-level political and structural concerns towards 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

20 These three strands reflect a basic framework common in much of the literature on state fragility. See for example, van Beijnum and van de Goor (2006).

critical element in reconstruction in post-conflict settings (see Tang Friborg and Riddell, 2007).

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, 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 politically marginalized groups (notably children and women) and other specifically targeted groups. Further, the case of Nepal suggests that an active international human rights presence 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.

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.²¹

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

21 See UN General Assembly, ‘Declaration on Human Rights Defenders’ (New York: A/RES/53/144, 2000), and the work of the UN Secretary General’s Special Representative on the Situation of Human Rights Defenders.

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 (see Centre for Humanitarian Dialogue, 2007; Vinjamuri and Boesenecker, 2007). However, the evidence seems to indicate that avoidance of the issue offers only a temporary reprieve and an insecure agreement at best. While post-conflict political settlements may provide an important basis for the development of subsequent state-building processes, 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 oriented towards avoidance or accommodation of issues or forces that may potentially destabilize the agreement – such as human rights and accountability.

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.²²

Appropriately and necessarily, much of the institution-building investment during a post-conflict phase will be directed towards 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. 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 protect key constituencies such as women, cultural minorities, and political opponents in the negotiation and planning processes for settlement agreements, reform programmes, budget formation, and other foundational elements of the emergent state.

Supporting Democratic Governance

While there is general agreement that elections are essential to state-building, there is considerable uncertainty 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

22 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’ (UNGA, 2005).

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 issues of human rights accountability 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' (UNDP, 2003a, b).

Much state-building theory has been focused on the reformation or replacement of elites, and has largely been non-participatory and non-consensual in approach. However, in order to be effective as instruments 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. This underscores the importance of programmes 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 sustainability of the various elements of the process that help to 'create the conditions for mutually empowering state-society relations' (Sisk, 2009: 196).

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. It also means 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 fulfilment (see Jones *et al.*, 2007; OHCHR, 2006). 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 fulfilment.

Strengthening Capacity

The key contribution of a human rights approach to addressing state capacity to deliver essential services is its insistence that 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 fulfilment of ESC rights, and will not likely address the core sources of fragility.

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.²³ In addition, state-building efforts in support of capacity development will emphasize anti-corruption measures and a critical means of advancing an institutionally supported culture of human rights – the critical promise of state-building efforts guided by an integrated human rights-based approach to development.

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23 See UN General Assembly, '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).

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