



The Legitimacy of the State in Fragile Situations

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P.O. Box 8034 Dep, NO-0030 OSLO
Ruseløkkveien 26, Oslo, Norway
Phone: +47 22 24 20 30
Fax: +47 22 24 20 31

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Prepared by

Séverine Bellina,
Institute for Research and Debate on Governance – IRG

Dominique Darbon,
Africa Study Center – SciencesPo Bordeaux, CEAN

Stein Sundstøl Eriksen,
Norwegian Institute of International Affairs – NUPI

Ole Jacob Sending,
**Norwegian Institute of International Affairs – NUPI/
Chr. Michelsen Institute – CMI**

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Executive summary

1- Legitimacy is a particular quality that is conferred upon a social or political entity by those who are subject to it or part of it, thus granting it *authority*. This means that *legitimacy is seen as an empirical phenomenon*. It depends on peoples' beliefs, perceptions and expectations – which also implies that an institution that falls short of certain normative standards may still be considered legitimate, if those subject to it consider it so.

2- State legitimacy concerns the very basis on which state and society are linked and by which state authority is justified. It is about a vision of what the authorities and the community are about, and are to do. Any analysis of state legitimacy in situations of fragility must therefore *focus on the relations between state and society*. It must also focus on relations of power – both within society, and between the state and various social groups.

3- The modern state, which is the reference-point for efforts to address state fragility, is based on a specific conception of how state and society should be linked and separated. A private sphere (society), consisting of social and economic relations, is constituted by, yet separated from, the state. These two realms are different but nevertheless intimately related. States and societies in fragile situations are both more separate and more closely linked to each other than presupposed in the model on which their formal institutions are based. States are more separate in the sense that they have failed to gain recognition as the highest political authority in their territory and to penetrate and administer their society. They are 'suspended' over society. At the same time, they are more closely linked to society by social networks, patronage and clientelism. This blurring of boundaries involves a particular intertwining of 'the private' and 'the public.' States in fragile situations are often characterized by a lack of autonomy from society, by a lack of clear distinction between the public and the private (patron–client networks, patrimonialism, and neo-patrimonialism), and a *lack of constructive linkages* between the two realms.

4- The formation of a legitimate state presupposes that citizens take the *state as the ultimate political authority*. However, states in fragile situations are characterized by their inability to regulate the basic parameters of everyday practices, and by the failure to be seen as the overarching authority within the territory. When state institutions are not in a position to claim, with reasonable success, a monopoly on the legitimate violence, and a strong impact over social relations, they lack institutionalized authority and social support. State fragility is thus intimately related to ineffective and poor connections with society.

5- This study identifies three general types and dimensions of legitimacy that pertain to the state: i) *how* the state functions (input legitimacy): the legitimacy of the state is here tied to the rules and procedures through which it makes binding decisions (participatory processes, bureaucratic management, justice); ii) *what* the state does (output): legitimacy is defined in relation to the perceived effectiveness and quality of the services it delivers; iii) What kinds of *beliefs* allow people to take the state as the rightful authority and to share a sense of community and identity intimately related to the state. Whatever processes a state may organize, and whatever amount of goods and services it may deliver, a central point is the symbolically established expectations that people have of the state. Efforts to help bolster state legitimacy in fragile situations must be cognizant of *all the dimensions of state legitimacy simultaneously*.

6- Actual state legitimacy draws on a specific and changing mix of different sources. Any discussion of the sources of legitimacy of a state must be considered with some caution: they are effective sources of legitimacy only to the extent that the relevant constituency considers them to be so. Central here is the dynamics by which various groups seek to either enhance or weaken the legitimacy of the political order and the sense of community.

7- Fragility is characterized by lack of capacity, and is often caused by a lack of legitimacy. We suggest that a *state in situation of fragility* is a state with *limited ability to govern* or rule its society,

and more broadly *to develop mutually constructive and mutually reinforcing relations* with society. In this perspective, fragility refers to lack of capacity, defined as not only organizational, institutional and financial capacity but also by the lack of existence of common norms, rules and regulations that are recognized and shared by both the state and the people. This is a critical issue: state fragility can stem both from lack of financial, technical and human capacity and from lack of legitimacy – both preventing the making of the state as a robust institution.

8- Ineffective or poor constructive linkages between state and society are thus defining features of states in fragile situations. The state co-exists with a society or various social groups or communities which are not captured by the state processes. Although their activities are connected in one way or the other with the state, they follow rules and principles that do not conform to state rules. A central feature of fragile states is precisely that state institutions co-exist with other institutions, resulting in competing and overlapping forms of rule that often draw upon different sources of legitimacy. In situations of fragility, various actors (state and non-state) will draw on different sources of legitimacy, sometimes in competition with each other. The fact that the same sources can be drawn upon by different actors may lead to intense competition and can contribute to undermining both the power and the legitimacy of the state.

9- Some rulers may see their interests as well served without expanding the state. To protect their own power and interests, governments may draw on sources of legitimacy that weaken the state, such as patronage. In many states in fragile situations, regimes secure the support they need, not through the systematic institutionalization of the state in society, but by using state resources to offer material rewards in return for political support. If the preservation of its power depends on sources of legitimacy of this kind, governments become trapped in a situation where their political survival is incompatible with state building. In order to make possible the establishment of an efficient state, it is necessary break out of the vicious cycle in which political survival depends on patronage.

10- Contemporary states are faced by demands for legitimization both domestically and internationally. On the one hand, they are expected to act in ways that correspond to the wishes and priorities of their own population. On the other hand, they are faced with external demands (from other states, international organizations, donors, etc). The dilemma of many states in fragile situations is that the expectations of the citizens do not correspond to those of external actors, making it impossible to satisfy the expectations from both simultaneously. Worse, this strengthens the capacity of various groups (such as leaders) to play off one type of legitimacy against the other. Thus a central challenge for donors is to recognize that what they consider to be the most effective and legitimate form of state building is not necessarily considered legitimate by domestic actors.

11- Donor's interventions may have a negative impact on state legitimacy when the content of a state's policies is heavily influenced by external actors, resulting in a weakening of popular sovereignty. In such cases, citizens are not able to take part in formulating the policies they will be subject to. While it is true that many states are governed by elites who show little concern for the priorities and needs of their people, forcing these elites to comply with conditions determined by outsiders is unlikely to increase these states' legitimacy and accountability towards their citizens. Furthermore, donor policies, particularly those focused on state building and capacity building, often depoliticize the state-making process. Such policies run the risk of undermining the sovereignty of recipient states, by making them accountable to donors rather than to their own citizens. Finally, the tendency of donors to apply standardized models in their state-building programmes makes it difficult to formulate policies that are adapted to local conditions.

12- Strategies and policies applied to address situations of fragility must be tailored specifically for each situation. Moreover, it may not be possible to achieve the same end result in all circumstances. In some cases, it may not be realistic to aim at establishing states that correspond to the model of statehood reflected both in formal state institutions and in donor policies. Thus, it is not just the means (policies, strategies) that must be adapted to context, but the ends as well. The same kind of legitimacy

and the same type of (end-) state cannot be established everywhere. *There is no standardized recipe for state building, nor is there a standard model of statehood that can be applied universally.*

Introduction:

OECD-DAC's 'Principles for good international engagement in fragile states and situations', adopted in 2007, invites donors to 'focus on State building as the central objective' and to focus on 'building the relationship between state and society'. In this sense, DAC principles already acknowledge the importance of addressing legitimacy issues, with an emphasis on state–society relations. This study is meant as a contribution to the ongoing debates within OECD-DAC and elsewhere about the character of state legitimacy in situations of fragility. The overall objective is to provide a better understanding of how legitimacy relates to and shapes states in fragile situations, and on this basis provide some policy advice and recommendations to the DAC's International Network on Conflict and Fragility (INCAF).

The report expands upon conventional understandings of the state and its relation to society, and presents a more thoroughgoing empirical understanding of legitimacy than is typically employed in studies of fragile states. This perspective illuminates *how legitimacy is formed through legitimization processes and how different types of actors, including external actors, can appropriate and use various sources of legitimacy to both undermine and bolster the legitimacy of state in fragile situations*. We present a view of state fragility that is defined by lack of capacity (organizational, and financial) and lack of constructive relations with society. Low levels of legitimacy are thus considered a central cause of, and outcome of, such lack of capacity. We suggest that legitimacy gives an 'added-value to power' and thus acts as an enhancer of state capacity. It turns people into citizens, state laws and regulations into 'natural' and self-imposed rules. We also discuss the special challenges that would-be state builders face in seeking to tap into and appropriate differing, and partly contradictory, sources of legitimacy.

We describe some of the central contradictions and challenges that characterize states in fragile situations, including what external actors may do to help. A central challenge for donors is to recognize that what may be effective and legitimate for domestically driven state building is not necessarily considered legitimate by the donor community. This raises important political and normative questions about which standards donors use in contemplating what, and what not, to do.¹

We can divide the sub-goals of the study as follows:

- emphasize the centrality of state–society relations for understanding fragility, state capacity, and state legitimacy;
- present an empirical understanding of legitimacy that directs attention to beliefs and perceptions, rather than normative standards;
- provide a detailed analysis and typology of sources of legitimacy, emphasizing that legitimacy is more about process (legitimation) than about static types, and exploring how these shape state characteristics and political dynamics;
- unpack the state into its constituent parts and levels by differentiating, *inter alia*, between state legitimacy and regime legitimacy, and between territorial areas and levels of governance;
- identify the tensions and contradictions faced by donors as they seek to engage states in situations of fragility and how considerations of legitimacy should shape decisions;
- present to DAC FSG a set of recommendations that highlights the timing, forms and areas of intervention that may bolster the legitimacy (and capacity) of states in fragile situations.

¹ This report is closely related to the other study commissioned by the FSG Task Team, now INCAF, of DAC under the 2007–08 work programme. The other study focuses on the 'do no harm' principle. See OECD-DAC (2008) 'State-building in fragile situations – How can donors 'do not harm' and maximize their positive impact?' Joint study by the London School of Economics and PricewaterhouseCoopers LLP, 2008. The report is also closely related to the study performed by Kevin Clements of the Australian Centre for Peace and Conflict Studies on 'Traditional, Charismatic and Grounded Legitimacy. This latter study was commissioned by the GTZ on behalf of the German Ministry for Economic Development and Co-operation, BMZ.

The report starts in *section 1* by discussing basic concepts such as the state, legitimacy and fragility. In *section 2*, we provide a brief analysis of state formation processes, state–society relations and the central distinction between the public and private. This discussion will help motivate the remainder of the report’s focus on state–society relations and the role of legitimacy therein. In *section 3* we present an empirical approach to legitimacy and provide a list of the many different sources of legitimacy upon which any institution may rest. Section 4 discusses actual processes of confrontation of various types of legitimacy and highlights the bargaining at work between states and society in situation of fragility. *Section 5* looks at legitimacy and fragility in light of political elites’ interests. *Section 6* draws out the implications of the overall analysis for donors and external actors more generally.

1 Basic concepts

1-1 The Western state

As a starting point, the modern state may be defined as an institution which successfully claims a monopoly over the means of legitimate violence, control over a territory and a population and responsibility to provide services, and is recognized by other states (Sørensen 2001). According to Krause and Jutersonke (2007), the various functions of modern states may be grouped into three: security, representation and welfare. This is the model of statehood on which all contemporary states are based. Regardless of whether these functions are carried out directly by the state or through other, non-state or local organizations and channels, the state remains ultimately responsible. States are seen as sovereign and as representing society as a whole, and they claim to be acting on behalf of society’s common interests. This idea, which Migdal describes as ‘the image of a coherent controlling organization in a territory, which is a representation of the people bounded by that territory’ (2001: 15–16) presupposes that the state has a monopoly of violence, control over its territory and the ability to provide services. It further presupposes that the state and society are constructively and closely interconnected.

In terms of security, the state is responsible for protecting society and its members from internal and external threats. Security is thus intimately related to the notion of sovereignty. Internally, state sovereignty refers to the state’s position as the highest political authority within its territory. Externally, the state’s borders define the boundaries of its authority, by delimiting its jurisdiction from that of other states. In terms of representation, the modern idea of the state entails that the state is seen as an institution acting on behalf of the people, or citizens, in order to promote the common interests of society as a whole. Thus, state power is seen as emanating from society, and state sovereignty is the institutional expression of the ultimate sovereignty of the people.

In order to carry out these functions, states must have a set of institutions with sufficient capacity. To provide security, a police force and an army must exist that is able and willing to do so. Likewise, in order to promote the welfare of its population, states must have institutions that can promote economic growth, ensure a reasonable (what is seen as ‘reasonable’ may of course vary greatly) distribution of economic resources and ensure that the population has access to basic goods such as food, housing and health care. And to represent its population, state power must be exercised through institutions that ensure that the needs and preferences of citizens (in line with the general interest) are promoted.

The Western idea of statehood also implies that the state must, at one and the same time, be closely linked to and yet clearly separated from the society over which it rules. On the one hand, the state must be present with its institutions at all levels of society. At the same time, modern states are based on a specific conception of how state and society should be separated, and here, the distinction between the public and the private is central: A private sphere (society), consisting of social and economic relations is constituted by, yet separated from, the state. States in fragile situations are often characterized by a lack of autonomy from society, by a lack of clear distinction between the public and the private (patron–client networks, patrimonialism, and neo-patrimonialism), and a lack of constructive relations between the two realms. As a result the public sphere, so influential in forging mutually reinforcing state–society relations (J. Habermas), is generally weak. Public-sphere fragility, then, exacerbates state fragility.

1-2 Legitimacy

There are two main ways of understanding legitimacy. One is normative and is concerned with the standards that an actor, institution or political order must conform to in order to be considered legitimate. Such standards may include the explicit consent of the population (typically through democratic elections) or claims to justice or fairness. Such standards are typically derived from moral and normative considerations, often based on considerations of basic human rights. Another way of approaching legitimacy is *empirical*, and is not concerned with normative standards as such, but rather with whether, how and why people accept (or reject) a particular actor or institution. Here, focus is directed towards peoples' beliefs and perceptions. Power or domination that is seen as legitimate by those subject to it, is defined 'authority'. Thus, a state that falls short of certain normative standards may still enjoy *de facto* legitimacy if those subject to its rule consider it legitimate.

Adopting an empirical approach to legitimacy, we here consider it to be a quality of an order, actor or institution that is conferred upon it by those who are subject to it or part of it. It is related to the ideas of trust (Giddens 1984), consent (Balandier 2004; Lapierre 1979) and reciprocity (Bratton and Hyden 1992; Hyden 2005). Thus conceived, an order, actor or institution is legitimate to the extent that the population regards it as satisfactory and believes that no available alternative would be vastly superior (Bonnell and Breslauer, 2001). This also means that legitimacy is seen in relation to people's material and symbolic expectations and perceptions. Lack of or poor legitimacy is thus a major contributor to state fragility. It deprives the state of peoples' support; it prohibits the making of a political community or identity, and prevents the state from acting efficiently at the lowest possible social and financial costs. Emphasizing that legitimacy has to do with peoples' beliefs and perceptions and daily social practices of the state allows us to look into the various sources that a state, and other institutions, may draw upon to shore up legitimacy. As we shall see, a central feature of fragile states is precisely that formal state institutions co-exist with other institutions (most often called 'informal'), resulting in competing and overlapping forms of rule that often draw upon different sources of legitimacy.

1-3 Fragility, capacity and legitimacy:

OECD-DAC publications have been central in defining and institutionalizing state fragility in the development discourse. According to the DAC 'Principles for good international engagement in fragile states and situations', adopted in 2007, states are fragile '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'. This is a state-centered definition in the sense that fragility is defined in relation to states' will and capacity, without reference to their relations with society. By contrast, the OECD-DAC paper 'Concepts and dilemmas of state building in fragile situations' (2008) defines fragility as the state's inability to 'meet its population's expectations or manage changes in expectations and capacity through the political process' (p 16). This definition ties fragility closely to legitimacy, since a state's legitimacy is, per definition, a question of the extent to which the state is able to meet people's expectations. The report 'State building in situations of fragility: initial findings' seeks to combine these two approaches, by defining fragility as 'the absence of capacity and/or will to perform key government functions for the benefit of all' (p.14).

This shift in emphasis – from the state to the relations between the state and society – has been accompanied by a terminological shift, from fragile states to situations of fragility which places *the focus not on the state but on state–society relations*. We argue that lack of state capacity or power should be seen as the defining feature of fragile situations. In our view, a state in situation of fragility is a state with limited ability to govern or rule its society, and more broadly to develop mutually constructive and mutually reinforcing relations with society. This definition will allow us to analyse how articulations and uses of various sources of legitimacy by a range of actors (state, non-state, local and external) may both strengthen and weaken a state. In this perspective, fragility refers to lack of capacity – defined as not only organizational, institutional and financial capacity, but also the capacity to produce or favour the existence of common norms, rules and regulations that are recognized and shared by both the state and the general population. This is a critical issue: state fragility can stem both

from lack of financial, technical and human capacity and from lack of legitimacy – and both can hinder the making of the state as a robust institution.

These definitions raise the question of whether lack of legitimacy should be considered as a defining feature of fragility or as a causal factor that produces it. We argue that states should be considered fragile also in situations where the issue is not primarily the inability to meet peoples' expectations. A state's lack of capacity and thus inability to govern makes it more vulnerable to unexpected events or shocks, and even apparently small and insignificant events may have grave consequences. Because the state is weak, fragile situations are typically characterized by institutional instability and unclear and contradictory rules (Andersen, Engberg-Pedersen and Stepputat 2008: 23–24; Vanderlinden 1993, 2000; Le Roy 1999). It is thus reasonable, in our opinion, to consider states as fragile even if there is *not* a crisis of legitimacy defined in terms of a gap between expectations and performance. Just as legitimacy gives an *added* value to power/capacity, lack of legitimacy *undermines* state power and capacity by making compliance and governing more costly. What distinguishes legitimacy crises in fragile states is the limited authority and thus ability to deal with such crises. Again, it is this lack of ability/capacity that constitutes the defining feature of fragility, one cause of which may be lack of legitimacy.

Capacity and legitimacy are different but interdependent. On the one hand, legitimacy brings extra capacities to the state, on two grounds: First, it is likely to meet less resistance – overt as well as passive – to its mere existence in general and to its policies in particular. Second, citizens contributing willingly and actively to the implementation of state policies make the state more cost-effective and stronger. On the other hand, reasonable capacity (meaning political and administrative capacity covering the major part of the territory and managing essential services like security, representation and basic welfare) is likely to improve legitimacy. One would expect an effective state to be more legitimate than an ineffective one, provided that its policies are more or less in accordance with popular preferences and expectations. Reasonable capacities are needed for a state to reinforce its legitimacy. This means that capacity and legitimacy can reinforce each other mutually, creating a 'virtuous circle' In situation of fragility, conversely, a 'vicious circle' may emerge where lack of capacity may reduce legitimacy, in turn reducing capacity.

1-4 Legitimacy and state formation processes

To address states in context of fragility, it is essential (as stated in most OECD reports) to put state–society relationships at the very core of the analysis. Such a perspective focuses on state making or *state formation as a process*. We approach this as a '(...) dynamic, historically informed, often contingent process by which states emerge in relation to societies. State formation is a process, not a deliberate strategy of action.' (Lonsdale and Berman 1979). The processes of state formation are central, we believe, for grasping how legitimacy issues impact on state strength, fragility and resilience. Historical processes of state formation are replete with examples of how the would-be state was able to appropriate existing sources of legitimacy and make them supportive of the emerging state. On the other hand, numerous cases also show that, while trade-offs between state rulers and particular groups in society may strengthen the state, they may very well undermine the position of the state as the highest authority in society. The state may come to rest on a foundation that is built on contradictory principles and sources of legitimacy.

States are socio-cultural and historical products, their form and shape being determined by both intended and unintended effects, resulting in a particular institutionalized form of political authority. While certainly beyond the scope of this report, there are important insights to be gained from a brief analysis of the processes of state formation. State formation processes imply, first, that the state-to-be establishes itself as the highest and ultimate political authority within its territory, thus being able to make and enforce binding decisions for the society as a whole. In that process, rival authorities become subordinated only to the state. Second, the state comes to hold reasonable capacities, including an effective administration to enforce its sovereignty. Third, a process of bargaining and adjustments is at work whereby state and society become two autonomous but tightly related and mutually supportive realms, to the extent that the state is present 'in' groups' and individuals' modes

of thinking and acting in the world, thus turning subjects into citizens.² The idea of ‘stateness’ supports the idea that although society and the state clearly follow their own path, they keep on influencing and shaping each other in daily life. ‘Stateness’ means that some sort of organizational and social proximity between the state and leading groups of the society is essential to efficient and strong states (Balandier 2004; Evans 1995, 1997; Nettl 1968).

Moreover, the making of a state and the shaping of its policies and priorities are highly dependent upon the structure of society. Some kind of osmosis or symbiosis between the state machinery and society clearly strengthens the capacity and legitimacy of the state (Di Maggio and Powell 1991; Darbel and Schnapper 1969; Evans 1997; Weiss and Hobson 1995). As we discuss below, the symbolic aspects of the state are crucial to make ‘the state be present in people’ and are thus central in shaping their everyday perceptions and attitudes not only towards the state but towards central public matters. In countries where state authority is firmly established, the state’s supreme position is taken for granted. Political struggles and conflicts are about control over the state and about the content of its policies. This points to the fact that state formation is not only about the creation of an efficient public sector. While that may be necessary, it does not in itself constitute state formation. State formation is also about society being encompassed by the state.

Moreover, it is about the state becoming ingrained ‘in’ people. This is a central part of what state formation is all about: State forms of classification (Bourdieu 1999) become part of citizens’ forms of classification, thus framing and orienting citizens’ actions, both towards the state and towards each other. To a significant degree, this occurs at an implicit level. Citizens take the presence of the state and its rules for *granted*, often without explicitly endorsing it or consenting to it. While they may reject or endorse a given policy or government, they do not question the state’s position as the highest political authority, with the right to make rules and policies that everyone is obliged to follow. The *symbolic* aspects of the state are thus crucial to making the state present ‘in’ people, and central in shaping their everyday perceptions and attitudes not only towards the state but towards public matters in general. In an important sense, therefore, the state is not merely a sector. It is the overarching level of authority, which stands above society and is ultimately held responsible for society as a whole.

By contrast, in contexts of fragility, the state is not accepted as the highest authority by substantial groups in society. When the state’s authority is not firmly established, bargaining, trade-off processes and conflicts do not deal only with struggles over policy options. They focus on the very nature of the domination the state claims over a territory and a population, and on strategies to subvert it or to gain a monopoly over it. In such cases, states lack institutionalized authority. To put it bluntly, they do not penetrate and structure social relations and fail to be accepted as the highest political authority, to which all other institutions must be subordinated. As a result, the state fails to be significant for the organization of everyday life (Bodansky 1999; Giddens 1979). In these contexts, the state power and authority as the sovereign or the supreme authority within a territory are drawn from the constitutional order, from international recognition, and from its capacity to enforce its sovereignty through violence and coercion. It is not drawn from what we above have termed ‘constructive relations with society,’ where people are not only ‘in’ the state and subject to its authority, but where the state is also ‘in’ people, shaping their beliefs, allegiances, identity, modes of evaluation and justification etc.

2. Unpacking state legitimacy along political, social and geographical lines

2-1 State–society relations

As noted, the model of statehood on which contemporary states are based presupposes that the state and society are linked and separated in specific ways. While it may be difficult to locate the boundary between state and society in practice, the fact that they are different things, and that the two should in principle be separated, is a central aspect of the model. On the one hand, state institutions are supposed to be separated from society, in the sense that the public domain of the state is to be differentiated from the private domain of the market, the family and civil society. Different rules apply in different

² Citizens incorporate or embody the state to the point that they are themselves the state and its regulations.

spheres, and the practices and actions undertaken in the sphere of the state are supposed to be governed by specific state rules. In this sphere, the private interests of the actors are subordinated to the public interest. One aspect of this is that state resources are not to be used for private purposes. On the other hand, the state, as the overarching authority in society, is responsible for society as a whole, and is entitled to make decisions that are binding for society as a whole. To do this, it must have power and resources that enable it to govern all sections of society. This requires that the state becomes closely linked to, and embedded in, society, while at the same time maintaining the formal separation between the private and the public domains. Thus, the state, whose actions are supposed to express the collective will of the people, must also be separated from the people on whose behalf it acts.

However, state and society may be linked and separated in many ways. In robust and stable states, states have strong ties to society and are able to define the parameters of social practices and institutions. The state is thus embedded in society by virtue of its strength to define and shape social relations in a way that is supportive of and conducive to state rule. At the same time, such states are separated from society through a relatively clear differentiation between the private and public domains. In fragile situations, however, states are both more separate from society, and more closely linked to it, than presupposed in the model on which their formal institutions are based. They are more separate in the sense that they have been unable to establish themselves as the highest political authority in their territory, and to penetrate and administer their society in the way presupposed by the model. They stand as isolated or suspended over the society. At the same time, they are more closely linked to society, in the sense that in practice, the boundaries between them are not generally recognized. This “blurring of boundaries” means that ‘the private’ and ‘the public’ tend to be intertwined.

For these reasons, it is important to distinguish between ideal models of statehood and actual state practices and institutions. In contexts of fragility, there is a wide gap between the state as a (Western) model and its practical manifestation. Many states lack both authority and capacities to enforce their claims, and manage to function often because they grant space to alternative patterns of organization and governing (as is arguably the case in, say, the Democratic Republic of Congo, in Bolivia, in Niger). A defining feature of states in fragile situations is thus that the character of the relation between state and society is uneasy and presupposes mutual concessions and bargaining. As Clements et al. note, ‘The main problem is not the fragility of state institutions as such, but the lack of constructive linkages between the institutions of the state and society’ (2007: 51–52).

The focus of the analysis should therefore be on the relations between state and society. This means that *what is at stake is neither the state nor society but the actual processes through which they are produced and reproduced, thus becoming (or not becoming) mutually reinforcing and complementary while differentiated and autonomous*. On the one hand, as the officially dominant organization, the state is expected to give a clear image of the current and future organization of society. It seeks to enforce its formal institutions, rules, processes and legitimization model over society even though the legal and constitutional order may have little connection with the type of organization and authority the society it is ruling over may accept. On the other hand, the state is engaged in actual practices that often deviate significantly from this model. In contexts of fragility, therefore, we must distinguish between the state as it is designed according to formal rules and institutions (tailored along Western models); and the way it actually works, through uneasy trade-offs and compromises with various groups and communities. Similarly, we must distinguish between national societies as they are supposed to be (with fully fledged citizens belonging to a common political community); and actual societies, which may be deeply rooted in traditions and alternative forms of organization, or as an uneasy association of interest groups and communities linked to a state they often fail to understand but are closely associated with. Thus, neither ‘the state’ nor ‘society’ can be taken for granted, since they are being made daily through actual social practices, while at the same time contributing to shaping one another.

Box 1: Strong society vs. strong state or poorly connected state and society?

The development literature makes a clear link between weak states and strong societies. For numerous authors, states are weak because the society or its organizations are too strong and independent to allow the state to 'tame' it. This interpretation, however disputable it may be, stresses the clear disjunction that exists between a state that is supposed to be produced by the society it rules over, and a society that is supposed to support and obey the state while contributing to its making. The Philippines, Lebanon, Mexico and Sierra Leone are often cited as example of societies that are simply too 'strong' and too 'independent' to let the state 'tame' them. However, in fragile situations the situation is often much more complex: the issue is not about a weak state and a strong society but between two weak actors that fail to enter into continuous and mutually constructive relationships. The state lacks capacity, strength and scope to continuously influence or control social groups, while social groups are not strong enough to take the lead or overcome the state project of domination. Some social groups may have a capacity to prevent the state from acting in a number of areas and to mobilize large support, but they ultimately fail to stand as an alternative form of political domination to the state (as in Senegal, Mexico and Myanmar). Neither the state nor social groups are in a position to monopolize the legitimate power and compel other groups to abide by its law. Uneasy and informal negotiations and bargaining take place that fail to be turned into institutions.

Sources: Migdal, Joe (1988) *Strong societies and weak states state/society relations and capabilities in the third world*, New Jersey, Princeton: Chickering, L. and Haley, E. (2007) 'Strong society, weak state; social dimensions of state building' *Policy Review*, 143, June–July.

2-2 State legitimacy, regime legitimacy, leaders' legitimacy

The relationship between state legitimacy and the legitimacy of regimes and political leaders is important. In practice, state legitimacy may be high whereas the legitimacy of a particular regime, government or leader may not. On the one hand, the very existence of a given state may be contested. Thus, Tamil separatists in Sri Lanka, South Ossetians or Abkhazians in Georgia or tribal populations in parts of Afghanistan may reject the very existence of their respective states. In such cases, those who reject the state may either seek to establish a new state (as in Kosovo), to join a neighbouring state (as in South Ossetia) or they may simply reject being governed by a state at all (tribal areas in Afghanistan). In such cases, what lacks legitimacy is the state itself, not just the ruling regime, government or leader.

On the other hand, there are situations where what is challenged is not the existence of the state itself, but a given government, or regime, or a given set of policies or practices. In such cases, people do not seek to form new states, join a different state or avoid being ruled by a state at all. Instead, they reject an existing regime (or government or policy) that does not meet their expectations, and they demand that the existing state be reformed so as to meet their expectations (as in the case of the 'colour revolutions' in Georgia, Ukraine and Kyrgyzstan). A political leader with strong legitimacy may contribute to strengthening the legitimacy of a given political order. Nelson Mandela in South Africa can be seen to have infused the post-apartheid state in South Africa with legitimacy by virtue of peoples' affection and devotion to him as a political leader. By contrast, a political leader may lose legitimacy from the people, while the regime or the state may not be affected (examples here include Wade in Senegal and Mbeki in South Africa).

Leaders make a difference, but strong constructive linkages between the state and the populace cannot be reduced to the quality of one leader. What is at stake is the *general quality* of the wide range of interactions at work in a given society at any level and in daily practice. Thus, state fragility caused by a lack of legitimacy may be of two types. In some cases, the very existence of a given state is rejected, while in other cases, people simply want the existing state to function better or differently. While both these types of legitimacy crises are characterized by a gap between people's expectations and actual state performance, the causes of this gap and the range of possible solutions are different.

2-3 Ruling elites and state legitimacy

The state is managed by particular social groups which develop special interests as elected or non-elected agents. The mere existence of the formal state grants international legitimacy to that group and makes resources available that can be used to distribute in patrimonial networks. As a result, the state is strongly supported by elected and non-elected officials whose occupations and life styles are

directly linked to it. In many states in fragile situations they form a 'state bourgeoisie' whose power depends on positions in the state or close relations with the state. Quite often in contexts of fragility the state is socially highly differentiated from the rest of the society. Special social groups (bureaucrats) or classes (state bourgeoisie) have private interests that are deeply linked with the reproduction of a particular type of state to protect their own power. Development agencies and donors often have no choice but to support such groups, since they formally represent the state, either as bureaucrats or as officially validated political leaders. State legitimacy is often particularly strong among this small but very influential elite, but it may not extend to the population in general. The legitimacy of the state and the regime can thus be strong in some parts of society and weak in others. This in turn renders possible the mobilization of 'mobs' by some groups in the name of the state against other groups, the making of civil wars, civil strives and insecurity. Sri Lanka, Myanmar, Bolivia, Burundi and Fiji exhibit features of this mechanism.

2-4 Territorial and social mapping of state legitimacy

Legitimacy in states in fragile situations is likely to fluctuate along territorial and community lines. In the same state territory, the level of confidence and trust that various communities are willing to extend to the state is likely to vary considerably, according to numerous factors that include their past relations with the state, their historical experience of state-like organizations, the consistency of local systems of organizations, the strength and legitimacy of local leadership and power, and the current relations with state leaders (Boone 2003). The result is that state legitimacy and state capacity take on different forms and meanings, and reach different levels of intensity in different areas and communities.

Within a territory, some groups may have a strong relation to the state while others may have a weak or even conflict-ridden one. This may result from political or ideological agreement or disagreement, from geographical proximity or distance to key state institutions, or from converging or diverging institutions and practices in various parts of society. In some areas, official state institutions are ignored or neglected by the population. The state may have virtually given up efforts to control a certain area, or it may struggle to be accepted and considered relevant by particular groups that have become used to relying on other, non-state institutions for their welfare, security and belonging. This may even be exacerbated by international donors' efforts to assist in state building: The state, benefiting from international legitimacy, tailored along international laws and regulations, and constantly fed by externally tailored institutional models, will often refuse to engage in efforts to negotiate, compromise and possibly integrate such groups or areas into the *de facto* reach of the state. This means that state legitimacy may take on different meanings and shapes according to the type of state activity, the type of local societies and geographical areas. One key implication follows: In states in fragile situations, the perception of the state, and the reception of state laws, regulations and actions may vary widely. What may bolster state legitimacy with one group in one area may undermine it in another.

Box 2: The strength and scope of the state

States in situations of fragility not only lack strength. They lack scope. Different human communities are officially gathered into one nation, but they fail to form one political community. This may take various forms. In some areas this may lead to rebellion, tensions or worst civil wars between different regions or area. Thus in *Bolivia*, political opposition to the policies of President Evo Morales' has given rise to a split between rich lowland areas where creoles and white large landlords and gas companies are very influential, and the poorest Indian Andean areas. Regional interests, culminating with the illegal referendum held in the region of Santa Cruz in May 2008 to support regional political and financial autonomy, conflict with a more redistributive national policy heading toward a much more community approach. In *Niger* and *Mali* the Tuareg population is in a minority in the northern parts of the two countries, far away from the political centre. The Tuaregs feel alien to the Southerners' way of life, and want to get the largest share of the royalties paid by multinational companies that exploit minerals in their part of the country. Both countries have had to cope with successive rebellions and civil wars. In other contexts, as in *Fiji* Islands or in *Malaysia*, community feelings are not territorialized. Strong

communities co-exist in a state of uneasiness or a sense of reciprocal deprivation. Persons of Indian origin confront non-Indians in the Fiji Islands, while Malays are fighting so-called Chinese privileges. Tajikistan experienced a bitter civil war between 1992 and 1997, due in large part to the uneven distribution of political power and economic wealth among regions and their elites from the 1950s onward. The result was a legitimacy crisis and a struggle for resources of power among the *nomenklatura* and between regional political factions. Regionalism has been strengthened by the conflict and ensuing government policies. The economic development of the region of the political rulers has been prioritized over other regions (be they deprived or wealthier ones). Politically inclusive, nation-building focuses in practice on Tajiks as the titular nationality, and leaves aside ethno-national groups such as Pamiris, Uzbeks and Russians.

In order to deal with this diversity and to form a political community, some states prefer to avoid centralizing tendencies. Instead they grant different systems of organization and laws to the diverse groups, using either geography or community belonging as basis of implementation. Thus, considerable differences are found between Nigerian states enforcing Sharia and those sharing civil law; or between local governments in Northern and Southern Niger; or between the various provinces in *Ethiopia*. *Cameroon*, though a unitary state, differentiates between areas abiding by traditional law, civil law or common law (South Western Cameroon) in family law and land-dispute regulations. *Malaysia* grants different rights and obligations to people according to their community of belonging in the general framework of its affirmative action policy. There is empirical evidence of such differentiation of patterns of government from the Zairian ‘feudal’ system of government to the constitutional Ethiopian model. Bolivia is too a clear example of such *de facto* differentiated systems of government, as are Senegal or Indonesia. Botswana, Senegal, Burundi, Afghanistan, Mali, Niger, Nigeria (rule of law and Sharia) are further cases of such official or semi-official deals. In Tajikistan, the state lacks strength and scope: it is not effectively represented under the district level. With the slow implementation of the decentralization process, which should benefit local self-governing bodies (*jamoats* and *mahallas*), non-state actors (such as warlords, politically well-connected individuals, NGOs) fill the authority gap at the community level. Moreover, while a unitary state, Tajikistan includes the Eastern Autonomous Province of Badakhshan, whose development is heavily reliant on external funding and assistance from the Ismaili Aga Khan Foundation.

Sources: Frédéric Deycard, « Le Niger entre deux feux. La nouvelle rébellion touarègue face à Niamey », *Politique africaine*, n° 108, 2007, pp. 127–144. Edmund Terence Gomez, ‘The Perils of Pro-Malay Policies’, *Far Eastern Economic Review*, United Nations Research Institute for Social Development, September 2005. Antoine Buisson, Nafisa Khusenova (2008) « La production identitaire dans le Tadjikistan post-conflit : état des lieux », *Les Cahiers d’Asie Centrale*, n°17–18; Antoine Buisson (2007) ‘State-Building, Power-Building, and Political Legitimacy: The Case of Post-Conflict Tajikistan’, *The China and Eurasia Forum Quarterly*, Volume 5, No. 4, pp. 115–146.

3 Founding the rightfulness of political authority: which sources of legitimacy

3-1 An empirical approach to legitimacy

Our concern here is with the mechanisms through which power is legitimated and thus transformed into (state) authority. This makes shared beliefs an essential feature of legitimacy. Shared beliefs are a precondition for legitimacy because they change the meaning of ordinary state input or output activity. When filled with special collective representations and beliefs, the various activities organized by the state take on a special meaning. Elections, for instance, are nothing more than a tool to collect opinions. They take on a distinct meaning when people share the common beliefs that the ‘collective will of the Nation’ is thereby expressed. If elections fail to attract such beliefs, they will probably become nothing more than a formal exercise (see box 3). On the other hand, practices such as elections contribute to build social shared beliefs. The more people become used to such common procedures, the more they see them as part of a legitimate way of participating in, regulating and transferring power. Thus elections that may have initially been seen as nothing more than a formal procedure, slowly come to be seen as a right and as the only way to designate a legitimate government.

When legitimacy is approached as an empirical phenomenon it means that the sources and dimensions from which legitimacy may flow are in theory infinite – everything depends on what the relevant

group of people believes (Hurd 2007). What people come to see as ‘natural’ and ‘desirable’ is shaped by their beliefs and their accustomed practices. Thus, while state legitimacy is often seen through the prism of certain normative standards derived from Western states, it may take on various forms depending on the social and political setting. An empirical analysis of legitimacy means that, however logically and normatively persuasive a claim to legitimacy may be, it does not result in *de facto* legitimacy without active support – or legitimization – by those on the ‘receiving end’ of such legitimacy claims. This means, in turn, that any discussion of *the sources of legitimacy* that are central to state legitimacy must be considered with some caution: they *are effective only to the extent that the relevant constituency considers them to be so*.

3-2 General sources of legitimacy

This study has identified *four* general sources of legitimacy that pertain to the state³: i) *Input legitimacy*: The legitimacy of the state is here tied to the rules and procedures citizens agreed upon and through which the state both takes binding decisions and organizes people’s participation (participatory processes, bureaucratic management, justice, etc.). Those procedures are expected to strengthen the mutually constructive relation linking the state and citizens. ii) *Output legitimacy*: Output legitimacy is about state performance (which may be different from government performance). Legitimacy is defined in relation to the performance, effectiveness and quality of the services and goods the state delivers. iii) *Shared beliefs*: The collective representations that allow people to see the state as the only and final rightful authority and to share a sense of community and identity intimately related to the state. Of central importance in this analysis are the systems of beliefs underlying the power, from which various sources of legitimacy are articulated and different types of legitimacy are built. iv) *International legitimacy*: Grants recognition to the state, the regime and the government and support particular orientations or actions, and may either converge with domestic legitimacy or be at odds with it.

3-3 Identifying sources of legitimacy

Below, we describe various sources of legitimacy that states may draw upon.⁴ Some of these sources are closely related and mutually reinforcing, while others are contradictory. These are described in order to facilitate the analysis of how state–society relations are established and reproduced by a combination of different types of legitimacy. None of these sources of state legitimacy exist in isolation and no state relies solely on one of them. For example, a state whose fragility stems in part from its lack of capacity to deliver services will not necessarily be seen as legitimate if the quality of its services is improved. That will depend on the extent to which citizens consider the state as a whole as legitimate, including how it is seen to embody and represent a sense of community (beliefs) and how it operates and performs (‘input’ and ‘output’). The somewhat detailed list will provide the basis for the discussion, in sections 4 through 6, of the relationship between the various sources of legitimacy and state fragility. These sources of legitimacy are all important. Classifying them into four general sources helps to create a lens for policy-makers. Nevertheless, as mentioned, it is the relationship between these different sources of legitimacy that is most important for state legitimacy, not the quality of any one of these sources.

3-3-1: Input legitimacy

³ This typology may be found in other OECD DAC reports, including the ‘Do No Harm Report’ and ‘From Fragility to Resilience’. See also (Sharpf, 1999).

⁴ While the list of possible sources of legitimacy is arguably more operational than the classical Weberian ideal-type classification, all sources of legitimacy listed below fit into Weber’s ideal-types.

3-3-1-1: Participation and Governance.

Legitimacy can be found in the organization of the relationship between the state and its citizens, allowing citizens to take part and be represented democratically in governing society. Participation is a central source of state legitimacy, even in fragile situations. Ever since the emergence of the idea of state sovereignty as popular sovereignty, the state has been seen as the bearer and expression of the will of the people. This means that some form of participation is central. Note, however, that the participation needed for increasing state legitimacy need not be tied to full-scale democratic elections. Indeed, the last two decades have seen a surge of interest in the much broader questions of the organization of the relationship between rulers and ruled under the heading of 'governance'. Governance is about the processes and mechanisms through which society is governed. It notably refers to the mechanisms by which those who appropriate and use public powers at all levels are held accountable by their constituencies. Elections are a clear process contributing to input legitimacy. However as detailed in Box 3 below, this is clearly related to the social beliefs attached to this process.

Box 3: Voting as a traditional privilege and a good to sell

Different sources of legitimacy can also collide or confront on the issue of voting. In situation of fragility voting may take very particular meanings. Thus according to John Hagelgam, Melanesian traditional leaders play a critical role by determining the vote of a community and negotiating with candidates. Thus, they participate in the making of formal democratic legitimacy by endorsing an aspirant parliamentary with traditional legitimacy. In Senegal, paramount *marabouts* may contribute to the political debate by issuing *Ndigel*, or recommendations, identifying the best candidate for an elected function and orienting the votes of their *talibés* and followers. Those *Ndigel* used to be highly influential, while the closeness with the Khalife general is still a major asset in an election campaign. The same type of relations can be found in Botswana, where the strongest traditional chiefs among the Bangakwetse have considerable influence on the votes cast by members of their group in elections. Voting is as much an individualist as a collective right. In Uzbekistan, where the state has extended its power vertically over traditional community councils (*mahallas*), local leaders (*aksakals*) play a decisive role in mobilizing participation and orienting the vote of their extended community according to the government's wishes. In Tajikistan, *mahallas* are not part of the state administration, but *aksakals* exert a similar political influence on how their community members vote, especially in the countryside. A ballot is seen as a valuable good that can be exchanged against material benefits. As such, it may be sold on the day of the election to the candidate who makes the best offer. In fragile situations, where normative and social system co-exist, a ballot can take on many different meanings: it is a private right to be exercised in the secrecy of an election booth; it is a valuable good that can be sold for cash ; it is a part of a classical gift-counter-gift process, in which related people exchange social capacities

Sources: Hagelgam, John (1998) *State, Society and Governance in Melanesia*, Research School of Pacific and Asian Studies; O'Brien, op cit; Holm, op cit.

Mechanisms of accountability extend beyond elections and include transparency, checks and balances on centres of power, procedural norms, auditing of public funds, appropriate media coverage and public political debate. Such mechanisms of accountability constitute a source of legitimacy since they provide a channel for citizens to be engaged in how the state governs, beyond how the rulers are elected. Officially, legitimacy is grounded in the principle of legality and in rule-following bureaucratic institutions. The state governs society according to law and regulations, upheld by a bureaucracy whose ethos is to be rule-following. The state thus emerges as legitimate because of the mechanisms through which it governs, where impartiality, rule-following and expertise are key features. The distinction between private and public is essential: the state emerges as legitimate in the eyes of the population because those who hold power diligently put public purpose ahead of private gain, adhering strictly to rules and using their professional judgment to advance public goals. The contemporary focus on state building – focused on building and reforming state institutions and training individuals to perform bureaucratic tasks – is an attempt to capitalize upon such rational-legal sources of legitimacy. The rational-legal type of legitimacy is at the core of the international recognition of the Western state that has been imported in many developing countries.

3-3-1-2: Patronage

In a system of patronage,⁵ legitimacy rests with the rewards that accrue from exchange, and from the fact that this exchange pervades large parts of society, in the sense that all but those at the very top or bottom are simultaneously both patron and client of some other person. To say that patronage can be a source of legitimacy is to bring attention to the ‘output’ side of legitimacy and to the fact that existing institutions that ‘work’ in some way are often considered legitimate in the absence of a system for redistribution and governing that can rival the efficacy of that system. If an institution is considered legitimate, then it will be followed or obeyed – even when it goes against one’s self-interest and in the absence of credible sanctions.

Box 4: The example of patronage in Central Asia

In Soviet Central Asia, patronage characterized the republics’ politics and even the relationships between the First Secretary of the Communist Party of the USSR and the First Secretaries of the Republican Communist Parties (and other high-level *apparatchiks*). This mode of power can be found in independent Tajikistan, not only as a colonial legacy, but as a technique to which state leaders and influential sub-state actors (*strongmen*) resort in conflict and post-conflict situations. From 1992 up to 2001, state authority was challenged by warlords (from the opposition as well as the government side) who controlled different portions of the national territory. Emomali Rahmon, Tajikistan’s leader since November 1992, enjoyed only limited authority at first. Patronage was a key tool in creating political alliances with warlords and politicians of his own camp, and of the opposition after 1997. Warlords are key sub-state actors in Afghanistan and in the recent history of Tajikistan. They first appeared in a context of civil wars and collapsing states. Uncontrolled by the central government, they are able to guarantee security, impose their own rules, and strengthen socio-economic mechanisms of survival on the territory they control. Thereby, they gain political legitimacy and authority over locally ruled populations. They seek or at least tend to create a ‘state in the state’, and enter into competition with the central government. Their relations with the state can be diverse and alternating over time, from armed confrontation to active partnership, through pragmatic recognition of the state’s authority against political and/or economic rewards. So warlords can destabilize the state, or participate in the consolidation of its authority when co-opted by the state. This second option has worked in Tajikistan. But in the end, state (re)building implies warlords’ recognition of the state and their full integration into its structures, or their neutralization.

Sources: Nourzhanov, Kirill (2005) ‘Saviours of the nation or robber barons? Warlord politics in Tajikistan’, *Central Asian Survey*, vol. 24, no2, June.

3-3-2: Output legitimacy

3-3-2-1: Security

One source of legitimacy can be found in the provision of security considered as a public good (OECD-DAC 2007). If considered strictly as a good, or service, it does not matter whether security is provided by the state or any other actor. All that matters is the quality, and cost, of the service. Citizens will thus, according to this argument, consider the state ‘more legitimate’ to the extent that it delivers a better product – security – than other actors. Because the provision of security and control over the territory is a defining feature of modern statehood, however, it is a source of legitimacy that cannot be understood solely in terms of a good. For one thing, the state is expected to provide security – that is part of what being a state involves. Thus, while the provision of security will help establish or re-establish an entity as a *de facto* state in a general sense, whether this will bolster its legitimacy will depend to a large extent both on different groups’ experience with the state (whether it has been repressive, violent etc), and on the legitimacy and capacity of other groups (rebel groups, say) to provide security. Security can also be considered as a basic moral value of the state as such. In this view, security is itself a source of legitimacy – one that overrides and renders the existence, and legitimacy, of the state possible in the first place. In this view, the operational question is why there should be states at all, and the answer is found in the state as it provides and expresses a basic value: security. Regardless of whether security is seen as fundamental for the state or as a service provided by the state, it remains central for state legitimacy because it makes possible the appropriation and

⁵ Elements of patronage can be found in almost all states. However, patronage is particularly pervasive in states in fragile situations.

production of other sources of legitimacy: If the state cannot protect its citizens, the provision of other services, such as health and education, becomes costly and difficult, if not impossible. Without elementary security, it also becomes difficult to establish democratic elections or the rule of law. In this sense, the provision of security is fundamental for state legitimacy – not because the provision of security directly translates into state legitimacy, but because it enables the production, and appropriation, of other possible sources of state legitimacy.

Box 5: Security and regime legitimacy

In Tajikistan, state and regime legitimacy rests heavily on the government's success in restoring peace and security after the civil war. The state had lost its monopoly of legitimate violence and had become fragmented, with autonomizing regions, and warlords of the two warring sides controlling numerous areas. The restoration of internal sovereignty could not be achieved without full military support from Russia and the political settlement of the conflict, political manoeuvring and institution-building (disciplined security forces), and the gradual neutralization of warlords through a mix of cooptation in governmental and economic structures, patronage, repression, and political marginalization. By contrast, Uzbekistan has managed to maintain order, but at the cost of repression and by setting up a true police state. Today, internal security can no longer be considered a basic moral value of this state. Although there are some sections of the population who still back the government's tough stance against the alleged 'Islamist threat' and 'terrorists', pious Muslims, especially in the Ferghana Valley, feel unjustly persecuted by a ruthless Leviathan. Even the population at large today fears the all-powerful security forces.

Sources: Antoine Buisson (2007) 'State-Building, Power-Building, and Political Legitimacy: The Case of Post-Conflict Tajikistan', *op. cit.*; Antoine Buisson (2006) « Une démocratisation impossible en Asie centrale ? », IRG, <http://www.institut-gouvernance.org/fr/analyse/fiche-analyse-228.html>.

3-3-2-2: Social services.

The provision of social services such as health and education is central to statehood, but it is not as intimately tied to the state as the provision of security. The significance of social services for state legitimacy is linked to the idea of the state as an agent of progress and development. While the state need not be directly involved in the provision of social services, it is central for its legitimacy that it be recognized as ultimately responsible for and as organizing the contributions of other actors like non-governmental organizations, philanthropic organizations, aid agencies etc. (Joshi and Moore 2002). In this sense, the provision of social services is a central source of legitimacy for states, but must be understood in the context of prevailing ideas in a society about the proper role of the state. States in fragile situations are typically characterized by groups whose relationship with, and benefits from, the state have historically been minimal. The provision of social services can be an important source of state legitimacy, but just as with security, there is no direct relationship between state legitimacy and the provision of social services in the states under discussion here. Non-state actors, non-profit and for-profit, are central in providing important social services, both in the developed and in the developing world. These are generally seen as supporting state legitimacy because they operate within a framework defined by the state. In fragile states, however, this is often not the case, and service providers may replace rather than supplement the state.

3-3-3: Beliefs

3-3-3-1: Collective Identity

One of the most pervasive features of the processes of state formation is the importance of a collective identity. The construction of a nation as an 'imagined community' (Anderson, 1983), bounded by a territorial border, has been and remains a central resource for state legitimacy. A strong sense of community attached to the state may act as a bridge between various other and conflicting sources of legitimacy such as tradition, religion, language or ethnicity. Whether defined in ethnic-cultural or in civic-political terms or in a looser sense of 'community', this collective identity is central to the making of a politically united people around a common acceptance of a state and their mutual recognition as citizens despite their differences. Indeed, nationalism, in its stronger version, can be

seen as an overarching, transcendent resource that gives the state a ‘purpose’ in the eyes of the population.

3-3-3-2: Religion

Religious beliefs, and religious institutions, play a central role in defining what is considered morally right, appropriate, sinful, wrong etc. in a society and in shaping people’s political expectations and conceptions of authority. Religion shapes broader categories and standards in society – standards that people use to evaluate, judge and debate state policies and institutions (Lamont and Thevenot 2000). Religious beliefs may be incorporated into and made part of the state institutions and policies, thus being used as an active resource of state legitimacy. The history of state construction in the Western world saw the state emerging by first using religion and then replacing it as a central resource of legitimacy (Rae 2002), while the perceptions of the secular state and authority by citizens remained heavily influenced by religious frameworks and conceptions. Many states are in the precarious position of trying to balance different and competing sources of legitimacy. Religious beliefs in a given society may, for example, be at odds with foundations of a modern liberal-style state or with the demands or suggestions of the international community for reforms in certain areas, as in the case of family law, or family planning and reproductive health. In other social contexts, religion may be used as a strong resource for contesting a regime (as in Myanmar) or for contesting the very foundations of the state and to presenting alternative models of states (Iran, Hezbollah in Lebanon, Pakistan). State fragility may come from an instrumentalization of religion against the state and the values on which it is built.

Box 6: Religion and state legitimacy

In Muslim but constitutionally secular Tajikistan, state–religion relations are tense, often ambivalent, uneasy at best. The place and role of Islam in society have been a central issue in politics since the 1980s. Islam was first used to reject the legitimacy of Soviet atheist rule and of the state-controlled Muslim clergy, to contest the distribution of power and wealth, and to reintroduce Islamic principles and practices in daily life. After Independence, it was presented as the main element of a new national identity, and quickly became a mobilization tool at the hands of the Islamic opposition party (IRPT) in the struggle for power against the (former) *nomenklatura* (which also used Islam as a source of legitimacy). During the civil strife, many feared the possible establishment of an Islamic republic. But while IRPT had publicly renounced *jihad* and adopted democratic principles, the political and military stand-off and external factors pushed for the signing of the 1997 Peace Accords, which entailed the legalization of IRPT (and other opposition parties) and a transitional power-sharing agreement between the government and the opposition. In 2000, IRPT won two seats in Parliament.

Since 1997, the government has cautiously maintained official discussions with religious representatives as part of the inter-Tajik dialogue designed to consolidate national reconciliation. And Islam is used as a source of legitimacy: for instance, the President takes the oath of office on the Koran. But at the same time, the government strives to control Islam politically and to reduce its place in national identity. First, it has succeeded in marginalizing IRPT in the political game, and has kept the Islamic clergy under the scrutiny of the state, in direct continuity with Soviet times. It also alternates permissive and repressive decisions on religious practice in the public sphere. Second, scholars and intellectuals working to build a national identity are asked to put the emphasis on founding traditions and myths that are chronologically antecedent to Islam, like Zoroastrianism and Aryanism.

Sources : Aziz Niyazi (1998) ‘Islam in Tajikistan: Tradition and Modernity’, *Religion, State & Society*, vol. 26, no 1; Olivier Roy (2001) « Islam et politique en Asie Centrale », *Archives des sciences sociales des religions*, 115, 46^e année, juillet-septembre.

3-3-3-3: Tradition

Tradition is an important source of state legitimacy, but also the one that it is most difficult for external actors to understand, much less act upon. As noted, state legitimacy and strength ultimately depend on, and are defined by, the ability to establish constructive linkages between the state and society. Traditions are defined by both material and non-material rituals and symbols whose invocation remind people of their identity, their sense of belonging and loyalty, their role and place in a particular community. Through extended processes of socialization, people come to take such rituals, practices and symbols as natural, self-evident – as the ways things are, thus inscribing in established

institutional orders (including that of the state) a sense of ‘naturalness’. When fully effective, tradition – as any other source of legitimacy – is not even part of the on-going reflection and debate about how to organize and govern society, or a small community – it simply becomes the habitual, routine way of doing things (Giddens 1985). However, traditions are not static: people continue to adjust their behaviours and practices to new situations, and the state is instrumental in identifying and defining some institutions and customs as ‘tradition’ and not others (Hobsbawm and Ranger 1983). Here, religion is often central. Its meaning and broader role in society may shift over time, owing in no small part to how religious practices and beliefs are used to either legitimate or seek to de-legitimate the state.

When part of traditional, habitual ways of doing things, religion assumes the form of more or less articulated views and standards or principles used to differentiate right from wrong. Traditions and traditional leaders can also be created by the state – intentionally or accidentally. In such cases, tradition is transformed from being something that is taken for granted to something that is self-aware and discursively articulated. Liberation struggles are part of this constantly created tradition, providing the state and power-holders with a ‘grand saga’ granting undisputable legitimacy to them. States in fragile situations, as we shall see, are often states where strong traditional legitimacies exist and are linked to non-state institutions and practices, and where peoples’ allegiance, trust and identity are not only tied to the state. Modern states in such contexts of fragility generally borrow items of traditional legitimacy and incorporate them into their own systems of legitimacy.

3-3-4: International legitimacy

3-3-4-1 International Recognition

A state’s external sovereignty is dependent upon international recognition. In that sense, recognition by other states is not only a source of state legitimacy, but a source of establishing a sovereign state as such. International recognition is also a source of legitimacy beyond this: In a globalized world, international recognition of the state and its actions is central not only externally but also internally. Financial, political and military support from external actors, or the international community may, however, be an ambiguous source of state legitimacy. As critics of state-building efforts typically point out, the active and sustained actions of the international community in a state may undermine state legitimacy because these produce accountability vis-à-vis donors rather than the domestic population (Chandler, 2006). To the extent that state legitimacy ultimately rests on what we here refer to as constructive state–society relations, international recognition can potentially disrupt the focus on the ruling elite on its domestic constituency.

3-3-4-2 Human rights.

International human rights norms constitute a source of legitimacy in two distinct ways. First, they are hailed as a universal framework within which all polities should operate, as enshrined in the UN Declaration on Human Rights. The significance of human rights as a source of state legitimacy became more pronounced during the 1990s as the principle of state sovereignty became increasingly conditional upon respect for fundamental human rights. Over and beyond the significance of human rights as a source of external or international legitimacy, however, they represent a source of legitimacy domestically to the extent that they provide a ‘moral purpose for the state’ (Reus-Smit 1999) and establish a link between the state and its subjects in such a way that they become recognized as citizens with rights that the state functions to defend and uphold. As we discuss later, however, adherence to human rights norms does not necessarily increase state legitimacy: what matters is how and the extent to which human rights norms and other internationally recognized norms are relevant for and resonate with those groups whose allegiance, trust and support is needed to strengthen the state. In short, we make a case for realism in relying on rights-based and international standards for seeking to bolster state legitimacy in fragile situations.

4 Competing for legitimacy in contexts of fragility

None of the sources of legitimacy listed above can by itself legitimize the political power. In any state, diverse sources of legitimacy co-exist and interact, bolstering or not state legitimization. Our central contention is that *state legitimacy depends on a stable and resilient web of different and multifaceted sources of legitimacy*. This means that state legitimacy does not depend on a particular hierarchy of sources of legitimacy. This helps to explain why it is so difficult for external actors to contribute to state legitimacy in fragile situations, as the fostering of state legitimacy requires, in our view, a comprehensive approach that *addresses different sources of legitimacy at the same time as their interactions*. Here, a major limitation is the persistent problem of engaging in state building with more or less pre-defined templates and with little knowledge of different groups' beliefs, historical relationship with the state. *External actors* must be cognizant of the fact that they will always, intentionally or not, *affect the competition for legitimacy between different local groups*. They will also have to tailor their interventions so as to help to bolster the state in question to draw upon and integrate different, sometimes competing, sources of legitimacy – what we refer to as ‘constructive interactions’ between diverse sources of legitimacy.

Below, we first discuss these interactions between different sources of legitimacy under the heading of ‘normative pluralism’. We move on to analyse the dynamics by which different actors – state and non-state – use and deploy different sources of legitimacy. In the final analysis, what establishes the state as the ultimate political authority is the ability to develop mutually constructive and mutually reinforcing relations with society.

4-1 (Co)existence of various forms of legitimacy: normative pluralism

‘Normative pluralism’ describes those situations where various normative systems and sources of legitimacy (legal, traditional, religious, etc.) co-exist and compete. Each one of these systems of norms refers to values and authorities affecting both idea of power and its practices: Such varying sources of legitimacy affect and shape existing practices and institutions. In many cases, there are different systems of governance and regulation – formal and informal – that co-exist and that rest on different norm systems and different sources of legitimacy. While different practices and institutions may, as in the case of the Senegalese banking system (see Box 7), co-exist and partly reinforce and supplement each other, the converse is often the case when external actors seek to establish new governance rules for state.

Box 7: Co-existing systems of norms: the Murid informal banking system (Senegal)

Senegal has a modern banking system that was established by the former colonial powers. This banking system operates according to international rules and regulations. However, the rules and mechanisms of this modern banking system are alien to ordinary peoples' understanding and perceptions of credit, confidence and guarantees. As a result, this banking system fails to reach and attract small economic operators. This does not mean that those economic operators are left without credit. People may get credit from other unofficial channels. Senegal's strongest Muslim community, the Murid brotherhood, has for years organized a parallel financial system which allows people to get credit and benefit from financial transfers, including international transfers. This financial system rests upon the strong social and religious link existing between members of the brotherhood and upon the legitimacy that the leaders of the brotherhood enjoy from their followers (*talibés*). Social pressure and trust, linking financial service to religious and cultural norms here allow for quasi-contractual relations, renegotiation of commitments, and compel contractors to keep to their word. This parallel system is closely related to yet distinct from the official economy, and leaders of the brotherhood act in close connection with the Senegalese state. Similar forms of co-existence can be found in the ‘tontine system’ found in other Western and Central African states. This system works along local social norms and through strong social pressure. The ‘Hawala’ system is another widespread type of alternative and informal financial system, used by labour migrants whose countries have a nascent, dysfunctioning or unreliable banking system. ‘Hawala’ is a kind of informal value transfer system whereby value rather than money is transferred from place to place, through intermediaries. Therefore, it rests upon trust and social pressure among members of extended family and

regional networks. This shows how co-existing systems of norms may interact and be a positive contribution to the development and involvement and participation of people into social activities.

Sources : *Economie des filières en régions chaudes: Formation des prix et échanges agricoles*, séminaire d'économie et de sociologie, Editions Quae, 1990 ; Pierre Kipré, Leonhard Harding, Boubacar Barry (1990) *Commerce et commerçants en Afrique de l'Ouest, Le Sénégal*, L'Harmattan; Mughal, Abdul-Ghaffar (2006) *Migration, Remittances, and Living Standards in Tajikistan* (Submitted to IOM/Tajikistan).

Research on the evolution of the legal management of land in Africa, for example, has shown how principles of ownership and property rights have supplanted and marginalized pre-existing customary principles of 'access to land.' Here, donors have typically sided with or advocated efforts to subsume customary law under new, liberally oriented laws. As a result, a gap emerges between the *legal* and the *legitimate*, since large parts of the population see customary law as more legitimate than state law. Moreover, new practices and norms emerge out of the combination and conflicting demands placed on actors, resulting in hybrid rules and practices associated with land rights and property (see Box 8).

Box 8: Co-existing property rights and normative blending

Traditional land ownership can be described as collective property in which access to land is regulated by customary norms. Land is distributed within the communities following hierarchical and social norms. To put it another way, an individualist conception of property rights does not exist. Property rights are enshrined in the community which may delegate part of them (*usus* and *fructus*) to individuals acting as trustee of the community via social intermediation (e.g. alliance between families and groups). Conflict is regulated by traditional authorities, whose legitimacy derives from their social status within the community. In Senegal, the relationship between *marabouts* and *talibé* (disciples) can be described as a gift/counter-gift system. For a *talibé*, working for a *marabout* abroad or on a *marabout's* land in *Murids* village is a way to express his devotion and faith. This working relation leads to informal land distribution through which young disciples are awarded informal property on plots which may tend to become inalienable (the land can be transmitted from father to son), but are not property rights as defined in the law of the Senegalese state. In the context of attempts by the state to individualize property by the possession of property rights delivered by the state administration, Le Bris et al. find that, when these two sources of legitimacy co-exist, securing access to land may require seeking both formal property rights guaranteed by the state and traditional acceptance of one's use of the land. The confrontation between modern private individual property rights and community-based ones leads to different land markets co-existing, while traditional lands are being registered on the modern market as 'private lands' by people who want to get some guarantee to which they are not entitled according to traditional law. This is a case of normative blending resulting from the co-existence of different sources of legitimacy for the determination of rights to land.

Sources: *Economie des filières en régions chaudes* (1990) *Formation des prix et échanges agricoles*. Séminaire d'économie et de sociologie. Editions Quae: Emile Le Bris, Etienne Le Roy, Paul Mathieu (1991) *L'Appropriation de la terre en Afrique noire: manuel d'analyse, de décision et de gestion foncières*. Paris : Khartala.

Within current thinking on state building, the rule of law is considered a central source of state legitimacy. To bolster state legitimacy and capacity, the international community often advocates rule-of-law reform as a cornerstone of state-building efforts – in the form of writing new laws that are in conformity with international standards and that are liberal in orientation; establishing new legal institutions such as courts; and training judges and law enforcement personnel, such as police officers. While these measures may help to bolster the state capacity to govern in accordance with internationally established standards, it is an open question whether such a new system of laws will be considered legitimate by the population in question. As Eberhard (1997) notes, 'The sociological institutionalization of the law refers to the acceptance of the legal system by the people to whom it is meant to apply.' In contexts of fragility, state law may be seen as unacceptable and illegitimate to large parts of the population, particularly in such areas as land management, property law, family and criminal law. As much as modern statehood is defined by rational-legal legitimacy, therefore, it cannot be assumed that establishing the formal contents necessary for the rule of law will automatically translate into increased state legitimacy. It all depends on whether these laws (referring to rational-legal legitimacy as the main social regulation tool) are or will be accepted as legitimate in their content and role: and here, existing sources of legitimacy other than those stemming from rational-legal principles are crucial.

In short, rational-legal and liberal principles are not self-sustaining as sources of state legitimacy in situations of fragility, but rest fundamentally the nature of the interactions with other pre-existing sources of legitimacy for their social and cultural validation and acceptance. *Legitimacy* is therefore a condition for *social efficiency* of law. Indeed, in contemporary discussions about state legitimacy and state building, the diversity of legal and normative orders is typically ignored or marginalized. Customs codification or legal pluralism is often streamlined and integrated within existing state law. However, the values underlying customary law and practices are often not taken into account. Greater attention needs to be paid to the relationship between legality and legitimacy, in a context of competing legitimacies and legal systems.

To return to the example of land management: land management is not only a legal or economic problem but also a social, cultural and religious one. Any dispute in that sphere is likely to confront different systems of norms and of law, which raises the question of how the state can accommodate and institutionalize normative and legal diversity without being weakened or threatened – how it can work out mechanisms that can reconcile legality and legitimacy aiming at anchoring state legality in normative pluralism (international norms being part of this pluralism). Understanding and acknowledging the diverse sources of state legitimacy is a major challenge for external actors. By not failing to grasp how, say, liberal or Western rule of law affect established forms of law, external actors run the risk of creating shallow institutions and practices with little substantive hold or relevance for large parts of the population. (See Box 9)

Box 9: Ignoring normative pluralism

Dominik Kohlhagen describes the efforts of modernizing Ethiopian law thus: ‘When between 1957 and 1965 the major body of present Ethiopian law was enacted, the principal aim was to achieve a modernization of the legal system. Although the country knew a great variety of local legal traditions, the new legislation was almost exclusively inspired by Western conceptions of law. Rather than to reflect social realities, the codes were to become a model for the society. ...As a result, large parts of legal practices today are not recognized by the formal laws... Furthermore, the question of how to integrate and articulate traditional and popular sets of regulation into the law is a concern for present legal reform projects. Most African countries today are facing the same problem’ (2008: 77). While this issue is often acknowledged, there is little work done to make try to make sure that different systems of law can be re-articulated and adapted to new contexts.

Source: Kohlhagen, Dominik (2008) ‘State Law and Local Law in Sub-Saharan Africa’ in Pankhurst, Alula & Assefa Getachew, (eds.) (2008), *Grass-roots Justice in Ethiopia: The contribution of Customary Dispute Resolution*, Addis Ababa, Centre français d’études éthiopiennes).

4-2 Competition over diverse sources of legitimacy: normative pluralism in fragile situations

What make states in situations of fragility unique is both that the various sources and forms of legitimacy are unlikely to reinforce each other and may be at loggerheads, and that they may be used by domestic actors as alternative assets in their struggle for power or advantage. States in fragile situations are not strong enough to draw upon or subdue other major sources of legitimacy, but are forced to struggle to enforce their authority against other actors seeking to appropriate and shore up not only material power but claims to legitimacy. Thus, state–society relations are shaped along conflicting sets of institutions, rules and processes and legitimization models which keep shifting according to actors (public institutions being actors) or group strategies. A major feature of states in situations of fragility is that they are affected by conflicting and alternative models of social and political organization and legitimacy without being able to sideline them, or include them into the state project. Fragility stems from the fact that the state fails to impose the *ultimate* ‘rules of the game’ in the country. It is unable to structure society in such a way as to it provides ‘the social and cultural framework within which people think and act’ (Eberhard 1997).

In societies where various patterns of legitimacy coexist *without* the state being able to act as an overarching structure, actors may ‘jump’ from one source of legitimacy to another. Actors engage in ‘forum shopping’, or go from one semi-autonomous social field to another, relying on whatever legitimacy they may garner from the area within which they operate (Moore 1973). Partial and unpredictable ‘miscegenation’ of various normative and legal orders thus emerges as people may exploit the heterogeneity of normative orders challenging the frame of reference that the state provides (Belley 1993 and 1997). Some groups may even ignore or refuse the legitimacy of the state and pay alternative allegiances. So-called ‘informal’, ‘non-state’ institutions, rules and processes may enjoy considerable legitimacy and are often more trusted – not only because these may provide alternative venues for security and social services, but also because these non-state institutions have been able, over time, to establish a sense of allegiance, trust and loyalty. Both customary practices of rule and religion may be cases in point. The existence of such alternative orders present states with a challenge inasmuch as these provide an ‘exit option’ from the state (Hirschmann, 1970).

Box 10: Using traditional symbols and sagas to ground state legitimacy in historical social mobilization

Symbols and historical sagas serve as essential features of social and political life as they help to justify actions, signal expectations, and aid in legitimizing political leadership. In situations of fragility in which different norms co-exist, leaders try their best to secure whatever links with those symbols and historical sagas to strengthen their power. In Guinea, Sekou Touré came to power amidst great popularity and political legitimacy. He was nevertheless confronted by severe political, economic and ethnic problems. To weather these problems, he successfully used historically established political symbols. For instance, he transported back the remains of two great figures of ‘resistance’ against French colonial occupation in Guinea – Almamy Samori Touré and Alpha Yayah – for re-burial in Guinea. Whenever his name was called, a string of titles were read out, in the same manner in which the powers of a supernatural being were being invoked by traditional malinke griots, followed by the clapping of hands. This ritual was enhanced by the practices of the traditional African society and Islam, the dominant religion in Guinea. Sekou Touré was called ‘Silly’ (the elephant) as he was supposed to share the qualities of this animal and be wise, fearless, overcoming, and intelligent. In Central Asia, a similar form of traditionalism is found in the personality cult built up around former Turkmen President Saparmurat Niyazov. In Tajikistan, President Rahmon has presented himself as the saviour of the nation and ultimate state-builder, and, as such, the ‘heir’ of the founding father of the Tajik state, Ismoil Somoni in the ninth century. The same dynamic can be found in numerous African, Asian and Latin American countries. For example, ‘Indian leaders’ in Mexico (Chiapas), the Pachakutik movement in Equador and the Cocalero movement led by Evo Morales in Bolivia have all invoked traditions, history and old social and religious practices and beliefs to support political mobilizations and provide them with the ‘value-added’ to power that we call legitimacy. In Pacific Islands, the role of the King of Tonga or of the chiefs in Fiji is essential for any political leader wanting to strengthen its hold to power. The 1987 Fiji coup, for example, was supported by a strong reassertion of traditional authority.

Sources: Hayward, Fred. M and Dumbuya Ahmed. R, (1983) Political Legitimacy, Political Symbols, and National Leadership in West Africa, *The Journal of Modern African Studies*, Vol. 21, No. 4, pp. 645–671; Massal. J (2005) *Les mouvements indiens en Equateur: mobilizations protestataires et démocratie*, Paris, Karthala, 2005. Guerrero. Andres (1997), Poblaciones indigenas, ciudadania y representacion, *Nueva sociedad*, (Caracas), n°150, 98–105.

In fragile situations, non-state actors may use the state’s inability to provide security as a justification for challenging the state and for presenting themselves as better able to cope with the legitimate expectations of the people. This results in intense political competition between the state and other actors who may take advantage of the state’s lack of capacity and legitimacy to offer alternative systems of government and present themselves as speaking on behalf of the people and the nation. The role of the Hezbollah in Lebanon or of Islamist movements in several Arab countries, the capacity of FARC in Colombia to offer in the 1980s and 90s an alternative order – all these are clear examples of this competition over sources of legitimacy. They show that if the state fails to incorporate other types of legitimacy that people consider to be essential, it will soon be challenged.

Box 11: Capturing legitimacy to fuel alternative models of state and societies: Hezbollah and the Lebanese state

Since 1982 in Lebanon, Islamic movements have challenged the state's legitimacy through a strong presence in public service delivery (especially in health, water, education, and rubbish collection). This relative absence of the state in services delivery and urban development projects is illustrated by the huge South suburb of Beirut which was affected by a strong demographic increase (partly linked to the heavy influx of Shiites refugees) and was abandoned by the state, particularly during the war periods. This area has been a privileged ground for the creation of a strong popular legitimacy by a constellation of Hezbollah-related associations and NGOs that work to meet the population's basic needs. The Health Committee (*Hayât—al-sihhiyya*) has coordinated a large number of efficient medical centers in the area. In education, al-Mustafa High School is often presented as one of the biggest and most efficient of the country. A notable aim of these organizations has been to foster (often successfully) a form of self-sufficiency among the communities, which goes hand in hand with the building of a 'society of resistance' (an alternative society) based on the rejection of state authority and legitimacy. The strong adherence of the population of this area to the ideology and the political project of Hezbollah demonstrates the tight link between two major sources of legitimacy cited below: one referring to what the actors does, the services it delivers, and the other one based on the shared beliefs that it develops among the population.

The specificity of contexts of fragility is not only that there may be competition between groups over different sources of legitimacy, but also that the different sources and forms of legitimacy claimed by the state are not mutually reinforcing. Many fragile states are characterized by extensive patronage systems that give legitimacy to the state. Patronage, however, makes the provision of state services – be it security or social services – highly differential between groups, where some groups receive much more than others. This may reinforce state legitimacy with some groups, while undermining it with others. Indeed, patronage directly contradicts efforts to establish a state that functions according to rational-legal principles. Finally, states in fragile situations often find themselves forced to struggle over sources of legitimacy with other groups and to use their limited capacity for governing to enforce their authority against other actors seeking to appropriate and shore up not only material power but also claims to legitimacy.

4-3 Constructive interaction between diverse sources of legitimacy: strengthening state legitimacy and reducing fragility.

As noted, actors keep on playing with the heterogeneity of normative orders and their different spheres of implementation (inter-normativity: Belley 1993 and 1997). Those *bargaining* processes contribute to the *reshaping* of the different patterns and institutions, through reciprocal interactions and adjustments. Organizing systematic interactions between actors of all types (public institutions, civil society, private sector, etc.) within public spaces of dialogue contributes to the making of a public sphere (or 'civic space' for G. Hyden) and to a de facto integration of various normative systems (through confrontation, miscegenation, hybridization, overlapping, deviance, etc.). Supporting such systematic *interactions* of actors and norms is the best possible way to support the state legitimization and institutionalization processes.

Box 12: Multi-Stakeholders' Forum on Governance in Mali: a "palaver tree" to exchange, learn and build'. An initiative for articulating the diverse sources of legitimacy in public debates.

Under the aegis of the Commission for Institutional Development (CDI), diverse actors in charge of public management (civil society organizations; public administrations and international partners) or academics, and with the methodological support of the Alliance to Refound Governance in Africa, the Multi-Stakeholders' Forum on Governance in Mali was launched in June 2008. Defined as a space for dialogue between diverse governance actors in Mali (notably the development partners), it aims to facilitate debate and the confrontation of ideas, innovations and learning process within an informal setting. It is a space for citizens' interpellations and large public debate. It aims to establish a diagnosis on governance in Mali to better identify drivers of change and actions to change mentalities and practices and so invent new forms of governance anchored in the Malian context. This long-term process (three years) is linked to the strong conviction that answers to central governance issues are not likely to come from miracle formulas, but from a meticulous process of practices

examination, experience sharing and governance devolution to regional and local levels. Democratic governance, based on socio-cultural settings and history, benefits from dialogue and actor training.

Governance debates address such issues as public service delivery, civil society, access to justice and citizens' rights... For each of them, 40 people are designated as referees while 10 more people (invited, experts and witnesses) as called upon to give special contributions. Four sessions of eight hours each are held every year. They are structured around studies and case studies commissioned to Malian experts, researchers and academics. Each report of session encompasses proposals, and every six months these proposals are translated into action plans by participants (gathered in a special college) who offer implementation, monitoring and assessment plans. Training and capacity strengthening are given priority in these plans. At the end of the first three years, a collegial assessment will be held to determine the follow-up to this process.

For more details see www.afrique-gouvernance.net

The issue of legitimate public action is closely related to this challenge of managing pluralism without weakening state legitimacy. State making is above all an exercise in associating different systems of norms and values to shape a common frame of legitimacy allowing for an accommodation of diversity with unity and general interest. Participatory processes as any other sorts of bargaining and active subsidiarity⁶ (Calame, 2003), are some examples of such challenges (see box 13).

Box 13: State reform through ownership: municipal participatory budget and Local Solidarity Governance Program (PGSL) in Porto Alegre, Brazil

In Porto Alegre, the now-famous participatory budget has provided strong evidence of how empowerment of the poor may contribute to more efficient and effective fiscal policy and policy-making processes and implementation. 'The participatory budgeting is a structure and a process of community participation based on three major principles and on a set of institutions that function as mechanisms or channels of sustained popular participation in the decision-making process of the municipal government. The three principles are the following : (a) all citizens are entitled to participate, community organizations having no special status or prerogative in this regard; (b) participation is governed by a combination of direct and representative democracy rules and takes place through regularly functioning institutions whose internal rules are decided upon by the participants; (c) investment resources are allocated according to an objective method based on a combination of "general criteria"-substantive criteria established by the participatory institutions to define priorities and "technical criteria"-criteria of technical or economic viability as defined by the executive and federal, state, or city legal norms-that are up to the executive to implement'.

Sources: [Boaventura de Sousa Santos](#), (1998), Participatory budgeting in Porto Alegre: Toward a redistributive democracy, *Politics & Society*, Vol.26, No. 4.

'The PGSL (...) aims at promoting a new relationship between public authorities and society and more broadly to reorganize the municipal (local government) model. Public administration is to follow three principles: **plurality** (recognizing that society consists of various sections and groups), **dialogue** (society becoming a system of connections that are always open and respected) and **consensus** (forming a community of projects and pacts resting over social responsibility and sustainable development). The networks are being organized in the thirty regions of the city and will proceed into the 82 neighborhoods and settlements of the city. The implementation of the GSL in this first round of regional coverage will follow the following steps: public launch of the proposal; training the first network energizers; setting up connection teams; constructing GSL networks; arranging future-vision seminars; preparing diagnosis of assets and needs; developing the participative plan and defining goals; formulating a priority agenda; and agreeing the Local Solidarity Governance Pact.'

Fogaça de Medeiros, José Alberto, 2008, « Mise en œuvre de la gouvernance solidaire locale à Porto Alegre : stratégie de promotion de l'insertion sociale », *La gouvernance démocratique: un nouveau paradigme pour le développement ?*, Karthala, Paris, 2008, pp. 327-341. English version forthcoming.

⁶ The principle of active subsidiarity, refers to the ability of the state to lead and be part of a policy network associating different levels of governance in order to reach through participation a common objective to the benefit of the population.

5 State strategies and the politics of regime survival

We have argued that state legitimacy depends on the state's ability to meet the material and symbolic expectations of the population. The underlying assumption is that the state is generally accepted as the highest political authority by a majority of the population. In many, but not all, fragile states, this is a reasonable assumption. Even if people are dissatisfied with how the state functions, they do not reject the state's right to exist or to make binding decisions as such. Instead, they want it to function differently. They may want it to pursue different policies, to allow for more popular participation or to include more sections of society into state institutions and to share their own non legal-rational perceptions and beliefs over authority, public goods and public/private sphere relations. The following discussion on challenges and constraints faced by fragile states focuses on domestic legitimacy. The specific problems related to international legitimacy will be discussed in section 6.

5-1 State strategies in context of fragility

While states in context of fragility claim to have the monopoly of legitimate violence, they actually compete with other groups, which either claim or may *de facto* enjoy considerable legitimacy in certain groups and territorial areas. States in fragile situations generally resort to one of two strategies. They may court non-state authorities and institutions to get support from and access to significant parts of the population. In that case, the state makes deals with alternative authorities in an effort to neutralize threats and prevail in the long run. Alternatively, they may opt to ignore 'society' and insist that the state is the only legitimate authority, as stated in formal regulations (constitution, laws, institutions) and as recognized by international actors. When lacking capacity, a state that chooses the latter strategy is a 'suspended state.'

Box 14: Botswana Kgotla, Burundi Bashingantahe, Rwanda Gacacas: three cases of reciprocal transformations

In *Botswana*, as a former customary court of law and public forum, the *Kgotla* (supported by the local chief system (Bogosi) simultaneously enables government policies to spread all over the countryside while being discussed and 'owned' by ordinary people in local public debates. *Kgotla* is a forum in which effective discussions over leaders' choices and policies take place. This form of public debate allows for more transparency and accountability of leaders' practices – supporting what is now known as the *Tswana democracy*. This does not mean that traditional authorities and normative system prevent the modern state from spreading among local people: quite the contrary. Since 1993, there has been a clear trend towards the diminishing of traditional power. Chiefs have lost their land-distribution power to the benefit of newly-created Tribal Land Boards, while their judicial power at local level is contested. The local chieftainships continue to make it easier for state power and decision to reach ordinary people, influential chiefs interpreting state policies for the people (top-down process) and 'channelling' people's choices and preferences (bottom-up process). The chiefs have been valuable not only in organizing the assemblies of the *Kgotla* but also in its extension and modernization, to include the participation of women, settling disputes and promoting tolerance and accommodation. Thus, they have been essential in intensifying and legitimizing the democratic system. The *Kgotla* acts as a genuine public forum in which people may both openly discuss and contest policies of common interests while confirming their sharing of common values and norms.

Sources: Holm, John and Patrick Molutsi (1989) *Democracy in Botswana*, Gaborone, McMillan; Brothers, Sue; Janet Hermans and Doreen Nteta (eds), (1994), *Botswana in the 21st century*, Gaborone, The Botswana Society.

After years of ethnic war, in 1988, the *Burundian* government stated that the revival of *Bashingantahe* could contribute to national unity. For five centuries, this traditional institution had designated an organized corporate group of wise and honest men whose effective juridical role was legitimated by their sense of truth, justice and accountability. However, this modern revamping of an old institution may be nothing more than a political game by political leaders. The government has been blamed by the *Bashingantahe* council for appointing as *Mushingantahe* individuals who already hold positions in the state territorial administration and act as local party committee chiefs.

Source: Gahama, Joseph, (1983), *Le Burundi sous administration belge*, Paris, Karthala.

In 2001, *Rwandan* law provided for the creation of more than 10,000 *Gacaca* courts inspired by formerly existing traditional dispute resolution through mediation structures. 'Living law' or locally accepted norms, values and ethics, have proven far more efficient for dealing with a genocide that involved much of the population, than any type of state and official law, which would seem alien and unworkable for ordinary people. *Gacaca* judges are selected among 'honourable' members of local communities, and are all people of high moral standards. With the active participation of the communities, *Gacaca* judges are engaged in establishing the facts and hearing confessions. The mission was not only to adjudicate but also to achieve national reconciliation after the 1994 genocide. Traditional – meaning generally accepted at grass-root level – systems of dispute resolution allow all people from each community to participate in the discussion over what went wrong, what types of behaviour and acts were wrong, and to find forms of mutually accepted sanctions and compensations.

In most cases, states in fragile situations choose a mixture of these two strategies. Thus, governments and states in fragile contexts engage in ambiguous relations with other actors, ranging from confrontations and struggle against separatism (Bolivia and Santa Cruz province; Sri Lanka and the Tamil uprising); strong and violent opposition to alternative legitimacy and to the institutions they support (destruction of chieftainship, traditional and religious leaders); to close exchanges and uneasy compromises and trade-offs; to finally simply abandoning their mission of sovereignty in some areas or communities in exchange for non-interference by rival groups (DRC, Colombia, Niger Delta area, Lamido de Rey Buba in Northern Cameroon). This is a dominant feature of fragile states. They mix formal, state-sanctioned rules, regulations and processes with informal ones (Hyden, 2006). The state is thus partly 'captured' by groups in society that are busy 'eating it up' from the inside, socializing state functions to their particular needs and interests. On the other hand, 'traditional' societies, communities or legitimate powers are no longer so traditional, being deeply moved and transformed by pervasive state policies and interventions (however weak they may be) and highly 'modernized' leaders (Tréfon). This means that the dualistic approach of confronting a 'modern' state with 'traditional' societies must be abandoned.

5-2 Patronage, regime interests and the politics of state building

In many (most?) states in a situation of fragility, regimes secure the support they need, not through the pursuit of state policies and the systematic expansion and spreading of state rule, regulations and principles to the whole of society, but by using state resources to offer material rewards in return for political support. What is on offer may vary. Clients may be offered positions in the state (which can be used for personal enrichment), business licenses, property or, quite simply, cash. The point is that a state of this kind depends on the distribution of state resources to garner the support it needs for its own political survival. Such a system, where positions within the government apparatus are of crucial material importance, also opens up opportunities for exploiting one's own position for personal gain.

Decisions to engage in patrimonial practices may be based on either moral considerations or on considerations of interests. This applies to both leaders and ordinary citizens. When actors decide whether or not to follow the state's official rules, they make take both norms and interests into consideration. In principle, the propensity to follow a given rule is likely to be strongest when norms and interests coincide, so that the actors' interests are best served by actions that are compatible with their own norms. Conversely, if following the legal-rational rules of the state does not serve actors' interests (material as symbolic) and if these rules also appear as alien and in tension with historically established practices, it is very unlikely that they will be followed.

This is often the case in fragile situations. On the one hand, from the state's perspective, generalized patronage or neo-patrimonialism may prove to be the most efficient tactic for a state with low capacities to assert its domination or avoid violent conflict. Many such states are unable to overcome alternative legitimacies and authorities, due to lack of economic or administrative resources or lack of cooperative relations with other actors in society. Patronage and other systematic patterns of redistribution of state resources may appear as an effective tool to keep together different sections, communities and areas of the state space (as in Gabon, Cameroon, Nigeria, DRC). And if, (as argued by Bayart 1993, or Chabal and Daloz 1999), maintenance of political legitimacy at all levels depends on the distribution of spoils and patronage, then increased state effectiveness through elimination of patronage could lead to a crisis of legitimacy, by undermining the ability of holders of official positions to promote legitimacy through

patronage. In such situations, it may be impossible for leaders to adhere to the formal rules of the state even if they consider them to be legitimate, since doing so would undermine their hold on power. As a result, a severe contradiction emerges, between the imperatives of political survival on the one hand, and professed aims of state policy on the other. Realization of the professed aims of the state requires a strong state, yet the imperative of political survival compels leaders to undermine state strength by extending patronage networks.

Thus, the political situation in many fragile states is such that pursuit of policies that are ‘rational’ in the sense of enhancing state capacity or promoting economic development may be politically impossible to sustain. In such situations, when the political and economic imperatives facing the state stand in direct contradiction to each other, political considerations are likely to take precedence. After all, preservation of regime power – and ultimately state power itself – is likely to be given the highest priority. Governments may then pursue policies that are detrimental to state capacity and economic growth, in order to secure their own position, despite the adverse long-term effects of such policies (Boone 1994; Beissinger and Young 2002; Reno 1998). Thus, patronage may allow the state to survive, but the long-term consequence of this policy will be that state weakness is reproduced.

Box 15: The shadow state

In contexts of fragility, the state displays the outward symbolic and theoretical attributes of statehood but lacks both strength and scope to control its territory and transform various social groups gathered on this territory into actual citizens and genuine political community. The state stands with a Janus face: On the one hand it displays official organization and system of rules that linked it to the modern bureaucratic state; on the other one, it actually works along much different rules and mechanisms, far removed from those that are officially displayed and from the legal bureaucratic model. The ‘shadow state’ theory (William Reno) refers to personal rule, constructed behind the façade of a *de jure* sovereign state. Despite the international recognition of sovereignty, such rule does not comply with the written laws or procedures and exercises power through personal ties and undermines formal governmental institutions. Leaders in such shadow states deliberately weaken formal impersonal institutions, for effective government institution may hinder private exploitation of state assets and may open access to rivals who can then contest the current ruler.

Source: William Reno (1995) *Corruption and State Politics in Sierra Leone*. Cambridge University Press.

On the other hand, citizens may regard systems of patronage as acceptable, either because it serves their interests or because they consider it to be legitimate (Chabal and Daloz 1999). First, in terms of individual interests, patron–client networks may give people access to favours and services otherwise unavailable to them. Second, such ties may be compatible with historical social practices, norms and expectations. People may therefore expect individual state representatives (as power-holders) to distribute resources to their clients. At the same time, people may expect the state to provide more services (health, education, infrastructure, popular participation or, more broadly, ‘development’), and may express dissatisfaction with the state’s inability to do this. In fact, these two sets of expectations are contradictory, since the distribution of resources through patronage networks undermines the state’s ability to provide other services and to promote ‘development’, however defined. In many cases, these contradictory expectations are a result of the experiences that people have had with the state. If they have experienced the state mainly as a threat and an instrument of domination that appropriates resources without giving anything in return, they are not likely to trust it, even if they also wish for a state that could promote ‘development’. Since patron–client ties are based on personal networks and connections, it will become more attractive to rely on these established methods.

More than anything else, the prospect of state formation depends on the nature of domestic power relations and the structure of interests. What makes state building so difficult is that regimes in weak states may not really have an interest in creating a stronger state. This means that a condition of state formation is that the structure of interests is changed, in a way that would make state building in the interest of ruling regimes. Given the social structure of most existing weak states (weak bourgeoisie, weak working class, informal economy, peasant societies, low political mobilization), the very groups

with whom regimes might align themselves to build a stronger state may have little to gain from the establishment of such a state.

However, there do exist experiences of changes in the structure of interests, where fragile states have been turned into effective and stable ones. State legitimacy may be expanded among other groups within the private sector. The social proximity and high degree of shared common social background and family background between state elites and private sector elites may contribute to spread state legitimacy among new sectors of the population and to transform clear widespread patronage into a tool for gradually enforcing state legitimacy and principles. Those groups of people ‘straddle’ both sectors of activity and may contribute through this close connection to some sort of economic transformation and economic efficiency, as described by Mkandawire (‘developmental state’), Evans (‘embeddedness’) or Médard and Fauré. In this perspective, political and economic benefits are expected to trickle down or spill over to larger parts of society (employed people, middle class) who become progressively included in the processes, organizations and resources of an expanding state whose legitimacy improves.

Box 16: The politics of regime survival in Zimbabwe

A clear example of the contradiction between state building and regime interests is found in Zimbabwe’s policies of land reform. By the 1990s, the position of the ruling regime had become increasingly fragile. The economic situation had deteriorated, political support for the regime was eroding and a new, strong opposition movement had emerged. In an attempt to revive its legitimacy in the countryside, the government made the crucial decision to carry out large-scale land reform, by taking over the majority of the white-owned commercial farms – without ensuring that those who took over the farms had sufficient financial, technical and institutional support to maintain effective production. Faced by a situation where its own position was under threat, the regime chose to embark on policies that could strengthen its own legitimacy, even when these policies also undermined economic growth and the economic basis of the state itself.

6. Legitimacy, fragility and the role of external actors

6-1 Paradoxes of aid and legitimacy

States today are faced by demands for legitimization *both* domestically and internationally. On the one hand, they are expected to act in ways that correspond to the wishes and priorities of their own population. On the other hand, they are faced with a range of external demands (from other states, international organizations, donors, etc). The dilemma of many states in fragile situations is that the expectations of their citizens do not correspond to those of the external actors involved. External actors may demand or seek to promote the establishment of states that maintain law and order, protect private property, respect human rights and the rules of democracy – in short, an ideal-typical liberal state. However, such a concept of statehood may not be what people themselves have in mind. In theory, it might be argued that by seeking to establish democratic states, donors in fact seek to ensure that state policies correspond to citizens’ priorities. In practice, however, the model of statehood envisaged by donors is not necessarily among the main concerns of the local people. Moreover, the ideas on which liberal democracies are based – such as the separation between the private and the public, and the notions of individual rights and private property – may be alien to people in many countries. Thus, a central challenge for donors must be to recognize that what they consider to be the most effective and legitimate form of state building may not necessarily be considered legitimate by people in the country concerned. This raises important political and normative questions about the standards that donors use in deciding what, and what not, to do. If the expectations of external and internal actors differ, states are faced with a situation where it becomes impossible to satisfy expectations from both simultaneously. Worse, it may enable different groups (like the leaders) to play off one type of legitimacy against the other.

It is an underlying assumption in the state-building literature that donor policies and actions are based on a wish to serve the best interests of the recipients. In fact, that is a somewhat naïve picture. While donors may have a genuine desire to help recipient countries, it is also a fact that donor policies and actions are always, to varying degrees, shaped by other considerations as well. These may include economic or geopolitical interests as well as the wish to enhance their own international standing by

being seen as generous or compassionate. While development policies, including state-building policies, are always officially justified with reference to moral concerns and the best interests of recipient countries, they may in reality be equally motivated by attempts to promote the donors' own national interests, however defined. This is clearly recognized by recipient countries, whose experience in dealing with donors has led them to be suspicious of the rhetoric and to interpret most donor actions as expressing ulterior motives and interests. That in turn means that recipients are not likely to take donors' expressed motives at face value – as so, the domestic legitimacy of donor programmes of state building may itself be fragile.

6-2 The double legitimacy: ownership and legitimacy

Whatever motives external actors (donors included) have, they may potentially either undermine or increase the legitimacy of states in fragile situations. In dealing with such states, external actors are confronted with a paradox: On the one hand, external actors are clearly in a position to influence the content of statebuilding *policies* by virtue of their resources and expertise. This is particularly true as states in contexts of fragility have few (if any) means to contest directly the offers that are made to them. On the other hand, the capacity of donors to influence the *actual* mechanisms through which governing takes place, or 'the state as it works', is very limited. One reason is that external actors do not have a clear, long-term, coherent policy, and they are accountable to their own constituencies and thus prone to policy changes quite unrelated to local contexts. Another reason is that external actors are not supposed to act as substitute to the state in daily management of the society. Finally, the state in fragile situations is engaged in daily bargaining with a range of domestic groups that external actors often do not know of or understand. This bargaining process shapes the kinds of governing mechanisms and distribution of power that will actually be accepted.

Box 17: States in context of fragility: double legitimacy and Tajikistan

The 'double bind theory' refers to the schizophrenic-like situation where, in contexts of fragility, states are accountable towards two broad types of constituencies: an internal constituency made up of its citizens, and an external constituency made up of donors and international organizations that request the state to display the outward attributes of (liberal) statehood as defined by them. Politics in such states is then very much about playing a double game. On the one hand, rulers seek to maintain firm links with external donors to secure financial assistance and attract political support that they in turn may use to alleviate contestations from their inner constituency. On the other hand, they mobilize their inner constituencies through informal networks and institutions to resist the pressures external donors may wish to put on them. This 'double bind theory', and even a 'triple bind theory', applies to post-conflict Tajikistan. Its political leadership is highly dependent on and accountable to not only donors and international organizations (for humanitarian, technical and economic assistance), but also to Russia (for military/political protection), and its internal constituency. The ambivalence in this situation lies in the fact that, although Tajikistan is characterized by a multifaceted dependence and can be considered as a quasi-state (Jackson 1993), President Rahmon enjoys real popular legitimacy for being successful in attracting foreign aid/investment, and thus in opening up this landlocked country. Some people criticize his all-out external strategy as schizophrenic, and as unlikely to last long, but it has proven viable so far. Although tied up to some conditionality, the peace-building and development programmes of donors and international organizations have shown their limits since 1997. They have clearly contributed to pacification (DDR programmes), to the relative opening of the political game, and to economic rehabilitation and reconstruction. However, the lack of coordination among these external actors, the lack of knowledge of the local institutional framework and political practices, the dispersion of resources and the lack of clear conditionality policy have made it easier for the Tajik political leadership to instrumentalize external assistance and pursue a political agenda that contradicts international recommendations. For instance, it has gone away from democratization, and made sure that inner and client circles reap the benefit of the land reform process.

Source: Antoine Buisson (2007) 'State-Building, Power-Building, and Political Legitimacy'

Out of respect for the principle of 'national self-determination', donors are not supposed to *interfere* in the state's own priorities. This means that aid must be based on voluntary agreements between donors and each state, and that activities funded by donors are defined as the state's own activities. Donors therefore always emphasize the principle of national ownership, even as their policies potentially undermine it. This situation has the advantage (for the donors) of enabling them to place the responsibility for failure on governments, while at the same time being able to fulfil their commitments

in terms of Official Development Assistance (Chandler 2006; Pender 2007). Conveniently, this may also serve the interests of some national governments, by enabling them to present a given policy as being imposed from outside, and thereby avoid being held responsible by their own citizens. This represents the flip-side of the argument about the problems produced by external actors' respect for local ownership for state-building efforts: To the extent that political elites are not primarily interested in building a capable state with strong and productive state–society relations, it is problematic for external actors to invest them with responsibility and oversight over external actors' assistance for state building, as these resources may be diverted to serve other ends (cf. Barnett and Zuecher 2007).

To ensure that aid is used as intended, donors have often imposed specific conditions to their aid. Initially, in the 1980s, such conditions were related to economic policies (cuts in government expenditure, liberalization of trade, economic deregulation, etc.). Subsequently, the list of conditions has been expanded to include governance issues like democracy, respect for human rights and the struggle against corruption. By receiving tied aid, national governments appear both as objects to be shaped by donor policies and as subjects with whom agreements are made. This reflects a basic tension embedded in the concept of development assistance. One part – the donor – appears as 'developed' and as responsible for 'developing' the recipients of aid. The other part appears as in need of 'being developed', and therefore, in one way or another, as 'underdeveloped'. Taken to its logical conclusion, the use of conditionality implies that the state is put under external supervision, and that instead of acting on behalf of, and being accountable to, 'the people', it becomes accountable first and foremost to its donors (Doornbos 1995; Ferguson 2006). As argued by Ferguson, a second conclusion is that donor policy de-politicize state-making processes, contributing to its failure (Ferguson 1990; 2006). Furthermore, the tendency of donors to apply standardized models in their state building programs makes it difficult to formulate policies that are adapted to local conditions.

However, external interventions may also contribute to reinforcing state legitimacy, albeit in a way that simultaneously undermines donor policies. There is always a risk that external conditions and sanctions may backfire, by provoking a nationalist reaction against the interference of external actors. Paradoxically, while such a nationalist reaction may undermine the legitimacy of donor policies (such as the aim of creating a liberal-democratic state), it may at the same time strengthen state legitimacy, by reinforcing a national identity in opposition to external interventions. If this happens, state legitimacy may be strengthened even if the legitimacy of the principles used to justify donor policies may to some extent be undermined. Examples of this can be seen in Cuba, Iran and Zimbabwe. Heavy Western criticism has enabled the leaders to portray themselves as the guardians of the nation, who stand up against the West – thereby contributing to strengthening their legitimacy.

6-3 Aid, taxation and legitimacy

If states are forced to rely on domestic taxation, such as personal income tax, property tax and taxes on corporate profits, they are compelled to develop their administrative capacity and their capacity for tax collection (Hobson 1997; Moore 2004; Doner et al. 2005). This in turn leads to enhanced government penetration of their territory, bureaucratic reform and institutionalized bargaining with citizens over the conditions of taxation and the government budget and more broadly over the type of state they may accept (Moore, 2004; Tilly, 1992). By contrast, states that have access to unearned income, or rents (mineral exports, oil and gas, customs duties) are less compelled to create strong institutions for the purpose of taxation. One variant of this is the 'resource curse'. Access to rents does not depend on the state's actual ability to control its territory or to be supported by its people. When states have access to such easy income derived from dealings with the external world, rather than from domestic taxation, the incentive for strengthening institutions for the purpose of taxation is removed. Instead, the state can obtain resources from the international community, customs and trade fees and in some cases from export of minerals, without needing an effective administration.

For many states, foreign aid is a source of rents. The aid dependence of many weak states makes state building difficult, since access to aid absolves ruling regimes from developing the state's administration for the purpose of tax collection. As a result, the state has a kind of economic freedom from society, in the sense that it does not depend on obtaining economic resources from it. States that depend on revenue

collected from their own society are in this view more likely to pursue a strategy of state building, while in states that do not depend on taxation, the interests of ruling regimes may be better served by pursuing policies that do not strengthen the state as such. But while dependence on rents may make state building difficult, the establishment of a strong state is not impossible when the state depends on rents. One example of successful state building in such conditions is Botswana (see box 18).

Box 18: Successful state building under conditions of rent dependence

At independence in 1966, Botswana was heavily dependent on aid. Later, from the mid-1970s, aid dependence was replaced by dependence on export of diamonds. Thus, Botswana has gone from being dependent on strategic rent (aid) to dependence on rents from the export of natural resources (diamonds). Throughout its independent history, the Botswana state has depended mainly on income in the form of rents. Yet, the country has become one of the most effective states in the developing world (Acemoglu, Johnson and Robinson 2003; Samatar 1999). A key factor that made the formation of a strong state feasible in Botswana was the fact that one of the key groups in the country's ruling regime, the cattle farmers, had economic interests that were best served by the establishment of an effective state. For the cattle farmers, positions in the state were not their main source of income, and their economic interests were linked to the development of the cattle sector, and not solely to positions in the state. And since an effective state was seen as a condition for economic development, the creation of such a state became a priority.

At the same time, the nature of external links found in fragile situations complicates the creation of an effective state. Neo-liberalism and global capitalism make state formation difficult, but not only for the reasons often stated. It is not just the enforced cuts on state expenditure that undermine state building. Instead, neo-liberalism undermines state building in two distinct ways. First, neo-liberal policies undercut the social foundations of a project of state building, by making it impossible for would-be state builders to pursue policies that could create a political alliance composed of actors with an interest in it. Second, the structure of the global economy generates interests that are better served without a strong state, by presenting rulers with alternative sources of revenue (warlord politics, smuggling, export of minerals, aid) that absolve them from the imperative of state building. While globalization may create opportunities for primitive accumulation that strengthen the position of capitalists within the state, the form that this accumulation takes weakens state power. And since, in certain circumstances, capitalists might be happy to preserve the weak state/warlord economy that has served their interests so well, globalization does not necessarily create conditions in which capitalists are likely to seek the strengthening of the state. Given the social structure of most existing weak states (weak bourgeoisie, weak working class, informal economy, peasant societies, low political mobilization), the very sections of society with whom regimes might align themselves to build a stronger state have little to gain from the establishment of such a state.

6-4 Sources of legitimacy and the limits of external state building

We discussed in earlier sections how efforts to help bolster state legitimacy in fragile situations must be cognizant of different dimensions of state legitimacy simultaneously. That suggests that the idea that democratization should be put on hold until a robust institutional framework is in place, rests on flawed assumptions about what makes a state appear legitimate in the eyes of its population. Proponents of such a model of 'institutionalization before liberalization' (Paris 2004) hold that democratic elections and, more generally, liberally oriented reforms, will not produce stability or state legitimacy. As one commentator puts it: 'States emerging from war do not have the necessary institutional framework or civic culture to absorb the potential pressures associated with political and market competition. Consequently, as peacebuilders push for instant liberalization, they are sowing the seeds of conflict, thereby encouraging rivals to wage their struggle for supremacy through markets and ballots.' (Barnett 2006: 89. See also Zakaria 2003). While these authors are right in noting the limits of democratic elections as a cure-all for states in fragile situations, the proposition that elections and other forms of 'input' legitimacy can be put off until a 'civic and political culture' has been established that is in some way ready for democracy is equally problematic: state legitimacy rests on different 'legs' of legitimacy. Any effort to strengthen either one or two sources of state legitimacy while putting off others is bound to produce a skewed and ultimately unstable polity.

There is an equally problematic assumption, however, in many contemporary state-building efforts to the effect that ‘all good things come together’: reform efforts proceed on many fronts at the same time, without due regard to, or understanding of, the social, economic and political context that shapes perceptions of state legitimacy. This is a central problem inasmuch as external actors often assume that their actions and strategies are or will be considered legitimate *because* they are based on a universal template for liberal state building. In short, external actors typically assume that because they advance liberal goals, their actions are *de facto* considered legitimate by the local population. This view ignores the fact that different local groups jockey for power and influence in part by drawing on different and competing sources of legitimacy. In this way, political struggle is often about which group is seen as legitimately representing and embodying the goals and sense of community of particular groups.

This means that donors cannot apply the same approach to state building in all circumstances, and that strategies and policies applied to address situations of fragility must be tailored specifically for each situation. Moreover, it may not be possible to reach the same end result in all circumstances. In some cases, the aim of establishing states that correspond to the model of statehood reflected in formal state institutions and donor policies may not be realistic. Thus, it is not just the *means* (policies, strategies) that must be adapted to context, but the *ends* as well. The same kind of legitimacy and the same type of (end-) state cannot be established everywhere. There is no standardized recipe for state building, nor is there a standard model of statehood than can be applied universally.

7. Concluding remarks

Building on recent work from the FSG and others, this report has put state–society relations at the centre of the analysis of state legitimacy in situations of fragility. State legitimacy concerns the very basis on which the state and society are *linked* and by which state *authority* is justified. To understand how legitimacy relates to state fragility, therefore, it is necessary to take an empirical approach to legitimacy and ask not about internationally established standards of rights, fairness or justice, but about what the people consider to be legitimate.

It is also essential to understand local power relations – within society, and between the state and various social groups. Since contexts vary tremendously, it follows that both the nature of legitimacy problems faced by states and the causes of those problems are diverse. Because legitimacy is in the eye of the beholder, existing sources of legitimacy within states in fragile situations can be used by different actors to strengthen or weaken the state. Such sources of legitimacy may very well fall short of international normative standards (such as human rights norms), but their significance for efforts to strengthen the state must not be underestimated.

States cannot be defined only as a sector or an actor that enters into specific relations with other actors or sectors, such as civil society. In well-functioning states, the state is also a structure that pervades everyday practices and helps define the schemas through which and with which individuals think and act. The state is ‘in’ individuals, implicitly and explicitly framing the social fabric. States in fragile situations stand out not only as lacking in capacity to govern in an administrative sense, but also as lacking the ability to be present in and to reflect and help define the everyday practices and institutions of their people.

The formation of a state of the kind envisaged by donors presupposes that citizens take for granted the state’s presence and its position as the highest authority. However, states in fragile situations are characterized by an inability to define the basic parameters of everyday practices in different spheres. When the state’s authority is not firmly established, political struggles (bargaining, trade-off processes and conflicts) do not deal only with struggles over policy options: they focus on the very status of the state as the supreme authority. When state institutions are not in a position to claim, with reasonable success, a monopoly on legitimate violence, they lack institutionalized authority.

Modern states are based on a specific conception of how state and society should be linked and separated. A private sphere (society), consisting of social and economic relations is constituted by, yet separated from, the state. These two realms are separated but are nevertheless intimately related. States in fragile situations are both more separate from society, and more closely linked to it, than presupposed in the model on which their formal institutions are based. They are more separate in the sense that they have been unable to establish themselves as the highest political authority in their territory, and to penetrate and administer their society in the way presupposed by the model. At the same time, they are more closely linked to society, in the sense that in practice, the boundaries between them are not generally recognized. This blurring of boundaries means that the domains of ‘the private’ and ‘the public’ tend to be intertwined.

This ability of the state to constitute a structure that is able to ‘cage in’ (Mann 1993) society rests fundamentally with historically produced sources of state legitimacy. In the state formation process in Europe, for example, nationalism and religion were first used and later subsumed by emerging states to bolster and secure state legitimacy.

State legitimacy draws on a range of different sources, which are mixed by actors in their daily practices. This hybridization process might bolster the legitimization process, or not. Some rulers may see their interests as being well served without expanding the state. To protect their own power and interests, governments may be compelled to draw on sources of legitimacy that weaken the state, such as patronage. In many states in situations of fragility, regimes secure the support they need, not through the systematic institutionalization of the state in society, but by using state resources to offer material rewards in return for political support. If the preservation of its power depends on sources of legitimacy of this kind, governments become trapped in a situation where their political survival is incompatible with state building. In order to make the establishment of an efficient state possible, it is necessary break out of the vicious cycle in which political survival depends on patronage. This requires the creation of sources of legitimacy other than patronage.

While such a broader and more empirically focused understanding of legitimacy is beginning to take hold among donors – in no small part due to the work of the FSG – there is still a clear tendency to present a hierarchy among different sources of legitimacy. Often, the provision of security, rational-legal principles, and democratic representation, are considered more important for state legitimacy than other sources of legitimacy. There is no *a priori* reason, however, why any one source of legitimacy should be considered more important than others in a general sense. More to the point: A state whose legitimacy rests too much on one or a few sources of legitimacy is inherently unstable. Donors have arguably been complicit in placing their bets on one or a few sources of legitimacy, such as democratic elections and human rights norms. Moreover, they have typically defined democracy and human rights as pre-political and a-historical, and not as shaped by and linked to social, historical and political processes. If states are to be able to extricate themselves from fragile situations, their legitimacy must not only be deepened by but also broadened to form a resilient web of many different sources, some of which – such as nationalism or religion – may be at odds with liberal democratic sources of legitimacy.

This means, in turn, that one of the central DAC principles for ‘Good Engagement in Fragile States’ – to ‘take context as the starting point’ – should be interpreted more broadly to refer not only to the means whereby state building proceeds, but also to its goals. Context, therefore, cannot only determine how donors seek to help build liberal democratic or Western states: it may also have to shape what type of state one can reasonably expect to help build.

Recommendations

1. What donors should keep in mind:

- 1.1 Donors should be aware that legitimacy concerns the very basis for how state and society are linked and by which the state's authority is justified. Any intervention in situations of fragility must therefore focus on the relations between state and society. It follows that donors should seek to engage the state and civil society in ways that strengthen and institutionalize state–society relations and positions the state as an actor that engages constructively with society and that at the same time helps define the framework for a civic and political culture.
- 1.2 Donors should be aware that their interventions, whatever form they may take, may undermine the state's domestic legitimacy and increase the gap between international and national legitimacy. While it is important to make sure that resources are not diverted and used to sustain the power of ruling regimes by enabling them to fund patronage networks rather than to create an alternative basis of legitimacy, donor conditionalities run the risk of shifting the lines of accountability, making governments accountable to donors rather than to their own population. Thus, even if donors were to succeed in making states comply with their policy conditions – which is itself far from easy – state legitimacy and accountability are likely to be undermined in the process.
- 1.3 The dilemma faced by many states in fragile situations is that the expectations of their citizens do not correspond to those of external actors. A central challenge for donors is to recognize that what they consider to be the most effective and legitimate form of state building may not necessarily be considered legitimate by domestic actors. This raises important political and normative questions about which standards donors use in deciding what, and what not, to do. If the expectations of external and internal actors are contradictory, states are faced with a situation where it is impossible to satisfy expectations from both simultaneously. Worse, it strengthens the capacity of leaders to play off one type of legitimacy against the other.
- 1.4 Donors should remember, first, that while their interventions may enjoy considerable international legitimacy, this does not automatically translate into domestic, bottom–up legitimacy of states in fragile situations. Second, donors should recognize that international recognition is a major source of legitimacy for different local groups. Any intervention by external actors, however technical it may be, will affect the relative position of different local groups and is thus inherently political.

2 How donors should operate: Context, flexibility, engagement

- 2.1 *To take into account the specificity of context and of the target:* The causes of state fragility and its potential remedy vary tremendously from country to country. Because state legitimacy in the final analysis depends on embedded socio-cultural features in each specific case, donors should not only abandon the one-size-fits-all approaches with respect to how state building should proceed, but must also consider what end-state they could conceivably help to establish.

While some progress has been made – as reflected in the DAC Principles for Engagement in Fragile States – donors need to be much more sensitive to local context. The mode of support should be based on knowledge of local history of state–society relationships, embedded socio-cultural features, and existing practices and institutions from which state legitimacy may emerge. Interdisciplinary analyses to better understand different groups and their beliefs, historical relationship with the state etc. seem particularly important. Furthermore, donors should rethink and change how they interact with and set goals for their engagement with fragile states, developing long-term goals that can be adjusted over time. In developing and

assessing timeframes, prioritized areas and objectives, donors should give priority to locally defined and agreed standards rather than international targets or norms for measuring progress and evaluating new initiatives.

- 2.2 *Develop flexible approaches:* A stable and resilient state is one that draws on a web of different sources of legitimacy. Donors should take care to avoid both the ‘logic of sequencing’ where it is assumed that democratic elections can be put off until a stable institutional framework is in place, and the ‘logic of all-good-things-come-together’, in the form of efforts to build an ideal liberal democratic state within a relatively short timeframe. Efforts to help bolster state legitimacy in fragile situations require not only a pragmatic approach that emerges from a detailed analysis of the causes of and potential remedies for fragility, but also one that is **flexible enough to be adjusted and amended over time**.

A flexible approach could be guided by three basic features: i) *A strong commitment by donors to participatory democracy whereby the shaping of projects* is inclusive from the very beginning and where implementation will give a strong role to local actors (which would help strengthening a public sphere); ii) *The setting of clear goals to reach in a specific period of time*, to which all stakeholders, donors and local actors, would commit themselves unambiguously and publicly (in the social forum and arena in which the projects are discussed). This would help bolster accountability and empower social actors); iii) *The setting of intermediary goals*. This is essential in order to mobilize actors right from the beginning of the project. iv) *Evaluation and adjustment*: Allowing for systematic evaluation and adjustments over time according to intermediary results and changes of perceptions and strategies of stakeholders is central to both empowering stakeholders and keeping them committed.

- 2.3 *Do not by-pass actors:* Any external interventions contribute to shape or change state society relations and thus affect how state–society relations are legitimized. Donor strategies that, intentionally or not, by-pass certain groups or that seek to short-cut state–society interaction in different forms have done more harm than good. Donors should be careful to avoid modes of intervention whereby local NGOs or other representatives of civil society are seen as bearers of civic virtues that will hold states accountable in a virtuous circle of negotiation and bargaining between state and society. Care must be taken to invest resources in activities rather than in specific organizations, and to identify and prioritize activities that are tailored to establish or institutionalize constructive state–society relations.

3 Where donors should focus their efforts

- 3.1 This study has shown that a state in a situation of fragility is a state with limited ability to govern or rule its society, and more broadly to develop mutually constructive and mutually reinforcing relations with society. The objective for donors should be to *favour constructive engagement between different actors* (including state actors) in such a way that the state may be re-designed and its regulations accepted as the main regulation frame.
- 3.2 Donors often seek to either eradicate or transform traditional forms of rule and customary law in the context of state building. To harness and transfer the legitimacy of such practices onto the state, donors should focus not on specifying outcomes but on defining appropriate processes for debates and negotiations between different groups about the definition and implementation of state law and rule. Here, support for *arenas and mechanisms for dialogue and negotiation between different actors* representing different interests and bases of legitimacy seems important also for facilitating learning processes regarding the building of consensus, constructive partnerships between different types of actors, and a sense of mutuality and citizenship. (See example in section 4-3). This method might also be applied to existing tools such as the PRSP, in an attempt to make them more participatory.

- 3.3 *International and local staff should be trained* for this new kind approach. Working with processes rather than standards and with dialogue, negotiation and mediation rather than mere implementation requires new tools and expertise on the part of external actors.
- 3.4 OECD-DAC may wish to commission studies that look more closely at how established donor practices affect the legitimacy of the state in fragile situations. The practice of budget support as a central modality for donor intervention would seem an important case in this regard. Similarly, the practice of investing in specific NGOs in an effort either to bypass the state or to build a strong civic culture would merit further analysis, not least with respect to how local NGOs can be said to help strengthen and/or undermine state legitimacy. A study assessing programmes and policies supporting multi-stakeholder dialogue should be undertaken, to clarify how to strengthen actors' capacities to participate in these kinds of dialogues.

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Norad

Norwegian Agency for Development Cooperation

Postal address:

P.O. Box 8034 Dep, NO-0030 OSLO

Office address:

Ruseløkkveien 26, Oslo, Norway

Tel: +47 22 24 20 30

Fax: +47 22 24 20 31

postmottak@norad.no

www.norad.no

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