Report for OECD DAC, Fragile States Group

The Legitimacy of the State in Fragile Situations

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Executive summary

1- The formation of a state as it is designed by the international settings presupposes that citizens take the state's presence and its position as the highest authority for granted. However, states in fragile situations are characterized by an inability to regulate the basic parameters/references 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 a reasonable success the monopoly of the legitimate violence, they lack institutionalized authority.

2- As employed here, legitimacy is a particular quality that is conferred upon a social, political institution or 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 quality – one that depends on peoples' beliefs, perceptions and expectations. In this view, an institution that falls short of certain normative standards may still be considered legitimate if those subject to it consider it so.

3- State legitimacy, understood empirically, is inherently political. It concerns the very basis on which the state and society are linked and interact and by which state authority is justified. It is about a *vision* of what the authority and the community who shares it is about and is to do. Whatever processes a state may organise, and whatever amount of goods and services it may deliver, the symbolically established expectations that people have of the state is central. Any analyses 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.

4- 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.

5- Ineffective or poor constructive linkages between state and society are thus defining features of states in fragile situations. The state coexists with a society or various social groups or communities which are not captured by the state processes. Although their activities are connected 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 formal state institutions co-exist with other institutions, resulting in competing and overlapping forms of rule that often draw upon different sources of legitimacy.

6- The modern state, which is the reference/model of 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 in fragile situations are both more separate from and closer linked to society 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 be recognized as the highest political authority in their territory and to penetrate and administer their society in the way presupposed by the modern state 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 recognised. This "blurring of boundaries" refers to 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 (ie patron-client networks, patrimonialism, and neo patrimonialism), and a lack of constructive linkages between the two realms.

7- Actual state legitimacy draws on a specific and changing mix of different resources. Any discussion of the sources of legitimacy that is central to state legitimacy must be considered with some caution: they are only effective sources of legitimacy to the extent that the relevant constituency considers them so. It is thus essential to identify the general type and combination of legitimacy sources that state society relations rest upon. Moreover, the dynamic by which different groups have or seek resources to either that enhance or weaken legitimacy of the political order and the sense of community is of central importance.

8- In this study, three general types and dimensions of legitimacy that pertain to the state, have been identified: i) *how* the state functions (procedures): the legitimacy of the state is here tied to the rules and procedures through which it makes binding decisions (i.e. 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. Efforts to help bolster state legitimacy in fragile situations must be cognizant of all the dimensions of state legitimacy simultaneously.

9- In situations of fragility, various actors (state and non-state) 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. If, for instance, non state groups are able to provide better services or present themselves as representatives of "tradition", state legitimacy may be undermined.

10- Some rulers may see their interests as well served without expanding the state. To protect their 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 are 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.

11- The nature of external links has sometimes contributed to weakening both state power and legitimacy. First, the structure of the global economy generates interests that are sometimes better served without a strong state, by presenting rulers with alternative sources of revenue that absolve them from the imperative of state building. Second, the conditionalities that have accompanied donor funds have contributed to shifting lines of accountability from domestic to external constituencies.

12- The very fact that the content of a state's policies is dictated by external actors contradicts the fundamental idea of popular sovereignty, according to which the people that are subject to a state's policies are the ones who are entitled to formulate those policies. While it is true that many states have been governed by elites with little concern for the priorities and needs of their peoples, forcing these elites to comply with conditions determined by outsiders is unlikely to increase these states' legitimacy and accountability towards citizens.

13- 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 both in formal state institutions and in 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.

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 as it emphasizes state-society relations. According to the 2007-08 workprogramme, the FSG Task Team aims to make progress towards the development of practical guidance for donors on statebuilding in Fragile Situations. The Task Team members have i.a decided to undertake a study of state legitimacy in fragile situation as part of the workprogramme. 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 report's overall objective is thus 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 DAC International Network on Conflict and Fragility (INCAF). Indeed, on January 1st 2009, the CPDC and the FSG merged into the 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 brings into view how legitimacy is formed, through legitimization process, insisting on identifying what bolsters and/or blocks state legitimacy. It also invites attention to how different types of legitimacy shape key state characteristics and how different types of actors, including external actors, can appropriate and use different 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 (lack of organizational, financial and institutional capacity and weak or ineffective mutually constructive relations with society), where low levels of legitimacy are the central cause, 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 particular challenges that would-be state builders face in seeking to tap into and appropriate different, 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. This study is thus closely related to discussions of the "do no harm" perspectives[1] and the study conducted by Clements et al[2].

More specifically, we can divide the different sub-goals of the study to be 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;

[1] Under the 2007-08 workprogramme, the FSG Task Team members have decided to undertake two studies: one focusing on how donors can make sure they "do no harm" in relation to state-building in fragile states and a second one discussing state legitimacy in fragile situations which is the present one. "*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 the PricewaterhouseCoopers LLP, 2008.

[2] Study commissioned by the GTZ on behalf of the German Ministry for Economic Development and Co-operation, BMZ) to Kevin Clements. The Australian Centre for Peace and Conflicts Studies, "Traditional, Charismatic and Grounded Legitimacy", Study for the GTZ advisory project "Good Governance and Democracy", Eschborn, Germany., 2008.

- provide a detailed analysis and typology of sources of legitimacy, emphasizing that legitimacy is more about process (legitimization) 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.

The report starts in section 1 to discuss basic concepts and approaches such as – state, legitimacy, fragility. In section 2, we provide a brief analysis of state formation processes, state society relations and the central distinction between 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 go beyond conventional typologies of legitimacy to provide a list of the many different sources of legitimacy upon which any institution may rest. Section 4, discusses actual processes of confrontation of different 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 Back to basic concepts

1-1 The Western state: the state to be.

As a starting point, the modern state may be defined as an institution which successfully claims a monopoly over the means of violence, control over a territory and a population and responsibility to provide services, and is recognized by other states (Sørensen, 2001). Following 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 this is done 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 ability to provide services. It presupposes as well that the state and the society are constructively closely interconnected.

In terms of human security, the state is responsible for protecting society and its members from internal and external threats. Security is thus intimately related 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 that are able and willing to do so. Thus, in order 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 in order to represent its population, state power must be exercised through institutions that ensure that the needs and preferences of citizens (in respect 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 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 (ie 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: The political authority?

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 obey (or not) a particular actor or institution. Here, focus is directed towards peoples' beliefs and perceptions. Power legitimacy analysis brings out the concept of authority; usually defined as the power or domination accepted as legitimate. Thus, a state that falls short of certain normative standards may still enjoy de facto legitimacy if those subject to its' rule consider it so.

Legitimacy, therefore, is here seen as a quality of a social or political authority, order 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 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 means that legitimacy is seen in relation to people's material and symbolic expectations and perceptions. Lack or poor legitimacy is a major contributor to state fragility. It deprives the state from people's 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.

An empirical take on legitimacy – with emphasis on peoples' beliefs and perceptions and on their daily social practices of the state – allows us to ask about the many different sources that a state, and other institutions, may draw upon to shore up legitimacy. 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. A discussion of state legitimacy in situations of fragility seems to require a discussion on these articulations between state institutions and other. Which sources of legitimacy are called upon in these articulations? How do they contribute to political power 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 DAC's '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' 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 whether the state is able to meet people's expectations. The report 'Service delivery in fragile situations' 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**.** 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. This definition will allow us to analyze how different forms or sources of legitimacy and notably their articulations, 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 ability to produce or favor the 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.

These different 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' 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. What distinguishes legitimacy crises in fragile states is that because of their limited capacity and authority, their ability to deal with such crises is severely limited. 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 - overt as well as passive - resistance to its mere existence in general and to its policies in particular. Second, citizens contributing willingly and actively to the implementation of state orientations and policies make the state 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 (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, which in turn reduces 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; Bayart, 1993; 2000).

The processes of state formation are central, we believe, to grasp how legitimacy issues impacts 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 already existing sources of legitimacy and make them supportive of the emerging state. At the same time numerous cases show that while trade offs between state rulers and particular groups in society may strengthen the state, it 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 holds 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' mode of thinking and acting in the world and that subjects are turned into citizens.[3] The idea of stateness supports the idea, that although the 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 are essential to efficient and strong states (Nettl, 1968; Evans, 1995; 1997; Balandier, 2004).

Moreover, students of institutions have since long established how the making of a state and the shaping of its policies and its priorities are highly dependent upon the structure of society and that some kind of osmosis or symbiosis between the state machinery and society clearly strengthens the capacity, and legitimacy, of the state the importance of how state "anchoring" and "embedding" the state in social relations (Di Maggio and Powell 1991; Darbel & Schnapper, 1969, ; Evans, 1997; Weiss, 1995). As we discuss below, the symbolic aspects of the state is crucial to make "the state be present in people" and so 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 the control over the state and about the content of its policies. This point to the fact that state formation is not only about the creation of an efficient public sector. While this 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 state's presence 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 just 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 strategies to subvert it or to get a monopoly over it. In such cases, states lack institutionalized authority. To put it bluntly, they do not structure social regulations, they fail to penetrate social relations and to be accepted as the highest political authority, to which all other institutions must be subordinated. As a result, it fails to be significant for the organization of everyday life (Bodansky 1999; Giddens, 1979).

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

In these contexts, the state's power and authority as the sovereign, as the supreme authority within a territory, is drawn from the constitutional order, from international recognition, and from its capacity to enforce its sovereignty through violence and conviction. 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 previously mentioned, the model of statehood on which all 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 supposed to be differentiated from the private domain of the market, the family and civil society. Different rules apply in different 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 allowed 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 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 can 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, states are both more separate from, and closer linked to, society 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 closer linked to society, in the sense that in practice, the boundaries between them are not generally recognised. This "blurring of boundaries" means that the domains of "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. One must thus recognize that many states lack both authority and capacities to enforce their claims and so function often because they grant space to alternative patterns of organization and governing (RDC; Bolivia; Niger, Laos). A defining feature of states in fragile situations is thus that the character of the relation between state and society is uneasy and supposes 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 or policies 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. **The state is thus not taken for granted but seen in relation to society**. The state and society are being made daily through actual social practices, while at the same time contributing to shaping one another. In contexts of fragility the state may be discussed either as it is designed according to formal rules and institutions (tailored along Western models); or, as it actually works (state at work) through uneasy trade-offs and compromises with various groups and communities. Similarly, national societies may be discussed as they are supposed to be (with fully fledged citizens belonging to a common political community; or alternatively as deeply rooted in traditions and alternative organisations); or as an uneasy association of interest groups and communities linked to a state they often fail to understand but are closely associated with.

These two approaches may be combined. On the one hand, as the official dominant organization, the state is supposed 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 into actual practices that often deviate significantly from this model.

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 organisations are too strong and independent to allow the state to "tame" it. This interpretation, however disputable it may be, stresses the clear disjunction existing 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, Sierra Leone are used as shining example of those 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 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 to act in a number of areas and to mobilize large supports from the people, but they ultimately fail to stand as an alternative political domination (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. While they often go hand in hand, the legitimacy of state 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 to be 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 demand that

the existing state should be reformed in a way that would ensure that it would meet their expectations (cases of the so-called "colour revolutions" in Georgia, Ukraine and Kyrgyztan). A political leader enjoying strong legitimacy may contribute to strengthening the legitimacy of a given political order. Nelson Mandela in South Africa can be seen to have embedded 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 (Wade in Senegal, Mbeki in Republic of 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. (Ex: Mali, Republic of South Africa, or Venezuela). 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 characterised by a gap between people's expectation and actual state performance, the causes of this gap and the range of possible solutions to it are different.

2-3 Ruling elites and state legitimacy

The state is managed by particular social groups which develop special corporative interests as elected or non-elected agents. The mere existence of the formal state grants international legitimacy to that group and make 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 a number of states in context of fragility they form what is called "state bourgeoisie" whose power depends on positions in the state or a close relation with the state. Quite often in context 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 perpetuation 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 sectors and weak in others. This in turn renders possible the mobilisation of "mobs" by some groups in the name of the state against other groups the making of civil wars, civil strives and global instability and insecurity. Sri Lanka, Myanmar, Bolivia, Burundi or Fiji are some clear examples.

Box 2: ???

Since the Soviet period, the state has been understood by Central Asian ruling elites and political factions as the key instrument to access economic resources and redistribute them through informal patron-client networks.

The poorest Republic of the USSR, Tajikistan was severely destabilized by the economic crisis of the 1980s and the desegregation process of the Union. It radicalized stakes and the struggle for power resources between regional political factions constituting the *nomenklatura* and the opposition. The former united to defend its corporative interests and power, the latter to obtain a fair redistribution of political power and economic wealth. The presidential elections of November 1991 failed to put an end to the political crisis. While the political leadership gained international recognition, it adopted a repressive stance against a virulent opposition who rejected the legitimacy of the new government. This led to the fragmentation of the political arena, the mobilization of each camp's partisans (the government calling to defend constitutional order, the opposition to organize new elections and adopt a new Constitution), the disorganisation of security forces, and, ultimately, armed confrontation.

2-4 Territorial and social mapping of state legitimacy

Legitimacy in states in context of fragility is likely to fluctuate along territorial and community lines. In the same state territory, the level of confidence and trust various communities are willing to extend to the state is likely to vary a lot, according to numerous factors including their past relations with the state, their historical experience of state-like organisations, the consistency of local systems of

organisations, the strength and legitimacy of local leadership and power, the current relations with state leaders (Boone, 2003). The result is that state legitimacy, and state capacity, takes different forms and meanings and reaches different levels of intensity in different areas and communities.

Within a territory some groups may, for example, 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 different 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 may struggle to be accepted and considered relevant by particular groups that have are used to rely on other, non-state institutions for their welfare, security and belonging. This may even be exacerbated by international donors' efforts to assist in statebuilding: The state, benefiting from international legitimacy, tailored along international laws and regulations, and constantly fed by externally tailored institutional toolkits and "one fits all" models, refuses to engage in efforts to negotiate, compromise and possible integrate such groups or areas into the de facto reach of the state. This means that state legitimacy may take different meanings and shapes according to the type of state activity, the type of local societies and geographical areas. One key implication follows: **In a number of 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 situation 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 takes different forms. In certain areas this may lead to rebellion, tensions or worst civil wars between different regions or area. Thus in **Bolivia**, political opposition to President Evo Morales' policy has given rise to a split between rich lowland areas where creoles and white large landlords and gas companies are very influential and 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, are conflicting 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 part of the two countries, ie far away from the political centre. They feel alien to the Southerners' way of life and wish to get a largest share of the royalties paid by multinational companies exploiting minerals in their part of the country. Both countries have to cope with successive rebellions and civil wars. In other context such as in **Fidji** Islands or in **Malaysia,** community feelings are not territorialized. Strong communities coexist in a state of uneasiness or a sense of reciprocal deprivation. Indians confront non Indians in the Fidji Islands while Malays are fighting so called Chinese privileges. Tajikistan experienced a bitter civil war between 1992 and 1997 which was greatly due to the uneven distribution of political power and economic wealth among regions and their elites from the 1950s onward. It resulted in a legitimacy crisis and a struggle for resources of power among the *nomenklatura* and between different 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). While 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 and to grant different systems of organisation and laws to the diverse groups using either geography or community belonging as basis of implementation. Strong differences will then exist between Nigerian states enforcing Sharia and those sharing Civil law; or between local governments in Northern and Southern Niger; or between different provinces in **Ethiopia**. **Cameroon**, though a Unitary state, makes a difference between areas abiding to traditional law, civil law or common law (South Western Cameroon) in family law and land dispute regulations. **Malaysia** will grant different rights and obligations to people according to their community of belonging in the general framework of its affirmative action policy. There are empirical evidences 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 other cases of such official or semi official deals. Some authors partly inspired by A.Lijphart's researches on consociativism, suggest turning those adjustments into official types of state management (Wunsch; Tshiyembe…). 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 to 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. Besides, while a unitary state, Tajikistan includes the Eastern Autonomous Province of Badakhshan whose development greatly relies 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.)

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

3-1: Classical understanding of sources of legitimacy:

The classical understanding of the relationship between legitimacy and power is associated with the works of Max Weber. Key here is the concept of authority, defined as power/domination accepted as legitimate. According to Weber, this can take three ideal-typical forms: charismatic, traditional and rational-legal. Because our concern here is precisely with the mechanisms through which power is legitimated and thus transformed into (state) authority, we find it useful to start with a brief description of tradition as related to the rational-legal forms of authority. What is of central importance in this analysis, are the systems of beliefs founding the power, from which different (re)sources of legitimacy are articulated and different types of legitimacy are built.

3-1-1: 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 we have noted earlier, state legitimacy and strength ultimately depend on, is defined by, its 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 socialization processes, 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). Tradition is not static, however as actors keep on adjusting their behaviors and practices to new situations and as the state is instrumental in identifying and defining some institutions and customs as "tradition" and not others (Hobsbawm and Ranger 1983). Here, religion is central. Its meaning and broader role in society can shift over time, owing in no small part to how religious practices and beliefs are used to either legitimate or seek to delegitimate 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 evaluate right from wrong etc (see also below). Traditions and traditional leaders can also be created by the state - intentionally or accidentally. Liberation struggle 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 exists 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 its own system of legitimacy.

3-1-2 Rational-legal legitimacy.

As Weber defined it, rational-legal legitimacy is grounded in the principle of legality and in rule-following bureaucratic institutions. The legitimacy is made by the degree of compliance with the Law. 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 that 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. **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.** It gives a special role to the state law which is supposed to be the only rational bureaucratic made normative system, working in close relations with the Western sociocultural background and history.

3-2 Identifying resources for legitimation

It follows from the weberian perspective outlined above that **legitimacy** must here be approached as **an empirical phenomenon**. This means, in turn, that the sources and dimensions from which legitimacy may flow are in theory infinite – it all depends on what the relevant group of people believes (Hurd 2007). **What people come to see as "natural" and "desirable" is shaped by peoples' beliefs and the practices they are accustomed to**. Thus, while state legitimacy is often seen through the prism of certain normative standards derived from Western states, it may take different 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 is central to state legitimacy must be considered with some caution: they are only effective sources of legitimacy to the extent that the relevant constituency considers them so. It also means, however, that the analysis of legitimacy could benefit from a more fine-grained list of different sources or resources of legitimacy than Weber's ideal-types.[4]

Below, we describe a number of different resources of legitimacy that states may draw upon. Some of these resources 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 resources of state legitimacy exist in isolation and no state relies solely on one of them. For example, a state whose fragility stem in part from its lack of capacity to deliver services, will not necessarily be seen as legitimate if the quality of services is improved. It will all hinge 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 ("input" and "output"). The somewhat detailed list will provide the basis for the discussion, in section 4 through 6, of the relationship between the different sources of legitimacy and state fragility.

[4] Reports (Doing no harm report analysis of legitimacy; Clements; From fragility to resilience…) and authors (Sharpf, 1999) list a number of sources and forms of legitimacy. They generally focus on four main sources namely: 1) Input legitimacy or process legitimacy; 2) Output legitimacy or performance legitimacy; 2) Embedded or historical legitimacy; 3) accepted beliefs about the rightful source of authority; 4) international legitimacy (recognition) which may either converge or be at odds with domestic legitimacy. These sources of legitimacy are all important to varying degrees, but they do not give us an optic, a tool, for advancing the understanding of legitimacy and states in fragile situations.

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, the state is supposed to provide security – it is part of what being a state is. 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) of providing security. Security can also be considered as a foundational 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 foundational value, namely security. Regardless of whether security is seen as foundational for the state or as a service provided by the state, security is nevertheless central for state legitimacy because it makes possible the appropriation and 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. If elementary security is not established, democratic elections or the rule of law, becomes difficult to establish. In this sense, the provision of security is fundamental for state legitimacy, but not because the provision of security directly translate into state legitimacy, but because it enables the production, and appropriation, of other possible sources of state legitimacy.

Box

In Tajikistan, state and regime legitimacy greatly rests on the government's success to restore 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 Russia's full military support 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 real police state. Today, internal security can no longer be considered as a foundational moral value of this state. If 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.

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 tied 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 is recognized as being ultimately responsible for and as organizing other actors' contributions, such as 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 it 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 not 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 for providing important social services both in the developed and

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.

3-2-3 Human rights.

International human rights norms constitute a source of legitimacy in two distinct ways. First, it is 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 the 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.

3-2-4 Participation and Governance.

Legitimacy can also be found in the organization of the relationship between the state and its citizens, allowing citizens to take part and be represented democratically in the governing of society. In ideal typical terms, participation is a central source of state legitimacy, also in fragile situations. Ever since the French revolution and the idea of state sovereignty as popular sovereignty, the state is seen as the bearer and expression of the will of the people and here, some form of participation is central. Note, however, that the participation needed for increasing state legitimacy need not be tied to full-scare democratic elections. Indeed, the last two decades has seen a surge of interest in the much broader questions about the organization of the relationship between ruler and ruled under the heading of governance. Governance is about the processes and mechanisms through which society is governed. It focuses on the mechanisms by which those that appropriate and use public power at all levels are held accountable by their constituency. Mechanisms of accountability extend beyond elections and include transparency, checks and balances on centers 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 rulers are elected. For an understanding of state legitimacy in fragile situations, governance is particularly important because it directs attention to the potential pitfalls of too much emphasis on democratic elections (Barnett 2006; Paris 2004).

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 have very strong influence while the closeness with the Khalife general is still a major asset in an election campaign. The same type of relations will occur in **Botswana** where the strongest traditional chiefs among the Bangakwetse have a strong influence on the votes the members of their group cast in elections. Voting is as much an individualist as a collective right. In Uzbekistan, where the state has extended its power vertical 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 over the way their community members cast their ballot, especially in the countryside.

A ballot is seen as a valuable good one may exchange against material benefits. As such, it may be sold the day of the election to the candidate that will make the best offer. In fragile situations, where normative and social system coexist, a ballot can take many different meanings: it is a private right to be cast in the secret of an election booth; it is a valuable good, one may sell against money before casting it; it is a part of a classical gift – counter gift process, in which related people will exchange social capacities. Once again normative blending at its best or worst!

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

3-2-5 Collective identity

One of the most pervasive features of the processes of state formation is the importance of a collective identity. The construction of an "imagined community" (Anderson, 1984) bounded by a territorial border has been and still is a central resource for state legitimacy. A strong sense of community attached to the state may act as a bridge between different other and conflictual resources of legitimacy such as tradition, religion, language... Whether defined in terms of strong nationalism or in a looser sense of community, this collective identity is central to the making of a political community uniting people around a common acceptation of a state and their mutual acceptation as citizens in spite of 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.

One of the most pervasive features of the processes of state formation is the importance of collective identity for the legitimacy of the state. Nationalism – the construction of an "imagined community" (Anderson 1984) bounded by a territorial border – has been and is a central source of state legitimacy. Nationalism can be seen as the bridge between different sources of legitimacy, such as tradition, religion, and the state because these sources are linked specifically to those that live within a particular territory. Whether defined in terms of collective identity or in a looser "sense of community" shared beliefs of "a people" is central as a source of legitimacy. Indeed, nationalism, in its stronger version, can also be seen as a overarching, transcendent source that gives the state a "purpose" in the eyes of its population. In this sense, nationalism is not a source of state legitimacy.

3-2-6 Religion

Religious beliefs, and religious institutions, play a central role to define what is considered morally right, appropriate, sinful, wrong etc in a society and to shape 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 and them replacing religion as a central resource of legitimacy (Rae 2002), while the perceptions of the secular state and authority by citizens kept on being very much influenced by religious frames and conceptions. Many states are in a precarious position of trying to balance different and competing resources of legitimacy. Religious beliefs in a particular society may, for example, be at odds with foundations of a modern liberal style state or with the demands or suggestions made by the international community for reforms in particular 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 to contest a regime (Myanmar) or to contest the very foundations of the state and to lay down alternative models of states (Iran, Hezbollah in Lebanon, Pakistan...). State fragility may come from an instrumentalization of religion against the state and the values it is built upon.

Religious beliefs, and religious institutions, evidently play a central role defining what is considered morally right, appropriate, sinful, wrong etc in a society for the interested groups. As a source of state legitimacy, then, religion is perhaps best understood by looking at how it shapes broader categories and standards in society – standards that people use to evaluate, judge and debate state policies and institutions (Lamont and Thevenot 2000). When incorporated into and made part of state institutions and policies, religious beliefs become difficult to entangle as independent sources of legitimacy. Indeed, the western history of state construction saw the state emerging by first using and then

replacing religion as a central source of legitimacy (Rae 2002). Religious authority sees themselves as being the voice of the voiceless. Religion is also very much tied up with charismatic leadership as defined by Weber, where religious beliefs are central to defining some actors' standing as particularly wise, courageous, and therefore legitimate (Kohmeini in Iran, for example). Many states are in a precarious position of trying to balance different and competing sources of legitimacy. Religious beliefs in a particular society may, for example, be at odds with the demands or suggestions made by the international community for reforms in particular areas, as in the case of family planning and reproductive health.

In Muslim but constitutionally secular Tajikistan, state-religion relations are tensed, 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 mobilisation 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 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 marginalising IRPT in the political game, and has kept the Islamic clergy under the scrutiny of the state, in direct continuity with sovietism. It also alternates permissive and repressive decisions on religious practice in the public sphere. Second, scholars and intellectuals working on national identity building are asked to put the emphasis on founding traditions and myths which are chronologically antecedent to Islam, like Zoroastrism and Aryanism.

3-2-7 Patronage

In a system of patronage, legitimacy rests with the rewards that accrue from the exchange, and from the fact that this exchange pervades large parts of society, in the sense that all but those at the very top are simultaneously both patron and client of some other person. More specifically, 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 "works" 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, it is followed or obeyed even when it goes against ones self-interest and in the absence of credible sanctions. The legitimacy of patronage is intimately tied up with traditions and with the trajectory of state formation and colonial rule in many developing countries, where patronage became central for what the state was about. It became institutionalized as a politico-economic institution and thus followed routinely, by habit.

Box

In Soviet Central Asia, patronage characterised 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 power managing mode can be found in independent Tajikistan, not only as a colonial legacy, but as a technique which state leaders and influential sub-state actors (*strongmen*) resort to in conflict and post-conflict situations.

From 1992 up to 2001, state authority was challenged by warlords (coming 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 a very 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 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 socioeconomic mechanisms of survival on the territory they control. Thereby, they gain political legitimacy and authority over locally ruled populations. In other words, 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 alternate in 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 in its structures, or their neutralization.

Source: Nourzhanov, Kirill, "Saviours of the nation or robber barons? Warlord politics in Tajikistan", *Central Asian Survey*, vol. 24, n°2, June 2005.

3-2-8 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, however: 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 statebuilding efforts typically point out, the active and sustained actions of the international community in a state may undermine state legitimacy because it produces accountability vis a vis donors rather than the domestic population (Chandler 2006). To the extent that state legitimacy ultimately rest on what we here refer to as constructive state-society relations, international recognition can potentially disrupt ruling elites' focus on its domestic constituency.

4 Competing for legitimacy in contexts of fragility

Diverse sources of legitimacy coexist and/or interact during state formation processes, bolstering or not state legitimacy. 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 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, the "Drivers of Change" analyses are a very useful approach. It will also be reminded that external actors can be made to work comprehensively in addressing state legitimacy in fragile situations; the way they typically operate seems to undermine the possibility of establishing such an approach. Here, 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 etc is a major limitation.

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

Normative pluralism describes those situations where various normative systems (legal, traditional, religious, etc.) may coexist and compete in social, political and economical regulations and be used by people in their relation with the state. Not only, each one of these systems of norms refers to values and authorities affecting both the idea of power and its practices but also people might consider other system of norms as law beside the state one.

Box 4: Coexisting systems of norms: Murids (Senegal) informal banking system

Senegal enjoys a modern banking system which was inherited from the former colonial power and works along international rules and regulations. However, those rules and mechanisms are alien to ordinary people understanding and perceptions of credit, confidence and guarantees. As a result this banking system fails to reach and attract small economic operators, which are left in a situation of credit crunch.
This does not mean that those economic operators are left without credit. People may get credit from other unofficial channels. **Senegal** strongest Muslim community, the Murid brotherhood, has been organizing for years 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 undisputable legitimacy leaders of the brotherhood enjoy from their followers (*talibés*). Social pressure and trust, linking financial service to religious and cultural norms allow for quasi contractual relations, eventual renegotiation of commitments and compel contractors to keep to their words. This parallel system is closely related to the official economy, leaders of the brotherhood acting in close connection with the official Senegalese state.

Another widespread type of alternative financial system, the so called tontine system, does exist in a number of Western and Central African countries as well as in the five central Asian Republic. This tontine, works along local social norms and through strong social pressure. All members of a given social group, sharing common interests, contribute a certain amount of money to make a capital they will successively be allowed to use. In a number of cases those credit systems have been used by banking operators to develop successful small credit schemes. The most famous one being the grameen bank as originally developed in **Bangladesh**. "Hawala" is another widespread type of alternative and informal financial system, used by labour migrants whose countries have a nascent, dysfunctioning or unreliable banking system. This was the case in Tajikistan between 1993 and 2003; since then, a growing majority of labour migrants have been using formal channels for their remittances. "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.
Once again this shows how coexisting systems of norms may finally interact to become positive contributions to 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, Ediations 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).).

The international community's efforts to address state fragility in the form of state-building are overwhelmingly focused on establishing a state that is rational-legal in compliance with the Western model one. It seeks to establish the state with a basic capacity for the provision of security and for other central administrative tasks, but more importantly seeks to transform whatever state institutions are in place to function according to rational-legal principles, key among which is the distinction between public and private, and to have the state advance and live by democratic and liberal principles. The debate about the extent to which state-building should proceed by "institutionalization before liberalization" (Paris 2004) or not is essentially a debate about whether rational-legal or liberal sources of legitimacy should be prioritized in addressing states in fragile situations. While a more nuanced approach has developed over time with regards to the sequencing of state-building efforts and the importance of building on pre-existing sources of legitimacy and stability (Clements et al 2007), those other types of legitimacy or authorities are still not considered as important or valued as rational-legal and liberal sources of legitimacy (Do No Harm Study).

Legitimacy is not synonymous of legality. State sponsored legality, or the Rule of law, is a clear an indisputable source of state legitimacy. However, in context of fragility state law may stand as alien, unacceptable and illegitimate (particularly in such fields as land management, property law, family and criminal law) to large parts of the people. This may lead to institutional tensions. To bolster state legitimacy and capacity, the international community often advocates rule of law reform as cornerstones of statebuilding 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 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 institutionalisation of the law refers to the acceptance of the legal system by the people to whom it is meant to apply." 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 are or will be accepted as legitimate, and here, already existing sources of legitimacy 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-miscegenation with others and 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 the customary law and practices are often not taken into account.

Box 6: 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 recognised 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). This issue is acknowledged, but there is little work done to make try to make sure that different systems of law and organisation may 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).

Research on the evolution of the legal management of land in Africa, for example, show 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 consider customary law more legitimate than state law.

Box 7: Coexisting property rights and dynamics of confrontations 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 one's 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. finds that, when these two sources of legitimacy coexist, securing one's access to land may require to seek 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 coexisting while traditional lands are being registered on the modern market as "private lands" by people who want to get some guarantee they are not supposed to get according to traditional law. Normative blending at its best or worst!

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

Increasing attention is 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 economical problem but also a social, cultural and religious one. Any dispute in that field is likely to confront different systems of law, which raises the question of how the state can acomodate and institutionalize legal and normative diversity without being weakened or threatened ie work out mechanisms that can reconcile legality and legitimacy aiming at anchoring state legality in normative pluralism (international norms being part of this pluralism).

4-2 Competition over diverse legitimacy: normative pluralism in fragile situation

Regarding the existing context of normative pluralism, what make states **in situation of fragility** specific is first that those **various sources and forms of legitimacy are likely not to reinforce each other** and may be at loggerheads and second that they may very well be used by domestic actors as alternative assets in their struggle for power or advantages. States in fragile situations, then, are not strong enough to attract or subdue other major sources of legitimacy. In fact, states in fragile situations are forced to struggle and to enforce its 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 on shifting according to actors (public institutions being actors) or group strategies. One major feature of states in context of fragility is that they are being affected by conflicting and alternative models of social and political organizations and legitimacy without being in a position of sidelining them, or including 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. As such, fragile states do not structure society in such a way that 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. Indeed, in many fragile states, various sets of legitimacy not only enter into confrontation but may be added or mixed and blended into various proportions by actors trying to maximize their benefits. Actors engage in "forum shopping", or keep on straddling from one semi autonomous social field to another one, to quote Moore. Uneasy, complex, partial, always changing and unpredictable "miscegenation" of various normative and legal orders are achieved by single actors, whether a person or a group, in daily life activities. People may exploit the heterogeneity of normative orders to challenge the frame of reference that the state provides in stable and robust states (Belley, 1993 and 1997). Indeed, 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 often enjoy high degrees of 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 9: Using traditional symbols and sagas to root the state and social mobilizations deep into history

In most societies, symbols and historical sagas serve as essential features of life. They help to justify actions, signal expectations, and by serving the same functions in politics, aid in legitimizing political leadership. In situations of fragility in which different norms coexist, leaders try their best to secure whatever links with those symbols and historical sagas to strengthen their power. Although Sekou Touré came to power amidst great popularity and political legitimacy, he was confronted by severe political, economic and ethnic problems. To weather these problems, he successfully used political symbols. For instance, he transported back the remains of two great figures of "resistance" against French colonial occupation of Guinea, his ancestor: Almamy Samori Touré and Alpha Yayah, for reburial 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 of 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. The extreme personality cult of former Turkmen President Saparmurat Niyazov could be compared to that of Sekou Touré. In Tajikistan, President Rahmon has not organized such a personality cult, although he is presented 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 (9th century).

The same could be said of numerous African leaders, past or present, but also Asian (Cambodia or Maynmar) and Central Asian (Turkmenistan) or Latin American (Bolivia). "Indian leaders" in Mexico (Chiapas), Ecuador (Pachakutik movement) or Bolivia (Evo Morales and the cocalero mouvement) have all called upon traditions, history and old social and religious practices and beliefs to support the political mobilizations they were heading and provide them with this value-added 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, 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, cuidadania 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 legitimate expectations of the people. Legitimacy in situation of fragility is the site for intense political competition between the state which is supposed to monopolize it and other forces that may take advantage of the state lack of capacity and legitimacy to offer alternative system of government and present themselves as speaking on behalf of the people and the nation. The role of Hezbollah in Lebanon or of Islamist movements in a number of Arabic countries, the capacity of FARC in Columbia to offer in the 80s and 90s an alternative order are clear examples of this competition over sources of legitimacy. They show that if the state fails to incorporate other types of legitimacy people still consider as essential to their own living, it will soon be challenged by alternative models or will fail to overcome them.

Box 10: 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 the field of health, water, education, and garbage 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 a strong flux of shîites refugees) and was deserted 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, ensuring access to the population's basic needs. The Health Committee (*Hayât—al-sihhiyya*) has thus coordinated a large number of efficient medical centers in the area. In he field of eductation, al-Mustafa Highschool, has often been presented as one of the biggest and most efficient of the country. One of the aims of these organisations has notably 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 illustrates the tight link between two major sources of legitimacy cited bellow: one referred to what the actors does, the services it delivers, and the other one based on the common belief that it develops among the population.

What characterises contexts of fragility, however, is not only that there may be competition between groups over different sources of legitimacy, but also that the sources and forms of legitimacy that are 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, but may undermine it with others. Indeed, patronage directly contradicts efforts to establish a state that function 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 legitimacy: strengthening state legitimacy and reducing fragility (see recommendation n°....)

As previously stated, people keep on playing on the heterogeneity of normative orders and their different spheres of implementation (internormativity-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) in public dialogues is a clear way to contribute to the making of a public space (or civic space for G. Hyden) in which practices and systems of norms are discussed and associated, blended or merged. It favours an integration of various normative systems (through confrontation, hybridization, overlapping, deviance, etc.). These systematic interactions BETWEEN legal systems contribute to the state legitimization process and institutionalisation. **Supporting interactions between people and institutions** is a way to strengthen the public sphere.

Box 8: Multi-Stakeholders forum on governance in Mali: a "palaver tree" to exchange, learn and build". An initiative to articulate the diverse sources of legitimacy in public debates.

Under the aegis of the Commission for Institutional Development-CDI diverse actors be it in charge of public management (civil society organizations; public administrations and international partners) or academics, with the support of the French Ministry of Foreign Affairs and the methodological support of the Alliance to Refound Governance in Africa, was launched in June 2008 the Multi-Stakeholders forum on governance in Mali. Understood as a space for dialogue between all the different kind of governance actors in Mali notably the development partners, it aims at facilitating debates, confrontations of ideas, innovations and learning process within an informal setting.

It is a space for Citizens interpellations and large public debate. It aims at establishing a diagnosis on governance in Mali to better identify drivers of change and actions on which each actors might rely on to change mentalities and practices and to invent a new governance anchored in the Malian context. This long term process (3 years) is linked to the strong conviction that answers to central governance issues are not likely to come from miracle formula to be adapted through ownership but from a meticulous process of practices examination, experience sharing and of governance devolution to regional and local levels. Democratic governance, based on sociocultural settings and history, and closely articulated to modernity, benefits from dialogue and actors training.

Governance debates address such issues as public service delivery; civil society; access to justice and citizens rights, etc…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. 4 sessions of 8 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 6 months these proposals are translated into action plans by by participants (gathered in a special college) and come along with implementation, monitoring and assessment plans. Training and capacity strengthening are given priority in these plans. At the end of the first three year, a collegial assessment will take place to decide the follow up of this process.

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The issue of legitimate public action is closely related to this particular challenge of managing legal pluralism without weakening state legitimacy. State making is above all an exercise in associating different systems of norms and values while keeping on considering the state law as both a beacon and something to be adapted. But how can the state law reflect social pluralism and not only international norms? The challenge of legitimate governance is precisely to make diversity and unity work, together in order to reconciliate authority and power (see the principle of active subsidiarity, Calame 2003). In such a context of normative pluralism, legitimacy clearly results from a participatory process of elaboration of the public policies. Law, public policies are thus inclusive.

Box 5: State reform through ownership: municipal participatory budget and Local Solidary Governance Program (PGSL)in Porto Alegre-Brazil

In **Porto Alegre**, the notorious participatory budget gave a 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".
(Boaventura de Sousa Santos, (1998), Participatory budgeting in Porto Alegre: Toward a redistributive, *Politics & Society*; Vol.26, 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 Solidary 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. To be published in English)

5 Forces at work

We have argued that state legitimacy depends on the state's ability to meet the population's material and symbolic expectations. The underlying assumption is that the state is generally accepted as the highest political authority by a majority of the population. In many, perhaps most, fragile states, this is a reasonable assumption. Even if citizens 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. Consequently the legitimacy of the state in context of fragility is paradoxical: on the one hand to increase its internal legitimacy the state must undermine the basic principles that give it its special features; on the other hand, to fulfil its formal functions it could be akin to ignore its own society. These discussions on challenges and constraints faced by fragile states that are confronted with alternative forms and

sources are focused on domestic legitimacy. The specific problems related to international legitimacy will be discussed separately.

5-2 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 have considerable legitimacy in certain groups and territorial areas. States in fragile situations generally resort to two strategies. They may court non-state legitimacy sources, processes, authorities and institutions to get support from and access to significant parts of the populations. In that case, the state makes deals with alternative authorities in an effort to neutralize threats and prevail in the long run. Alternatively, they ignore "society" and claim that it stands as the only legitimate authority, as stated in formal regulations (constitution, rule of law, institutions) and as recognized by international actors. When lacking capacity, a state choosing the latter strategy is a "suspended state."

Box 11: Botswana Kgotla; Burundi Bashingantahe; Rwanda Gacacas: three cases of reciprocal transformations

As a former custom law court and public forum, the *Kgotla* (supported by the local chief system (Bogosi) simultaneously enables **Botswana** 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 to spread among local people; Quite the contrary. Since 1993, there is 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 chieftainship continue to make it easier for state power and decision to reach ordinary people, influential chiefs interpreting for the people state policies (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 consecrating their sharing of common values and norms.

(Sources: Holm, John and Patrick Molutsi (1989) *Democracy in Botswana*, Gaborone, McMillan; Brothers,.Sue; Hermans.Janet; Nteta. Doreen, (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 has designated an organized corporate group of wise and honest men whose effective juridical role was legitimated for their sense of truth, justice and accountability. However, this "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 that are already holding positions in the state territorial administration and acting as local party committee chiefs.

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

In 2001, **Rwanda** 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 ethic, were much more efficient to deal with a genocide in which a considerable amount of the population was involved than any type of state and official law that still stand as alien and unworkable for ordinary people. *Gacaca* judges are selected among "honourable" members of local communities, or all people of high moral standards. With an active participation of the communities, *Gacaca* judges are engaged in establishing the facts and hearing confessions. *Gacaca* 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 some 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 Tamil's upheaval); strong and violent oppositions to alternative legitimacy and to the institutions they support (destruction of chieftainship, traditional and religious leaders); to close exchanges and uneasy and more or less structural compromises and trade offs; to finally mere abandoning their mission of sovereignty in some areas or communities in exchange for non- interference by rival groups (RDC, Columbia, Niger delta area, Lamido de Rey Buba in Northern Cameroon). This is one of fragile states' dominant features. They mix formal, state-sanctioned rules, regulations and processes on the one hand with informal ones on the other one (cf Hyden 2006). Actors are involved in tensions, trade-off, bargaining and confrontations as both community and interest leaders thus contributing to the actual state making processes. The state is thus partly "captured" by groups in society that are busy "eating it up" from the inside, socializing the state functions to their particular needs and interests. On the other hand, "traditional" societies, communities or legitimate powers are no longer that traditional, being deeply moved and transformed by pervasive state policies and interventions, however weak they may be and highly "modernised" leaders (Tréfon). This means that a dualistic approach confronting a "modern" state with "traditional" societies must simply be given up.

5-3 Patronage and 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 offered may vary. Clients may be offered positions in the state (which can be used for personal enrichment), business licenses, property or, quite simply, money. 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, opens up opportunities for exploiting ones position for personal gain. If, for instance, the personal economic situation of the state elite depends on their holding official positions, their interests may be best served by policies that undermine both state capacity and economic development, but enable them to hold on to their positions.

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. On the one hand, actors may see such practices as serving their interests. On the other hand, they may regard them as morally justified. The same applies to decisions of whether the state's official, legal-rational rules should be followed. When actors decide whether they should follow the state's official rules or not, 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 actors' interests are best served by actions that are compatible with his/her norms. **Thus, 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, generalised patronage, clientelism or neopatrimonialism 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 for lack of economic or administrative resources or lack of cooperative relations with other actors in society. Patronage and other systematic pattern of redistribution of state resources appears as an effective tool to keep together different sections, communities and areas of the state space (Gabon, Cameroon, Nigeria, RDC). And if, (as argued by Bayart, 1993, Martin and Coulon or Chabal and Daloz, 1999), maintenance of political legitimacy at all levels depends on the distribution of spoils and patronage, increased state effectiveness through elimination of patronage could lead to a crisis of legitimacy, by undermining holders of official positions' ability 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.

Box 12: 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 as a Janus state. On the one hand it displays an 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 away from those which 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 to 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 "shadow state" 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.

William Reno (1995) *Corruption and State Politics in Sierra Leone*. New York: 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 as legitimate (Chabal and Daloz, 1999). First, in terms of individual interests, patron-client networks may give people access to favours and services they otherwise would be unable to get access to. 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 express dissatisfaction with the state's inability to do this. However, 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 experience people have had with the state. If they have experienced it as mainly a threat and an instrument of domination, which appropriates resources without giving anything in return, they are not likely to trust it, even if they simultaneously wish for a state that could promote 'development'. Since patron-client ties are based on personal networks and connections, it appears more attractive to rely on these ties.
The strategy of reproducing state power by building client networks contains built-in escalator clauses that seriously compromise state capacity over time (Beissinger and Young, 2002). 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. The realisation of the state's professed aims required a strong state, yet the imperative of political survival compelled leaders to undermine state strength by extending patronage networks. Thus, the political situation in many fragile states is such that pursuit of policies which are "rational" in the sense of enhancing state capacity or promoting economic development may be politically impossible to sustain. If, for instance, the personal economic situation of the state elite depends on holding official positions, their interests may be best served by policies that undermine both state capacity and economic development, but enable them to hold on to their positions.

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, in spite of the adverse long-term effects of such policies. The long-term consequence of this policy will, of course, be that the sources of the state's income will be eroded, thus leading to economic collapse of the state (Boone, 1994). Thus, patronage allows the state to survive, albeit the long term consequence of this policy will, of course, be that the sources of the state's income will be eroded (Boone, 1994; Beissinger and Young, 2002; Reno 1998).

5-4: Regime interests and the politics of state formation:

Thus, ruling regimes in many states do not see a strengthening of state capacity as serving their interests. Their control over the state depends on maintaining patronage networks that undermine the capacity of the state. As long as regime survival does not depend on strengthening the state, and may

in fact be threatened by it, while regimes have alternative strategies for political survival (patronage, crime, corruption, aid, mineral extraction), state building is not likely to be pursued. 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 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 mobilisation), the very sections of society with whom regimes might align themselves to build a stronger state may have little to gain from the establishment of such a state.

However, experiences of changes in the structure of interests exist, 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 élites may contribute to spread state legitimacy among new sectors of the population and to transform clear widespread patronage into a tool to gradually enforce 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 (developemental state), Evans (embeddedness) or Médard and Fauré. In this perspective, political and economical benefits are supposed to trickle down or spill over to larger parts of society (employed people, middle class) which are progressively included into the processes, organisations and resources of an expanding state whose legitimacy improves.

Box 13: The politics of regime survival in Zimbabwe

A clear example of the contradiction between state building and regime interests is Zimbabwe's policies of land reform. In the 1990s, the position of the ruling regime became increasingly fragile. The economic situation has 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 which 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: Hypothesis on the paradox of aid and legitimacy

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 faced by many states in fragile situation is that the expectations of citizens do not correspond to those of external actors. Thus, external actors demand or seek to promote the establishment of states, which maintains law and order, protect private property, respect human rights and the rules of democracy – in short, an ideal-typical liberal state. However, such a conception of statehood may not be what citizens have in mind. In theory, one might argue 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 people's main concerns. 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 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. This raises important political and normative questions about which standards donors use in contemplating what, and what not, to do. If the expectations of external and internal actors are not similar, states are faced with a situation where it is

impossible to satisfy expectations from both simultaneously. Worse, it strengthens the capacity of different group (ex: leaders) to play one type of legitimacy against the other.

It is an underlying assumption in the statebuilding literature that donors' policies and actions are based on a wish to serve the recipients best interests. However, this is clearly a naïve picture. While donors may have a genuine wish to help recipient countries, it is a fact that donor policies and actions are always to some extent shaped by other considerations as well. These may include economic or geopolitical interests as well as a wish to enhance their own international standing by being seen as generous or compassionate. Thus, while policies of development, including state building policies, are always justified with reference to moral concerns and the best interests of recipient countries, they may in reality be equally motivated by attempts to promote their 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 donors' rhetoric and to interpret most donor actions as expressing ulterior motives and interests. This means that recipients are not likely to take donors' expressed motives at face value. As a result, the domestic legitimacy of donor programmes of state building may itself be fragile.

6-2 The double legitimacy: ownership and legitmacy

Whatever motives external actors (donors included) have, they may potentially either undermine or increase the legitimacy of states in fragile situations. In dealing with states in contexts of fragility, external actors are confronted with two types of paradoxes: The first paradox could be called *the paradox of power*. Donors are clearly in a position to strongly influence state building by suggesting reforms and actions and funding priorities. The state in a fragile situation is typically not in a position to challenge or directly negotiate with donors the content and orientations of major reform programs. However, the capacity of donors to influence actual state making processes, or "the state as it works", is very limited: a clear, long term, coherent and concerted policy by external actors is still pending; external actors are accountable to their own constituencies and prone to policy changes that have nothing to do with local contexts. Finally, external actors are not supposed to act as substitute to the state in daily management of the society. Meanwhile the state in fragile situations is engaged in daily bargaining with groups in order to build its "internal constituencies", and this process shapes what will actually be accepted and to which extent.

Box 14: states in context of fragility: the issue of double legitimacy

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 maintain strong links with external donors to secure financial aids and attract political support, they 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.

The "double bind theory", and even a "triple bind theory", apply to post-conflict Tajikistan in the sense that its political leadership is highly dependent on and accountable to not only donors and international organisations (for humanitarian, technical and economic assistance), but also Russia (for military/political protection), and that it is supposed to be accountable to its internal constituency. The ambivalence in this situation lies in the fact that, although Tajikistan is characterised 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 his landlocked country. Some people criticize his all-out external strategy as schizophrenic, and unlikely to last long, but it has proven viable so far. Although tied up to some conditionality, donors' and international organisations' peace-building and development programmes 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 between 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 things easier for the Tajik political leadership to instrumentalise external assistance and pursue a political agenda that contradicts international recommendations. For instance, it has gone away from democratisation, and made sure inner and client circles reap the benefit of the land reform process.

According to 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 activities. Donors therefore always emphasize the principle of national ownership, even as their policies potentially undermine it. This is particularly true in states in contexts of fragility, which have little means if any to contest directly the offers which are made to them. 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 fulfill their commitments in terms of ODA (Chandler, 2006; Pender 2007). Conveniently, this also may 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 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 avoid this problem and 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 so-called governance issues (democracy, respect for human rights, 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 donors (Doornbos 1995; Ferguson 2006). As argued by Ferguson, a second conclusion is that donors policy depoliticize state making processes, contributing to its failure (Ferguson,1990; 2006). This contradiction is particularly clear in the case of donor programs aiming at state building and capacity building. Such programs run the risk of undermining the sovereignty of recipient states, by making them accountable to donors rather than to their own citizens. 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 countries such as Cuba, Iran and Zimbabwe. Heavy western criticism has enabled leaders of these countries 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, 2004a, b; Doner et al, 2005). This in turn leads to enhanced

government penetration of their territory, bureaucratic reform and institutionalised bargaining with citizens over the conditions of taxation and the government budget and more broadly over the type of state they may accept (Moore, 2004a, b; Tilly, 1992).

By contrast, states that have access to unearned income, or rents (mineral exports, custom fees, foreign aid) are not compelled to create strong institutions for the purpose of taxation. 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 taxation of the country's population, the incentive for creating strong institutions for the purpose of taxation is removed.[5] Instead, it can obtain resources from the international community, from custom and trade fees and in some cases from export of minerals, which does not require an effective administration.

For many states, foreign aid has been an important source of rent. 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. This means that the ruling regime does not depend on domestic society for revenue and for the reproduction of its own power. 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. It follows that, from an economic perspective, regimes which depend on revenue collected from their own society would be more likely to pursue a strategy of state building – quite simply because they, as regimes, have the most to gain from it (Moore, 1998). Conversely, in states, which 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. At independence in 1966, the country 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 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 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 was not their main source of income, and their economic interests were linked to the development of the cattle sector, and not solely to their 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.

What makes state building so difficult in many cases is that regimes in weak states may not 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. However, even if incentives could be changed to make state building more attractive for ruling regimes, rulers may be unable to do so. Such inability may be caused by lack of economic or administrative resources or by a lack of cooperative relations with actors in society.

At the same time, the nature of external links found in fragile situations makes the creation of an effective state difficult. 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

[5] This is one aspect of what Bayart calls extraversion (Bayart, 1993, 2000). African politicians, he argues, have become experts at manipulating international organisations, foreign governments and aid agencies.

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 globalisation may create opportunities for primitive accumulation that strengthen the position of capitalists within a 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, globalisation does not necessarily create conditions in which capitalists are likely to seek the strengthening of the state.

Thus, the particular combination of internal power relations and external constraints faced by weak states makes the task extremely difficult. Given the social structure of most existing weak states (weak bourgeoisie, weak working class, informal economy, peasant societies, low political mobilisation), the very sections of society with whom regimes might align themselves to build a stronger state have nothing to gain from the establishment of such a state.

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

We discussed in section three how efforts to help bolster state legitimacy in fragile situations must be cognizant of different dimensions of state legitimacy simultaneously. This suggests that the idea of "sequencing" in state building processes – 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 the population (Paris 2004). Sequencing has been proposed as a viable policy option by those that criticize the tendency to rely on democratization and liberalization as a means to establish state legitimacy in post-conflict situations. They hold that democratic elections and, more generally, liberally oriented reforms, will not produce stability nor 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 1993) While proposals for sequencing may be right in pointing to the instability of too quick democratization processes, 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 will produce a skewed and ultimately unstable polity.

There is an equally problematic assumption, however, in many contemporary peacebuilding 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 have a tendency to assume that their actions and strategies are or will be considered legitimate *because* they are based on a universal template for liberal state- and peace-building. In short, external actors typically assume that because they advance liberal goals, their actions are de facto considered legitimate by the domestic population. Various 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. Thus, strategies and policies applied to address situations of fragility must be tailored specifically for each situation. Moreover, it also means that 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 both in formal state institutions and in 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 our 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 its 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 people consider to be legitimate.

It is also essential to understand local power relations – both 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, we must seek to understand how 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 etc, 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 thus emerges 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 everyday social practices and institutions.

The formation of a state of the kind envisaged by donors presupposes that citizens take the state's presence and its position as the highest authority for granted. 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 a reasonable success the monopoly of the 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 nevertheless intimately related. States in fragile situations are both more separate from, and closer linked to, society 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 closer linked to society, in the sense that in practice, the boundaries between them are not generally recognised. 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 rest 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 mixture 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 its power and its 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 are 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 a priori 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 too much of their bets in one or a few sources of legitimacy, such as democratic elections and human rights norms as an end by themselves and disconnected from the society project. To get states out of 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 statebuilding proceeds but also to its goals. Context, therefore, cannot only determine how donors seek to help build liberal democratic states, but may also have to shape what type of state one can reasonably expect to help build.

Recommendations

1- What should donors 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 on state legitimacy in situations of fragility must therefore,** directly or not**, 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 intervention, 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 government 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 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 situation is that the expectations of citizens do not correspond to those of external actors. 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. This raises important political and normative questions about which standards donors use in contemplating 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 one type of legitimacy against the other.

1-4 Donors should remember, first, that while their interventions typically have a high degree of 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, thus affects the relative position of different local groups and is thus inherently political.

2- Which methodology and tools for donors support to State legitimacy in situation of fragility

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 between different** countries. Because state legitimacy in the final analysis depends on embedded socio-cultural features in each specific case**, donors should not only depart from one-size fits all approaches with respect to how statebuilding should proceed, but must also consider what end-state it is conceivable that donors could help establish**.

  While some progress has been made – as reflected in the DAC Principles for Engagement in Fragile States – donors should 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 already existing practices and institutions from which legitimacy of the state may emerge. Interdisciplinary analyses to better understand different groups' beliefs, historical relationship with the state etc. seems 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 prioritize locally defined and agreed upon standards rather than international targets or norms for the measurement of progress and evaluation of new initiatives.

- **2-2 To develop progressive tool**

- A stable and resilient state is one that draws on a web of different sources of legitimacy. Donors should be cautious 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 time frame. **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.**

Recommendations

2-2 b) Contractualisation: A flexible approach to donors intervention could be guided by three basic features:
- a strong comitment by donors to participative democracy whereby the shaping of projects woud be inclusive from the very beginning to the implementation and would give the strong word to local actors (supporting the strenghtening of a public sphere);
- the setting of clear goals to reach in a specific period of time, on which all stakeholders, donors as local actors, would unambiguously and publicly (in the social forum and arena in which the projects are discussed) commit themselves (supporting accountability and empowering social actors)
- the setting of intermediary goals. This is essential first to mobilize all actors right from the beginning of the project; second to allow for systematic evaluation on an annual basis, third to ajust and amend over time the implementation of the project, the means and pace used to implement it; and finally, to adapt along a "groping around" or "muddling through" model, the final objectives according to the intermediary results and the change they produce within the different perceptions and strategies of stakeholders (supporting empowering and appropriation)

- Contractualisation….**..**

2-2 Not to bypass any 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- Which main specific actions/sectors to be strengthen to bolster State legitimacy in situation of fragility?

3-1 This study has shown 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. **The objective for donors should be to favour constructive engagement between different actors** (state being one of these) in such a way that the state may be redesigned 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 statebuilding. 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 partnership between different types of actors, and a sense of commonness and citizenship. (See example in §§ 4-3 of the study). This method might also be applied regarding existing tools such as PRSP, etc to make them more participative in their making process.

3-3 International and local staff should be trained for this new kind approach. Working on process being defined and progressive require new tools but also people being trained to apply and manage these tools. It probably also ask to diversify the profile or the technical assistant, staff, etc.

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 donors' intervention would seem an important case in this regard. Similarly, the practice of investing in particular non-governmental organizations (NGOs) in an effort either to by-pass 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. In this respect, a study assessing programs and policies supporting multi-stakeholder dialogue should be undertaken to better identify how actors' capacities to participate in these kinds of dialogues can be strengthened.

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