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STATE-SOCIETY RELATIONS AND INTANGIBLE DIMENSIONS OF STATE RESILIENCE AND STATE BUILDING

A BOTTOM-UP PERSPECTIVE

Béatrice POULIGNY, Georgetown University (Government Department, Conflict Resolution)



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ABSTRACT

Crucial social and cultural elements underpin state institutions and ensure that they function. This is true in any context, but it is even more important to understand and truly acknowledge in “fragile” ones. Conventional perspectives need to be broadened and need to look at the multiplicity and diversity of political institutions (formal and informal), cultures and logics through which state resilience and state-building processes may be supported. Such an approach would help re-integrate the “intangible” dimensions that constitute the substantive content of institutions, their ethos, beyond their mere forms. Based upon concrete experiences in different African countries, this paper explains what these intangible dimensions are in three of the sectors usually concerned with reforms (politics, justice and security), and why they are important and should be better integrated in analyses, intervention strategies and aid programmes. An equally important dimension of such integration is that it would also allow better consideration of local capacities and resources to be taken, in particular in terms of resilience, and would allow it to go beyond the impression of “vacuum” or “chaos” too often given to situations of fragility. Finally, the paper presents some concrete recommendations to integrate these dimensions better into the priorities and modalities of European aid, as well as suggest a few avenues for further research on the subject.

Béatrice POULIGNY

Georgetown University (Government Department, Conflict Resolution)

e-mail: bpp3@georgetown.edu

beatrice.pouligny@gmail.com

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1 Introduction

This paper will focus on what is sometimes referred as *the “intangible” (“invisible”, qualitative) dimensions of state resilience and state building*. These intangible elements have been increasingly integrated in the international agenda aiming at transforming political structures, indicating a better understanding and acknowledgement of state–society relationships in situation of “fragility” and of the bases on which a society can actually be rebuilt and further conflicts peacefully transformed.¹ Analyses (including those by international organisations) have been increasingly emphasising *the importance of the content beyond the mere forms of institutions*. For instance, the OECD/DAC Fragile States Group has defined state building as “an endogenous process to develop capacity, institutions and legitimacy of the state driven by state-society relationships”.² In another discussion paper, the same group noted that:

“absent a careful understanding of the way in which the political and social fabric of society is expressed institutionally, investment in recreating or building new institutions that mimic the ideal Weberian form is often bound to fail. Rather, an open mind with respect to institutional arrangements and honest acknowledgement of the social foundations of existing forms of organisation is essential.”³

Other publications call for an increased attention to *the nexus between “formal” and “informal” politics*. Such analyses actually echo what social sciences have long taught us about the nature and diversity of institutions in any given context; of particular interest is their insistence upon an awareness of the routines and complexities of the processes shaping institutions, in the (fluid) conjoining of the social and the political spheres.⁴ Thus, the challenge for outsiders is *to capture the multiplicity and diversity of political institutions, cultures and logics – in other words, of “modalities of governance” – through which state resilience and state building processes may be supported*. This may refer to institutions which apparently are not political at all but which fulfil different functions, in particular, in terms of political socialization, permanent renegotiation of the rules of the game and legitimisation of the political system.⁵ These non-political institutions may provide what is sometimes referred to as the *“software” side of statebuilding: social and cultural elements that underpin state institutions and that ensure that they function*. Notions such as “civic” trust and legitimacy of the state, for instance, are now widely considered as central to the functioning of a state and sustainability of peace. A number of scholars who have worked and written extensively on statebuilding even con-

¹ Bernardo Arévalo de León, Joint Program Unit for UN/Interpeace Initiatives, UNOPS, Peacebuilding Community of Practice, Post-Conflict Capacity Development through Attitudinal and Behavioural Change, 15 September 2008.

² OECD, *State Building in Situations of Fragility: Initial Findings*, August 2008: <http://www.oecd.org/dac/fragilestates>. The [OECD/DAC Fragile States Group](http://www.oecd.org/dac/fragilestates) is a forum that brings together experts on governance, conflict prevention and reconstruction from bilateral and multilateral development co-operation agencies to facilitate co-ordination and share good practice to enhance development effectiveness in “fragile states”.

³ OECD, *Concepts and Dilemmas of State Building in Fragile Situations: From Fragility to Resilience*, OECD/DAC Discussion Paper, 2008, p. 39.

⁴ See, in particular, Samuel N. Eisenstadt, “Institutionalization and Change”, (1964) vol *American Sociology Review*, p. 235; Georges Balandier, *Anthropologie politique*, (Paris: PUF, 1967) (and Reed, Quadriga, 1991).

⁵ Anthropological studies on “local-level politics” have underlined this point, particularly in non-western contexts. A good example of this kind of investigations may be found in: Thomas Bierschenk & Jean-Pierre Olivier de Sardan (eds), *Les pouvoirs au village. Le Bénin rural entre démocratisation et centralisation*, (Paris: Ed. Karthala, 1998). On post-conflict contexts, see Béatrice Pouligny, “Promoting Democratic Institutions in Post-Conflict Societies: Giving Diversity a Chance”, (2000) 7:3 *International Peacekeeping*, pp. 17-35.

sider that “in many ways, state legitimacy is more important than effectiveness”.⁶ This legitimacy may sometimes derive from the efficiency of the state, but it also requires a number of socio-political processes, such as participation and accountability that are an essential part of the democratic and governance agenda. They also include more intangible components related to collective values, beliefs, perceptions and expectations attached to the state and what it represents. The same applies to the perceptions of justice and the rule of law, security or economic recovery and development. In other words, informal institutional forms may be as important as formal ones, as they contribute to important dimensions of state functions, in particular (but not only) intangible ones.

By comparison, *the tangible dimensions of statebuilding* consist of such things as the number of weapons destroyed, soldiers demobilised, laws drafted, judges trained, material delivered, or infrastructures rehabilitated or built (for example, clinics, schools, tribunals and roads). Most international initiatives aiming at supporting states in fragile contexts have focused primarily on those visible, tangible, and quantifiable outputs, rather than on qualitative processes of change, which, admittedly, are much more difficult to induce and assess. This approach is sometimes referred to as a “programmatically minimalism” – that is, to develop programmes that are “largely replicable, standardised, culturally inoffensive and politically ‘neutral’ or uninformed [and that] focus on technical procedures and institutions rather than law’s substance and ethos”.⁷ Several factors explain the pervasiveness of such an approach. Pragmatism: given the formidable obstacles in many fragile environments, outsiders, in particular, tend to focus on technical activities (for example, training judges, drafting laws, building tribunals, and providing material), as these seem easier to do than inducing behavioral and attitudinal changes. They also correspond to immediate needs that require important budgets for which most countries totally depend on the international community. Transferability: technical know-how is much less problematic to transfer from one context to another than political and cultural values.⁸ Strategic: the focus is more on short-term, immediate and visible results, than on sustainable, long-term impact. Political: a technical approach to these issues is partially a way of circumventing contentious debates and accusations of neo-colonialism (namely, that international actors are trying to impose outside — mainly western — values).⁹ Organisational: technical experts tend to capture most of the discussions. In reference to rule of law programmes, some critics have cautioned that “the rule of law is too important to be left to lawyers”.¹⁰ This criticism could be applied to other sectors of reform.

As a consequence, in practice, *the majority of international programmes focus on the forms and structures of institutions, but evade their substantive content — their ethos*. For instance, they will “focus on law enforcement — as illustrated by the preoccupation with police reform — rather than the generation of the rule of law and of public confidence in it”.¹¹ They will be interested in the formal design of institutions more than the

⁶ *The Peacebuilding Roundtable*, Ottawa: International Development Research Centre / UN Peacebuilding Support Office / Carnegie Corporation of New York, December 2008, Summary Report, p. 12.

⁷ Mark Malloch Brown, “[Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies](#),” Statement to the United Nations Security Council (6 October 2004), p. 85.

⁸ See, Francis Fukuyama, *State-Building: Governance and World Order in the 21st Century*, (Ithaca NY: Cornell University Press, 2004).

⁹ Béatrice Pouligny, “UN Peace Operations, INGOs, NGOs, and Promoting the Rule of Law: Exploring the Intersection of International and Local Norms in Different Postwar Contexts”, (2003) 2:3 *Journal of Human Rights*, p. 374.

¹⁰ Mark Malloch Brown, “[Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies](#),” Statement to the United Nations Security Council (6 October 2004).

¹¹ Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War*, (Malden: Polity Press, 2002), p. 76.

social context within which these institutions operate and the norms that support them. Yet, in their absence, institutions may appear as mere shells or “empty boxes”. In so doing, outsiders simply forget what political anthropologists have taught us: that the “political” must be understood in its “substantial” aspects, its properties, more than in its institutions (the formal aspects).¹²

Based upon concrete experiences in different African countries, this paper will first explain what these intangible dimensions are in three of the sectors usually concerned with reforms (politics, justice and security), and why they are important and should be better integrated in analyses, intervention strategies and aid programmes. Indeed, tangible and intangible dimensions of state resilience and state building need to be understood in their constant interaction and should deserve equal attention in aid programmes.¹³ Second, an important dimension of such integration is that it would allow taking better consideration of local capacities, in particular in terms of resilience and go beyond the impression of “vacuum” too often given of situations of fragility.¹⁴ The third and final part of the paper will present some concrete recommendations to better integrate these dimensions in the priorities and modalities of European aid, as well as suggest a few avenues for further research on the subject.

2 Exploring the intangible dimensions of political, judicial and security reforms

Crucial social and cultural elements underpin state institutions and ensure that they function. Conventional perspectives need to be broadened and look at this wider network of relationships, structures and belief systems that support them. Examples in the political, judicial and security sectors may help us understand the nature of these decisive components of any reform.

¹² Georges Balandier, “Le politique des anthropologues,” in *Traité de Science Politique*, vol. 1, ed. Madeleine Grawitz and Jean Leca (Paris: PUF, 1991), 309–34. On the application of that argument to post-conflict environments, see Beatrice Pouligny, *Peace Operations Seen from Below: UN Missions and Local People* (Bloomfield, CT: Kumarian Press, 2006), 97; see also Antonia Potter, [*The Rule of Law as a Measure of Peace? Responsive Policy for Reconstructing Justice and Rule of Law in Post Conflict and Transitional Environments*](#) (Geneva: Centre for Humanitarian Dialogue, May 2004), 11.

¹³ See Béatrice Pouligny *et al.*, (eds), *After Mass Crime: Rebuilding States and Communities*, (Tokyo-New York: United Nations University Press, 2007), and Barry Hart (ed), *Peacebuilding in Traumatized Societies*, (Lanham MD: University Press of America, 2008).

¹⁴ The notion of resilience generally refers to an individual’s capacity to adapt, survive, and bounce back during or after hardship and adversity. This capacity comes from individual characteristics as well as effective social and family supports. The notion has been increasingly used to also refer to the capacity of a group, a community or a society at large to do the same. It offers an interesting and dynamic perspective on situations of “fragility” as they also present multiple resources for the (re-) building process. For an overview of the notion of resilience, see M. Konner, “Trauma, Adaptation, and Resilience: A Cross-Cultural and Evolutionary Perspective”, in: L.A. Kirmayer, R. Lemelson & M. Barad, (eds), *Understanding Trauma. Integrating Biological, Clinical and Cultural Perspectives*, (Cambridge: Cambridge University Press: 2007), p. 322.

2.1 Beyond constitutional, governance and electoral reforms: restoring “civic” trust and a political community

2.1.1 Reforming local governance structures: a diversity of conceptions and perceptions

It has been recognised by many stakeholders that “rebuilding the capacities of the state and the (re-) establishment of credible, transparent, participatory and efficient governance and public administration institutions in fragile post-conflict settings is the key ingredient to achieving peace, stability and sustainable development”.¹⁵ Indeed, there is increasing acceptance of the idea that modern states must perform a variety of functions beyond holding the legitimate monopoly on the use of force in a given territory.¹⁶ The capability to perform these functions enhances either stability or instability. Failure to perform state functions can lead to loss of trust and legitimacy between citizens and the state, perpetuating a further weakening of state functionality (which cyclically then erodes the social contract and trust between citizens and the state). The consequences on economic recovery and sustainable development are also well known.¹⁷

In other words, everybody agrees on the centrality of institutions and governance mechanisms. This is the broad consensus. But at the implementation stage, the reality is that the notion of governance refers to a diversity of conceptions embedded in different historical systems of reference and practices. The World Governance Assessment (WGA), a project by the Overseas Development Institute, which aims to provide primary data on governance structures from every region of the world, has shown that the usual definitions of governance are problematical because they have been informed and determined by international development agencies, without incorporating the perspective of local stakeholders. This study has been providing primary data that include national and local stakeholder perspectives, showing that understandings of governance may relate to different cultural elements and assets.¹⁸ Historical and cultural contexts have often shaped *public perceptions of who the “authorities” are and what are the existing, at times informal (and even illegal) institutions*. While outsiders have been gradually integrating a better understanding of how their intervention has a high chance of exacerbating the struggle over resource allocation and rent distribution,¹⁹ their understanding of the more intangible dimensions that would help them to grasp local understandings of governance and, as a consequence, expectations from any reform, remain insufficient. Phenomena such as corruption and “black market”, for instance, have been more widely approached in their dysfunctional – and, at times, criminal – dimensions than in their functional ones. We tend to adopt a very moral approach towards these issues, forgetting that the variety of perceptions and functions attached to them in the daily practices will influence any governance reform.

¹⁵ UNDESA, [Governance Strategies for Post Conflict Reconstruction](#), P. 9.

¹⁶ See A. Ghani, C. Lockhart & M. Carnahan, *Closing the Sovereignty Gap: An Approach to State-Building*, (London: Overseas Development Institute, 2005).

¹⁷ See, for instance, Graciana del Castillo, [Economic Reconstruction in Post-conflict Transitions: Lessons for the Democratic Republic of Congo \(DRC\)](#), (Paris: OECD, 2003), 5.

¹⁸ See Goran Hyden, Julius Court & Kenneth Mease. *Making Sense of Governance: The Need for Involving Local Stakeholders*, (London: Overseas Development Institute, 2003).

¹⁹ See, for instance, United Nations Peacebuilding Commission Working Group on Lessons Learned WGLL/12/07, [Background Note: Local Governance and Decentralization in Post-War Contexts](#), (New York: United Nations, 2007), pp. 2-3.

2.1.2 Intangible dimensions at stake in electoral systems and processes

In the political sphere, elections are among the most powerful tools for accountability and legitimation of the state. In general, electoral processes are perceived as a way of extending participation and of legitimating a particular government. In accordance with the idea of social contract, elections can provide a government with legitimacy and breathing space to develop state capacity. This benefit of electoral processes is often under-estimated or ignored in the literature. Conversely, elections can also increase the salience of a lack of social cohesion or agreement on the nature of the social contract. But to play their role fully, electoral processes must be understood in a broader context – encompassing the substance of the democratic project itself — and not only as a stand-alone rather technical event.²⁰ *Many intangible elements need to be understood and fully taken into consideration in order to support any electoral process correctly, in particular in contexts of fragility.* Actors involved in the field have noted that the vitality of catering electoral systems to context cannot be sufficiently emphasised. A given electoral system will not necessarily work the same way in different countries. Important determinants include the socio-political context in which it is used, such as how a society is structured in terms of ideological, religious, ethnic, racial, regional, linguistic, or class divisions.²¹ The issues of boundary de-limitation and voter registration are particularly crucial from this perspective. They not only define voter constituencies, but also refer to more fundamental questions related to the definition of “nationality” and “citizenship”, the recognition of equal citizenship and (re-) allocation of resources. Various contexts, such as Sudan, the Ivory Coast, and the Democratic Republic of Congo (DRC) have shown how decisive those “intangible” dimensions can be, beyond the immediate interests at stake in the elections.²²

2.1.3 “Civic” trust and political community in constitutional processes

The same is true of activities and programmes surrounding *the revision or drafting of a Constitution* as a document that (re-) affirms core values of a society, institutes rights, and lays out the framework to reform the state apparatus (*i.e.*, the rules for the allocation and exercise of power, in particular the separation of, and relationships between, powers)²³ in order to build trust, with the aim of building a political community and thus entrenching a basis for state legitimacy. In some circumstances, reforming or drafting a new constitution may be imperative to (re-) establishing the basis of civic trust and of state legitimacy. *Multiple intangible dimensions are at stake in that process.*

One important component of any constitution is the definition of citizenship, an element that also relates to identities. Constitutions exist also to ensure the inalienable rights of every citizen, ideally without distinction as to race, religion, sex, or belief.

²⁰ Béatrice Pouligny, “The Limits of Imposed ‘Procedural Democracy’ in Post-War Societies”, in: *Peace Operations Seen from Below*, (London: Hurst / Bloomfield CT: Kumarian, 2006), p. 239. Andrew Ellis, “[Elections Are Not an Island: The Process of Negotiating and Designing Post-Conflict Electoral Institutions](#)”, (paper presented at the conference, “Post-Conflict Elections in West Africa: Challenges for Democracy and Reconstruction,” Accra, Ghana, 15-17 May 2006).

²¹ United Nations Development Programme (UNDP), “Electoral Systems and Processes”, in: *Governance in Post-Conflict Situations*, (New York: UNDP, 2004), p. 5; Benjamin Reilly, “Electoral Systems for Divided Societies”, (2002) 13:2 *Journal of Democracy*, pp. 167-68.

²² Béatrice Pouligny, “The Limits of Imposed ‘Procedural Democracy’ in Post-War Societies”, in: *Peace Operations Seen from Below*, (London: Hurst / Bloomfield CT: Kumarian, 2006), p. 244.

²³ Yash Ghai & Guido Galli, [Constitution Building Processes and Democratization](#), (Stockholm: International Institute for Democracy and Electoral Assistance, 2006), p. 8.

These key functions explain why many negotiations surrounding the settlement of armed conflict apply to the modifications envisioned to this regard in the constitution; attention to these issues is equally important as a preventive measure.

Trust and the attachment to common values essential to any political community are intimately linked to the modalities chosen to draft a new constitution or revise an existing one. They imply that “the diverse groups that constitute the population of the country have agreed to live together”.²⁴ The process through which a constitution is drafted or amended is therefore decisive. While the formulation of constitutions was originally the result of negotiations between élites, behind closed doors, participation and deliberation are now conceived as an inherent feature in the technical process of drawing up a constitution, which “has become one criterion of a legitimate process”.²⁵ *Participatory constitution-making (or reform)* is generally recommended as it provides a unique opportunity to encourage a process that promotes national reconciliation and the creation of a national vision for the future of the country. Today, most scholars and practitioners alike agree that this requires not only the traditional (top-down) approach of constitution-building and reform, but also the modern, popular (bottom-up) one.²⁶ Such recognition means that appropriate mechanisms are needed (with adequate support by donors) for *debate and deliberation that include populations’ views* on constitutional decisions. In some cases, “public opinion is sought before a draft is prepared, as was done in Uganda, Ethiopia, Thailand, Eritrea and Kenya, so that, even if the agenda for reform has been identified in advance, it can be broadened by reference to the needs and aspirations expressed by the people”.²⁷ This requires, at a minimum, *a substantial civic education campaign*, vital to empowering people to understand their roles, responsibilities, and rights in this capacity.²⁸ In the recent past, successful processes “have involved extensive education programmes and a process of consultation and discussion. They have encouraged national debate and allowed representatives from key political and civil groups to discuss and develop a plan for the county’s political future, largely on a consensus basis.”²⁹

More fundamentally, a Constitution aims at *restoring a political community*. In most cases, this is largely a “re-imagined” one, in the sense that it is not about restoring a pre-existing community or an ideal image that would already be available. In the words of the scholar Andrew Schapp:

“Faith in the possibility of community enables a collective reckoning with the past in terms of which former enemies might eventually arrive at a shared understanding of what went before.”³⁰

This means that *some forms of political reconciliation* are also needed. This political process needs to be understood both as a bottom-up and top-down one in which “collec-

²⁴ *Ibid.*, 9.

²⁵ Vivien Hart, *Democratic Constitution Making*, (Washington, DC: United States Institute of Peace, July 2003), p. 5.

²⁶ Vivien Hart, “Constitution-Making and the Transformation of Conflict”, (2001) 26:2 *Peace and Change*, p. 169.

²⁷ *Ibid.* See, also, Yash Ghai, “[The Constitution Reform Process: Comparative Perspectives](#)”, (paper presented at the conference, “Toward Inclusive and Participatory Constitution Making”, Kathmandu, Nepal, 3-4 August 2004).

²⁸ Yash Ghai & Guido Galli, *Constitution Building Processes and Democratization* (Stockholm: International Institute for Democracy and Electoral Assistance, 2006), p. 14.

²⁹ Kirsti Samuels, “Constitutional Choices and Statebuilding in Postconflict Countries”, in: Roland Paris & Timothy D. Sisk (eds), *The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations*, (London: Routledge, 2008).

³⁰ Andrew Schapp, *Political Reconciliation*, (New York: Routledge Taylor & Francis Group, 2005), p. 9.

tive and individual imaginations find ways to create a relatively small set of shared meanings and patterns of thought that will create a perception of safety, in which more complex forms of shared meanings and mutuality might grow".³¹ In post-conflict societies, these processes are neither linear nor easy, particularly as the coping mechanisms used by individuals may be "anchored not in deep community-based mechanisms, but rather in the essential *individual* struggle for survival".³² This observation made by Peter Uvin, based upon his experiences in Burundi, echoes, in part, his diagnosis about Rwanda.³³ This diagnosis is not limited to those two countries. The difficulty of fostering collective action, given extreme poverty as well as high levels of distrust within society, and between society and the state, is quite common in so-called "fragile" environments. It constitutes a great obstacle to the (re-) building of both a political community and a vital civil society. Indeed, civil society actors may also assume uncivil roles or be as discredited as political élites. Thus, they are likely to be distrusted by the general population. One key anchor highlighted by most of the literature is the building of some kind of *trust and confidence not only in others, in terms of shared norms and values, but also in the state and its institutions*. Indeed, "if genuine co-existence is to take place, then the building of trust is indispensable. If trust is absent, citizens will not be prepared to invest their energies in the consolidation of democracy."³⁴ It is referred to as "*civic*" trust, in the sense that it can develop among citizens who are members of the same political community, but who are, nonetheless, strangers to one another.

"In this view, reconciliation is the condition under which citizens can once again trust one another as citizens. That means that they are sufficiently committed to the norms and values that motivate their ruling institutions; sufficiently confident that those who operate those institutions do so also on this basis; and sufficiently secure about their fellow citizens' commitment to abide by these basic norms and values."³⁵

However, this is a long process: "One cannot expect that this will happen immediately. Trust can be broken in an instant but may take years to be re-established".³⁶ "*Civic*" trust as here understood is not just a state of mind but a host of conditions that make institutions trustworthy.³⁷

*These processes do not generally emerge by themselves; they are not engendered by the mere passage of time, either.*³⁸ *They need to be supported by appropriate and innovative reconciliation programmes deeply rooted in the cultures and realities of the soci-*

³¹ Roberta Culbertson & Béatrice Pouligny, "Re-imagining Peace after Mass Crime: A Dialogical Exchange between Insider and Outsider Knowledge", in: Béatrice Pouligny *et al.*, (eds), *After Mass Crime: Rebuilding States and Communities*, (Tokyo: United Nations University Press, 2007), pp. 272-273.

³² Peter Uvin, *Life after Violence: A People's History of Burundi*, (London: Zed Books, 2008), pp. 166-167.

³³ Sue Unsworth and Peter Uvin. [A New Look at Civil Society Support in Rwanda?](#), (Draft, Oct. 7, 2002).

³⁴ Alexander L Boraine, "Transitional Justice: A Holistic Interpretation", (2006) 60:1 *Journal of International Affairs*, pp. 22-23.

³⁵ "[Reconciliation](#)", International Center for Transitional Justice, February 2006.

³⁶ Daniel Bar-On, "[Reconciliation Revisited - Part III: The Concept of Reconciliation Revisited, the Testing Parameters](#)", *New Europeans Magazine*, 15 March 2006.

³⁷ On reconciliation as "civic trust", see Pablo de Grieff, "The Role of Apologies in National Reconciliation Processes: On Making Trustworthy Institutions Trusted", in: Mark Gibney & Rhoda E. Howard-Hassmann (eds), *The Age of Apology*, (Philadelphia PA: University of Pennsylvania Press, 2008).

³⁸ Luc Huyse, "Theory and Practice", in: Grainne Kelly & Brandon Hamber (eds), *Reconciliation: Rhetoric or Relevant?*, (Belfast: Democratic Dialogue, February 2005), p. 9.

ety concerned, so that they are meaningful to local actors and empower them.³⁹ They should not be considered as a peripheral activity. Yet, the reality of international aid is that programmes that aim at supporting the reconciliation process and targeting specific elements of it often look marginal in comparison to the large focus put on more tangible programmes; they are usually constrained by time and inadequate resources on the part of donors, whose practices do not match what is needed.⁴⁰

2.1.4 Memories, historical narratives and the formation of collective identities

Memorialisation and history work are other examples of programs that can assist in those difficult tasks. They help access crucial intangible aspects of state resilience and statebuilding related to issues of culture, dignity and the formation of collective narratives and identities.⁴¹

“Various studies have shown that memory is intrinsically linked to identity and the transmission of memory and history in a post-conflict period can play a significant role in evolving new identities of citizenship. [...] While national narratives often portray a selective version of the past in an attempt to build a national identity and consolidate new political identities, narratives within the home and school have the potential to provide alternative versions of the past to provide a more holistic picture of events of the past as well as promote a critical citizenship.”⁴²

Actors engaged in peacebuilding and democratization processes “link their projects and their orientations toward the future with the memories of their violent and conflictive past.”⁴³ This is even more important in societies involved in nation building processes after widespread violence. Having a sense of a shared history is a central component in that formation of new collective identities and political communities.

Memorialisation presents a powerful arena for such processes, in particular, as it works with contested memory.⁴⁴

“When memory projects go beyond the role of museums to become centers of discourse on the past, they become living examples of the reconciliation process, signifying *the population’s recognition of the past and its affirmation of a different future*. [...] They are critical to the process of deepening a country’s democracy by *creating avenues for building trust and mutual understanding*. Identity is forged and renewed, networks of communication are developed, and society is reconfigured, all of which can contribute significantly to a successful transition to democ-

³⁹ Karen Bruneus, “[Reconciliation and Development](#)”, Study Prepared for Workshop 8 – “Reconciliation”. International Conference, Building a Future on Peace and Justice, (Nuremberg, 25-27 June 2007), p. 6.

⁴⁰ [Ibid](#), 1, 7.

⁴¹ Ereshnee Naidu, [The Ties that Bind: Strengthening the links between memorialisation and transitional justice](#), (Centre for the Study of Violence and Reconciliation, Transitional Justice Programme Research Brief, August 2006), p. 2.

⁴² Ereshnee Naidu & Cyril Adonis, *History on their own Terms: The Relevance of the Past for a New Generation*, (South Africa: Centre for the Study of Violence and Reconciliation, 2007), p. 29.

⁴³ Elizabeth Jelin, *State Repression and the Labours of Memory*, (London: Latin American Bureau, 1993), p. 3.

⁴⁴ Judy Barsalou and Victoria Baxter, “[The Urge to Remember: The Role of Memorials in Social Reconstruction and Transitional Justice](#)” (Washington, DC: USIP, January 2007), 4.

racy, the creation of functional democratic institutions, and a more unified society."⁴⁵

National and international researchers generally agree that a fundamental goal of *history education is to "transmit ideas of citizenship and both the idealized past and the promised future of the community"*.⁴⁶ It is not surprising, then, that reforms to history education are nearly always specifically about changing the representations of the political community's past and changing methodology "to promote tolerance, inclusiveness, an ability to deal with conflict non-violently, and the capacity to think critically and question assumptions that could again be manipulated to instigate conflict".⁴⁷ It is often complemented by the concept of "peace [or peacebuilding] education", which seeks to support "an educational process that allows students to articulate, accommodate and accept differences between and within groups [...]. This entails a distinct two-fold process that nurtures and constructs positive inter-group relations while marginalising and deconstructing negative inter-group relations".⁴⁸ *Yet, little attention has been paid so far to the integration of these programmes in the overall statebuilding process; they are very low priorities.* The question of schooling itself is generally approached by donors in relation to employment and economic development, not in relation to the intangible dimensions of conflict transformation and statebuilding. As a consequence, teaching of history, social studies and the humanities in pre- and post-conflict societies has been considered a low priority; instead, more emphasis is placed on subjects seen to have practical value for competition in the global marketplace, such as foreign languages, maths, science, technology, and vocational training.⁴⁹

This is even more the case of *trauma and psycho-social recovery issues, in particular in post-violent and post-war contexts, which constitute a high proportion of fragile situations.*

"Despite growing evidence of the consequences of trauma, concrete actions to address these 'invisible wounds' are unexpectedly still often inadequate, if not entirely missing, from paradigms of assistance and development employed by relief and development organizations in post conflict transition."⁵⁰

Yet, trauma may induce, among other things, "the loss of basic trust in the order of things".⁵¹ At the society level, unprocessed blows may have strong impact on a people's sense of identity and self-esteem.⁵² Specific traumatic events, termed by some psychia-

⁴⁵ Sarah Topol, "[What's being Done on Memory Projects?](#)", (Washington DC: World Movement for Democracy, 2006).

⁴⁶ Laura Hein & Mark Selden. *Censoring History: Citizenship and Memory in Japan, Germany, and the United States*, (Armonk NY: M.E. Sharpe, 2000), p. 3; Ereshnee Naidu & Cyril Adonis, *History on their own Terms: The Relevance of the Past for a New Generation*, (South Africa: Centre for the Study of Violence and Reconciliation, 2007), p. 23.

⁴⁷ Elizabeth A. Cole, "Introduction: Reconciliation and History Education", in: Elizabeth A. Cole (ed), *Teaching the Violent Past: History Education and Reconciliation*, (Lanham MD: Rowman & Littlefield, 2007), pp. 1-2.

⁴⁸ Kenneth D. Bush & Diane Saltarelli, *The Two Faces of Ethnic Conflict: Towards a Peacebuilding Education for Children*, (Florence, Italy: UNICEF Innocenti Research Centre, 2000), p. 22.

⁴⁹ Elizabeth A. Cole & Judy Barsalou, [Unite or Divide? The Challenges of Teaching History in Societies Emerging from Violent Conflict](#), (Washington DC: United States Institute of Peace, June 2006), p. 7.

⁵⁰ Richard Mollica and Laura McDonald, "Old Stereotypes, New Realities: Refugees and Mental Health", (2002) 2 *UN Chronicle*, p. 29.

⁵¹ Judy Barsalou, "[Training to Help Traumatized Populations](#)", Special Report 79 (Washington DC: US Institute of Peace, December 2001).

⁵² Marta Cullberg Weston, "A Psychosocial Model of Healing from the Traumas of Ethnic Cleansing: The Case of Bosnia", (Kvinna till Kvinna Foundation, 2001), 13-14; Richard J.

trists as “chosen traumas”, may become transformed or glorified in the retelling to subsequent generations, and may be used to incite revenge and justify efforts to restore the honour or dignity of the victimised group.⁵³ Almost all opinions of psychiatrists and psychologists coincide in emphasising the intergenerational effects of trauma.⁵⁴ When individuals, families and societies cannot cope with their (past) trauma, there is a high likelihood that they will pass it on to the next generation. This transgenerational trauma is also sometimes referred to as “historical trauma”, and requests specific healing processes.⁵⁵ Here, *official discourses and initiatives may play as important a role as more targeted psychosocial programmes.*

“The public narrations of the past, those that are authorized or official, such as celebrations, commemorations, and monuments, can lend meaning to individual memories and give to the new generation the possibility of facing the ‘unthinkable’: the attempt to make a whole society disappear. But official memories can, conversely, mutilate personal memories.”⁵⁶

These processes refer to highly intangible dimensions of state resilience and state-building, but they are crucial.

2.2 The transformation of collective beliefs in relation to justice and the rule of law

The transformation of collective beliefs and perceptions plays an equally crucial role in relation to justice and rule of law. As Thomas Carothers noted, “law is not just the sum of courts, legislatures, police, prosecutors, and other formal institutions with some direct connection to law. *Law is also a normative system that resides in the minds of the citizens of a society*”.⁵⁷ It refers to “a certain number of *collective representations regarding the figure of the state, the judicial apparatus and the police*”.⁵⁸ Yet, in the own words

Goldstone, foreward, *Between Vengeance and Forgiveness: Facing History after the Genocide of Mass Violence*, by Martha Minow (Boston MA: Beacon Press, 1998); Vamik Volkan, *The Need to Have Enemies and Allies*, (NY: Jason Aronson, 1989); B.A. van der Kolk & A.C. McFarlane, “Trauma and its Challenge to Society”, in: B.A. van der Kolk, A.C. McFarlane, L. Weisaeth, (eds), *Traumatic Stress. The Effects of Overwhelming Experience on Mind, Body, and Society*, (NY: Guilford Press, 1996).

⁵³ Judy Barsalou, “[Trauma and Transitional Justice in Divided Societies](#)”, Special Report 135 (Washington DC: US Institute of Peace, April 2005), p. 9.

⁵⁴ Yael Danieli, (ed), *International Handbook of Multigenerational Legacies of Trauma*, (New York: Springer, 1998); Eric Brahm, “[Trauma Healing](#),” Beyond Intractability (January 2004); Derek Summerfield, “The Psychological Legacy of War and Atrocity: The Question of Long-term and Transgenerational Effects and the Need for a Broad View”, (1996) 184 *Journal of Nervous Mental Disorders*, pp. 375-377; Lykes, M. Brinton and Marcie Mersky, “Reparations and Mental Health: Psychosocial Interventions towards Healing, Human Agency, and Re-threading Social Realities”, in: Pablo De Grieff (ed), *The Handbook of Reparations*, (New York: Oxford University Press, 2006), pp. 589-622.

⁵⁵ See different contributions in: Barry Hart (ed), *Peacebuilding in Traumatized Societies*, (Lanham, Boulder, New York, Toronto, Plymouth UK: University Press of America, 2008), and also Joseph Montville, “The Healing Function in Political Conflict Resolution”, in: D. Sandole & H. Van der Merwe, (eds), *Conflict Resolution Theory and Practice*, (Manchester: Manchester University Press, 1993), pp. 112–27.

⁵⁶ Béatrice Pouligny, Bernard Doray & Jean-Clément Martin, “Methodological and ethical problems: A trans-disciplinary approach”, in: Pouligny *et al.*, (eds), *After Mass Crimes: Rebuilding States and Communities*,. (New York: United Nations University Press, 2007), p. 33.

⁵⁷ Thomas Carothers, [Promoting the Rule of Law Abroad: The Problem of Knowledge](#), (Washington DC: Carnegie Endowment for International Peace, January 2003), p. 8.

⁵⁸ Béatrice Pouligny, “UN Peace Operations, INGOs, NGOs, and Promoting the Rule of Law: Exploring the Intersection of International and Local Norms in Different Postwar Contexts”, (2003) 2:3 *Journal of Human Rights*, p. 373.

of the former administrator of the United Nations Development Programme, Mark Malloch Brown:

“Too often international assistance on the rule of law has ignored the link between the rule of law and politics. Assistance is often technocratic and apolitical in nature, focusing on the transfer of technical know-how to state institutions and on the technical modernization of institutions such as the courts and the police.”⁵⁹

The choice of a “technical” approach and consequent neglect of the socio-political and cultural dimensions of judicial and legal reforms may have various consequences. First, “the primary tool or the most favoured method for promoting rule of law in crisis states is to transplant and borrow laws and institutions”.⁶⁰ This can lead to constitutions, laws, and legislations, written by the international community, which, while often of high quality, are never accepted or implemented by the national stakeholders.⁶¹ This is particularly true in cases where international actors pressure countries to incorporate international standards extensively into local legislations. A consequence of this tendency is that, on paper, many laws of fragile countries may appear much more respectful of human rights than those in many democratic countries, but have little to do with the reality, with what is actually enforced. This is even more so in contexts where the local law itself “has been no more than a paper somewhere which has nothing to do with the reality and the informal rules that have been developed, along the history, by both the rulers and the population”.⁶²

Another consequence is that institutional reform, or reforming formal institutions such as the judiciary, police, *etc.*, may become the end goal of, rather than the means to, statebuilding. *Although reforming or (re-) building institutions is essential, it may not have a direct and tangible impact on the state of rule of law in a given society;* in particular, it does not say anything about the nature of the “order” these institutions are meant to uphold. As a result, *a technical focus on institutional reform tends to direct assistance at the symptoms rather than the causes of the problem and forgetting that achieving rule of law ends requires political and cultural, not only institutional, change.*⁶³ Among other risks, experts tend to “reproduce technical solutions and rely on ‘template’ strategies that *fail to integrate adequate conflict analysis in their design, in that they are not based on a thorough understanding of the political situation in a given country.*”⁶⁴ They are even less informed by local norms and practices. Outsiders tend to “shy away

⁵⁹ Mark Malloch Brown, “[Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies](#)”, Statement to the United Nations Security Council (6 October 2004).

⁶⁰ Richard Sannerholm, “In Search of a User Manual: Promoting the Rule of Law in Unruly Lands”, Social Science Research Network Working Paper (December 2007), p. 7.

⁶¹ Shelby R. Quast, “Rule of Law in Post-Conflict Societies: What Is the Role of the International Community”, (2004) 39:45 *New England Law Review*, p. 47.

⁶² Béatrice Pouligny, “UN Peace Operations, INGOs, NGOs, and Promoting the Rule of Law: Exploring the Intersection of International and Local Norms in Different Postwar Contexts”, (2003) 2:3 *Journal of Human Rights*, p. 373.

⁶³ See, for instance, Rama Mani, “Exploring the Rule of Law in Theory and Practice”, in: Agnes Hurwitz & Reyko Huang, (eds), *Civil War and the Rule of Law: Toward Security, Development, and Human Rights*, (Boulder CO-London: Lynne Rienner, 2008), p. 22; Rachel Kleinfeld, “Competing Definitions of the Rule of Law”, in: *Promoting the Rule of Law Abroad: In Search of Knowledge*, Carnegie Endowment for International Peace, Rule of Law Series no. 34, January 2003, pp. 54-63.

⁶⁴ Agnes Hurwitz, “Introduction: Civil War and the Rule of Law: Toward Security, Development, and Human Rights”, in: Agnes Hurwitz & Reyko Huang, (eds), *Civil War and the Rule of Law: Toward Security, Development, and Human Rights*, (Boulder CO-London: Lynne Rienner, 2008), p. 2. See, also, Balakrishnan Rajagopal, “Invoking the Rule of Law: International Discourses”, in: Agnes Hurwitz & Reyko Huang, (eds), *Civil War and the Rule of Law: Toward Security, Development, and Human Rights*, (Boulder CO-London: Lynne Rienner, 2008), p. 47.

from knowledge and integration of cultural and historical specificities and needs of individual societies, and engage local populations only minimally in their programmes".⁶⁵ Lessons from the past have shown that one-size-fits-all approaches do not lead to meaningful changes. At a minimum, some knowledge of local collective history could help outsiders to understand better the diversity of conceptions of politics, power, justice, or the state within a given society.⁶⁶ Indeed, "the 'rule of law', far from being a foundation, as may be sometimes implied by the discourse of foreign intervention, is the product of concrete histories, the expression of worldviews and social relations".⁶⁷ It cannot be constructed without integrating local actors' different frames of reference and organisation, with all their historical baggage, including their relation to other cultures.

2.3 Safety perceptions and attitudes towards security issues in fragile contexts

Regarding the reforms in the security sector, two examples illustrate the equal importance of those "intangible" dimensions. One of the most pressing issues on the agenda of many "fragile" states is *the reduction of small arms and light weapons* (SALW). Most studies have now shown the importance of looking not only on the supply-side of the issue, but also the "demand-side", examining the reasons why individuals or groups "want" or "desire" these weapons. Questions such as: "Why do people possess and buy small arms? What are the political, economic and social functions of guns, and what ideas (about violence, security, justice, authority, self, gender, etc.) inform these?" are the topic of focus.⁶⁸ This exploration of "motivations" for SALW acquisition requires the input of multiple expertises: anthropologists, criminologists, psychologists, sociologists, and behavioral economists. For instance, sociologist, Jacklyn Cock who analyses social violence through values, social practices, and institutions, has argued that the desire for guns in South Africa is a socially constructed concept that is embedded in culture and different social identities.⁶⁹ Her work explores the dynamics of collective identities and power relations, and how social categories have the power to define deficiency or threat. Such approaches emphasise the fact that *from the society's perspective, disarmament is more than just about putting weapons beyond use and facilitating their collection; it is also about changing attitudes.* How different people conceive the ownership of a weapon in a specific cultural and political context is very important in this respect. In many countries, to deprive a male inhabitant of his gun is like questioning his virility. *Here the preliminary realization of good SALW surveys helps contextualise the work to be done, as well as the local resources that can be mobilised.* Such studies conducted in the case of Burundi, for instance, have highlighted the variation of perceptions between rural and urban areas, and the importance of much localised parameters that would influence the efficiency and legitimacy of any programme aiming at reducing small arms.⁷⁰ In Kenya,

⁶⁵ Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War*, (Cambridge UK: Polity Press, 2002), p. 76.

⁶⁶ Béatrice Pouligny, *Peace Operations Seen from Below: UN Missions and Local People*, (Bloomfield CT: Kumarian Press, 2006), p. 97.

⁶⁷ Béatrice Pouligny, "UN Peace Operations, INGOs, NGOs, and Promoting the Rule of Law: Exploring the Intersection of International and Local Norms in Different Postwar Contexts", (2003) 2:3 *Journal of Human Rights*, p. 373.

⁶⁸ Kiflemariam Gebre-Wold, "Understanding the Demand for Small Arms in the Horn of Africa", in: Kiflemariam Gebre-Wold and Isabelle Masson (eds), [Brief 23: Small Arms in the Horn of Africa: Challenges, Issues and Perspectives](#), (Bonn: Bonn International Centre for Conversion, March 2002), p. 12. Jurgen Brauer & Robert Muggah, "[Completing the Circle: Building a Theory of Small Arms Demand](#)", (2006) 27:1 *Contemporary Security Policy*.

⁶⁹ Jacklyn Cock, "Fixing Our Sights: A Sociological Perspective on Gun Violence in Contemporary South Africa", (1997) 28:1-4 *Society in Transition*, pp. 70-81.

⁷⁰ See, for instance, Adam Forbes, "Rapid Assessment of the Impact and Perceptions of Small Arms in the Burundi interior". DanChurchAid and the Conseil National des Eglises du Burundi

similar studies have shown that perception of criminal activity (even more than reality) is the key factor that drives the demand for firearms. A study conducted by the Institute for Security Studies in Nairobi concluded that “perceptions of firearms and security are as crucial as the actual reality of firearm proliferation, crime and conflict, in guiding policy development and implementation.”⁷¹

The same is true of the sense of safety, which is a highly subjective process. “Assessments of security ‘problems’ and ‘needs’ tend to be highly subjective in nature, and where this is done exclusively through the filter of donor concepts such as ‘human security’ or ‘SSR’, there is a risk that the peculiarities of local perceptions of security will be downplayed or ignored.”⁷² In any given country, different stakeholders may also perceive and define their security problems in different ways. These may be influenced by a wide range of emotionally, socially and culturally traumatic events, losses, isolation, the destruction of social norms and codes of behaviour that most individuals and communities face in fragile situations, which are often characterised by a high level of violence and unpredictability in the daily life. In different fragile contexts, such as in Haiti and Eastern Congo (DRC), a micro-analysis of local perceptions of insecurity may also help prevent violence against civilians and protect local populations, which is an increasing concern for the international community.

The weight of these intangibles elements may explain the perception that, “sometimes, the most scarce resource in a fractured society is not funding or institutional capacities: it is the sheer will to stay together”.⁷³ However, if we start looking more closely at local societies and communities’ frames of reference, values and conceptions, we also discover “*sources of resilience and coping, traditional beliefs that colour interpretations of one’s war experiences, and local resources for healing and providing assistance.*”⁷⁴ These processes not only help people to cope with the situation; they often contribute to support its transformation. “This is community not as a utopian or communitarian goal, but community in reality; social groups engaging in some sort of social life.”⁷⁵ I would now like to explain how looking at the intangible dimensions of state resilience and state-building actually helps better identify the resources and mechanisms at play, and bypass the impression of “vacuum” that is too often given of the most fragile situations, in particular, in post-conflict countries.

(CNEB), 2007; Stéphanie Pézard & Nicolas Florquin. “[Small Arms in Burundi Disarming the Civilian Population in Peacetime](#)”, Special Report No. 7. Geneva: Small Arms Survey, 2007; Peter Uvin, *Life After Violence: A People’s Story of Burundi*, (London: Zed Books, 2009).

⁷¹ Institute for Security Studies, *Attitudes to firearms and crime in Nairobi: Results of a city survey*, ISS Arms Management Programme, ISS Paper 59, July 2002.

⁷² OECD, *Security System Reform and Governance*, DAC Guidelines and References Series, OECD/DAC, 2005.

⁷³ Bernardo Arévalo de León, Joint Programme Unit for UN/Interpeace Initiatives, UNOPS, Peacebuilding Community of Practice, Post-Conflict Capacity Development Through Attitudinal and Behavioural Change, 15 September 2008.

⁷⁴ Joan Duncan & Laura Arntson. [Children in Crisis: Good Practices in Evaluating Psychosocial Programming](#), (Westport CT: Save the Children, 2004), p. 14.

⁷⁵ Roberta Culbertson & Béatrice Pouligny, “Re-imagining peace after mass crime: A dialogical exchange between insider and outsider knowledge”, in: Pouligny *et al.*, (eds), *After Mass Crimes: Rebuilding States and Communities*, (Tokyo-New York: United Nations University Press, 2007), p. 280.

3 Accessing local resources and the resilience capacity of societies and states

3.1 Beyond the impression of a “vacuum”

In many situations, institutions are devastated, dysfunctional, or illegitimate, or even all of the above, which means that the infrastructure is devastated, there is very low human capacity with few, if any, qualified personnel, and the population has a deep mistrust and lack of faith in state. Then, the challenge may appear to be actually to create, rather than to reform or even to reconstruct local structures; institutions have to be created anew, not just adapted, and old institutions must be de-constructed in order to gain a population's faith in the institutions and lend them legitimacy. In such circumstances, the impression may often well be that the state apparatus and new institutions need to be rebuilt almost from scratch, in conditions that are sometimes qualified as of “virtual anarchy”.⁷⁶ This explains the frequent reference to notions such as “security vacuum” or “rule of law vacuum”, for instance.⁷⁷ However, experience has shown us again and again that “no such vacuum exists, even when the state structures have collapsed completely. People will always need ways of settling their disputes, and if there is no more formal way of doing so, they resort to other means”.⁷⁸ As some scholars have observed, “in fact, most of the security and justice in post-conflict and fragile states is not carried out by the state police and judiciary, but by non-state security and justice organisations”.⁷⁹ The same is true of other needs that any society has: people cope with everyday life by relying on “culturally informed practices”.⁸⁰ *Paying attention to these existing mechanisms allows us to gain a more accurate understanding of the needs of people, the obstacles as well as the possibilities and resources to (re-) build a functioning and supportive state/society relationship.* Even in situations that have often been qualified as “anarchist”, as in Somalia or Eastern Congo (DRC), experience has shown that a variety of actors have been fulfilling, in part, the functions that we would expect from the state (even though it may be in a very dysfunctional way, at least in some cases, an aspect that I will address later in the paper).

3.2 Examples of community mechanisms supporting the management of security threat, delivering justice and facilitating reintegration

Local mechanisms may exist and need to be taken into consideration when aiming at reforming existing institutions. This section of the paper will explain what these mechanisms are and provide a few concrete examples.

In the security sector, community efforts aiming at reducing the security threats created by the proliferation of small arms or at facilitating the re-integration of ex-combatants and rebuilding the trust between them and local communities, emphasise

⁷⁶ Roland Paris, *At War's End: Building Peace after Civil Conflict*, (Cambridge: Cambridge University Press, 2004), 46-47.

⁷⁷ [Report of the Secretary General on The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, Summary](#), UN Doc. S/2004/616 (August 23, 2004); Kristi Samuels, “Rule of Law Reform in Post-Conflict Countries: Operational Initiatives and Lessons Learnt” (Social Development Paper No. 37, World Bank, October 2006), p. 15.

⁷⁸ Kristina Thorne, *Rule of Law through imperfect bodies? The informal justice systems in Burundi and Somalia* (Geneva: Centre for Humanitarian Dialogue, November 2005).

⁷⁹ See Bruce Baker & Eric Scheye, “Multi-layered justice and security delivery in post-conflict and fragile states”, (2007) 7:4 *Conflict, Security & Development*, p. 512.

⁸⁰ Erin K. Baines, “The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda”, (2007) 1:1 *International Journal of Transitional Justice*, p. 114.

the importance of local values and intangible elements of the local cultures to build sustainable institutions. Several of these mechanisms are actually also part of traditional and informal justice systems, which encompass a wide array of social goals including accountability, truth-telling, reparation, and reconciliation.⁸¹ I would like to present a few examples of such mechanisms.

In Kenya, the Kuria community has put in place its own governance mechanism to face the huge increase in cattle rustling, aggravating violence within the community and neighbouring communities.⁸² The inability of the police to deal effectively with criminal elements and the community's loss of faith in the state's ability to maintain security led to the introduction of the "*Sungusungu*" initiative as an alternative mechanism to deal with the problem of small arms.⁸³ The term *Sungusungu* is a Swahili word for "a species of large black biting ant".⁸⁴ The *Sungusungu* is an indigenous system of governance, which may have been copied from Tanzania;⁸⁵ it was used to deal with conflicts, wars and violent crimes before the advent of modern governance.⁸⁶ The system's composition, process and methods originated from iritongo, an indigenous age-old local government mechanism. It had three components, corresponding to three levels of power: the incharma, which takes the appeal from iritongo; the iritongo which investigates, judges and punishes; and the ichisaiga which has been replaced by sungusungu and acts as the enforcement mechanism of iritongo. The system combines prosecution and enforcement responsibilities.

"The process of an oath involves the suspect standing on seven magic sticks placed on top of a bare anthill completely naked in full view of his relatives and friends who must attend. The oath-taker raised his hands and recited the words: 'I am not the person who stole the complaint's property. If I am lying, I'll be destroyed by the oath.' The complaint will then follow the same process and say the following: 'I know the suspect stole my cattle. If I'm accusing him falsely, I'll be destroyed by the oath.' It is believed by the community members that the curse does not only affect the suspect alone; it can affect other family members and relatives and even his descendants."⁸⁷

The system enables local people to "dispense, to all intents and purposes, with the costly, inefficient, and corrupt services of the police, whom many villagers dismiss as 'useless.' In their place it provides them with 'law enforcers' who are of the community

⁸¹ See Luc Huyse & Mark Salter, (eds), [Reconciliation and Traditional Justice After Violent Conflict: Learning from African Experiences](#), (Stockholm: International Institute for Democracy and Electoral Assistance, 2008).

⁸² Peter Marwa, "[Sungusungu in Kuria: An Indigenous Approach towards Control and Management of Small Arms](#)", in: Kiflemariam Gebre-Wold & Isabelle Masson (eds), *Brief 23: Small Arms in the Horn of Africa: Challenges, Issues and Perspectives*, (Bonn: Bonn International Centre for Conversion, March 2002), p. 24. On the problem of small arms in Kenya and its consequences on the state capacity to provide security, see, also, Human Rights Watch, [Playing with Fire Weapons Proliferation, Political Violence, and Human Rights in Kenya](#), (New York: HRW, May 2002); Njoroge, Mbugua. "[Small Arms and Light Weapons in Kenya.](#)" *At Issue Ezine*, Vol. 5, No. 2 (February 2007); Rukia Subow, [The Proliferation of Small Arms and Pastoralists in the Horn of Africa](#), (Bonn: Bonn International Center for Conversion (BICC), 2002).

⁸³ Peter Marwa, "[Sungusungu in Kuria: An Indigenous Approach towards Control and Management of Small Arms](#)", p. 24.

⁸⁴ Michael L. Fleisher, "Cattle Raiding and Household Demography Among The Kuria of Tanzania", (1999) 69:2 *Africa: Journal of the International African Institute*, p. 242.

⁸⁵ Michael L. Fleisher, "'Sungusungu: State-Sponsored Village Vigilante Groups among the Kuria of Tanzania", (2000) 70:2 *Africa: Journal of the International African Institute*, p. 213.

⁸⁶ Peter Marwa, "[Sungusungu in Kuria: An Indigenous Approach towards Control and Management of Small Arms](#)", p. 25.

⁸⁷ *Ibid.*, p. 28.

and accountable to it. It dramatically reduces the out-of-pocket costs of law enforcement, because the fees paid to *sungusungu* are lower than the bribes habitually demanded by the police, and because all fees and fines collected by *sungusungu* remain within the community, to finance not only the work of *sungusungu* but also other worthy village projects. And, lastly, it enables local people to punish fellow villagers who have transgressed the law of their friends and neighbours by administering beatings and levying fines, but without handing them over to the formal justice system, which they see as indifferent, if not hostile, to their needs, and over which they have no control".⁸⁸

Other mechanisms address the delicate issue of *demobilisation and re-integration of former soldiers*. Various scholars such as Kees Kingma have argued that there had been no in-depth studies on the place of demobilised soldiers in society, in particular in Sub-Saharan Africa.⁸⁹ This is, indeed, a vital aspect of re-integration that local communities have often tried to address, while aid programmes tend to neglect it. For instance, in *Mozambique* and *Northern Uganda*, traditional rituals have been used to facilitate the re-integration of former child soldiers. *In Mozambique, mediums and traditional healers (kimbanda) helped with the peaceful re-integration of former combatants and former child soldiers, through purification rituals involving the whole community*. Referring to concepts of pollution and purification, they not only made it possible to designate and describe the period of violence as "abnormal", as "unacceptable", but also to re-define the rules indispensable for the group's co-existence and survival.⁹⁰ These actions demonstrate the success of strategies, which are deeply rooted in the social and cultural context, and take into consideration the subjective and psychiatric dimensions of the re-integration process. Whereas the Re-integration Support Scheme (RSS) used by UNDP probably helped combatants in their economic re-insertion by providing them with a steady source of income, most observers consider the role played by traditional healers as key in some of the "success stories" registered in that country, in particular for child soldiers. At least some of them benefited from a true re-integration in their status of children, although they were generally not re-integrated into their home community.

In Northern Uganda, traditional Acholi rituals such as the "stepping on the egg" ceremony (*nyono tong gweno*) and, to a lesser extent, "drinking the bitter herb" (*mato oput*) currently play key roles in the reconciliation and re-integration of ex-combatants or abductees into their communities.⁹¹ The "Stepping on the Egg" (*Nyono Tong Gweno*) ceremony involves "the returnee stepping on an egg (tongweno) placed on a 'slippery branch' (*opobo*) and a stick with a fork (*layebi*), traditionally used to open granaries. The egg is said to symbolise purity...[and] also symbolises that which is 'soft,' 'fragile,' suggesting a restoration of innocence. The *opobo* is a soapy, slippery branch, which helps to cleanse the returnee from any external influences he or she might have encountered in the 'bush' that might be calling them back. The *layebi* is a symbol of welcoming a person back into the home, where the family members will once again share food to-

⁸⁸ Fleisher, "'Sungusungu': State-Sponsored Village Vigilante Groups among the Kuria of Tanzania".

⁸⁹ Kees Kingma, (ed), *Demobilization in Sub-Saharan Africa: The Development and Security Impacts*, (New York: St Martin's Press, 2000).

⁹⁰ Alcinda Honwana. "Children of War: Understandings of War and War Cleansing in Mozambique and Angola", in: Simon Chesterman (ed), *Civilians in War*, (New York: Lynne Rienner, 2001); Harry G. West, "Creative Destruction and Sorcery of Construction: Power, Hope and Suspicion in Post-war Mozambique", (1997) 37: 147 *Cahiers d'Etudes Africaines* pp. 657–98; Sara Gibbs. "Postwar Social Reconstruction in Mozambique: Reframing Children's Experiences of Trauma and Healing", in: Krishna Kumar (ed), *Rebuilding Societies after Civil War*, (Boulder CO: Lynne Rienner, 1997) pp. 227–38.

⁹¹ Lucy Hovil & Joanna Quinn, "[Peace first, Justice later: Traditional Justice in Northern Uganda](#)", Refugee Law Project Working Paper No. 17 (Kampala, Uganda: Refugee Law Project, July 2005), p. 26.

gether".⁹² In the context of the current conflict, "it is widely thought that abductees need no more than the simple cleansing ceremony, while ex-combatants also need *mato oput*".⁹³

3.3 Facilitating broader resilience

As exemplified by these examples, cleansing ceremonies and rituals are equally concerned with issues of community re-integration, the peaceful coexistence of former antagonists, and the psychosocial recovery of war survivors. But they also fulfil broader functions which are important for the psycho-social and political resilience of both the individuals concerned and society at large. This is an important aspect of these community mechanisms and explains their interest in the approach of "fragility". Three dimensions are particularly worth underlying:

- The contribution to the transformation of world views;
- The contribution to broader forms of governance;
- The support to community re-integration and trust, which often includes the re-inforcement of the acceptance of the collective rules and the restoration of harmony within the community.

3.3.1 Transforming world views

Rituals help transform worldviews and enable people to make sense of the larger conflict. At times when worldviews are crumbling, rituals can create new ways of thinking and may dramatically alter the ways people see the world. They can also make conflict less destructive by *reframing the issues at stake and allowing people to approach problems in new ways*.⁹⁴

"Rather than focusing on the particular rules applied in situations of dispute, this perspective examines the ways social groups conceive of ordering, of social relationships, and of ways of determining truth and justice. Law is not simply a set of rules exercising coercive power, but a system of thought by which certain forms of relations come to seem natural and taken for granted, modes of thought that are inscribed in institutions that exercise some coercion in support of their categories and theories of explanation."⁹⁵

3.3.2 Contributing to broader forms of governance

Moreover, in many cases, these systems (often qualified as "traditional" and "informal") are also broader forms of governance that go beyond dispute resolution as *their leaders and operators may be also involved in the day-to-day functioning of their village or community*. Traditional systems operating outside the confines of the state are usually the primary forms of social control, dispute resolution, and reconciliation, especially with regard to familial matters and land tenure issues, which are numerous in the aftermath of a war and are exacerbated by the displacements of population and return of refugees. Although they may have been seriously affected and altered by violence, there is a general assumption that they are likely to remain more intact than formal ones.⁹⁶ Particu-

⁹² Barbara Harvey, "[Breaking Eggs / Re-Building Societies: Traditional Justice as a Tool for Transitional Justice in northern Uganda](#)", (13 April 2006), p. 15.

⁹³ Hovil & Quinn, "[Peace first, Justice later: Traditional Justice in Northern Uganda](#)", p. 24.

⁹⁴ Lisa Schirch, *Ritual and Symbol in Peacebuilding*, (Bloomfield CT: Kumarian Press, 2005).

⁹⁵ Merry Sally Engle, "Legal Pluralism", (1988) 22: 5 *Law & Society Review*, p. 889.

⁹⁶ See Tracy Dexter & Philippe Ntahombaye, *The Role of Informal Justice Systems in Fostering the Rule of Law in Post-Conflict Situations: The Case of Burundi*, (Geneva: Centre for Humanitarian Dialogue, July 2005); see, also, Andre Le Sage, *Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives*, (Geneva: Centre for Humanitarian Dialogue, July 2005).

larly in the justice sector, "they are often more accessible to poor and disadvantaged people and may have the potential to provide quick, cheap and culturally relevant remedies".⁹⁷

3.3.3 Supporting community re-integration and trust

It is generally believed that *one unique contribution of these systems is that they foster social trust and community re-integration, in particular, in the aftermath of violence.* This belief stems from the observation that they are almost invariably based upon communitarian notions of order and community, meaning that *the primary issue at stake is the well-being of the community at large, and not only the interests of the victim.* A dispute between individuals is perceived as "not merely...a matter of curiosity regarding the affairs of one's neighbour, but in a very real sense a conflict that belongs to the community itself".⁹⁸ Each member of the community is tied to varying degrees to each of the disputants and, depending on the extent of these ties, will either feel some sense of having being wronged or some sense of responsibility for the wrong. In other words, "a conflict between two members of a community is regarded as a problem which afflicts the entire community. In order to restore harmony, therefore, there must be general satisfaction among the community at large, as well as the disputants, with the procedure and the outcome of the case. Public consensus is, moreover, necessary to ensure enforcement of the decision through social pressure."⁹⁹ Justice, in this view, is essentially concerned with *the restoration of a community's moral order and social harmony.*

Justice in a strictly retributive sense (that is, meting out punishment) is generally not the exclusive, or even primary, objective of traditional/informal systems. As one report on traditional justice in Africa points out, "the traditional African sense of justice is not simply about isolating the retributive aspects of justice, as it is in the Western model. Instead, retribution is but one part of an overarching process that also encompasses rehabilitation, reconciliation, compensation, and restoration. In other words, it is not just that retribution equals justice. Indeed, justice itself is one component of restoring perpetrators back into harmony with the values of a community".¹⁰⁰ While the more formalised Western models allow for only one form of justice – retributive, restorative, or reparative – these traditional institutions seek to combine various of these and other elements in keeping with the values of the community.¹⁰¹

This holistic approach also includes the utilization of rituals, rites and symbols. "Genuine acceptance of a ruling is recognised as essential for the ending of hostilities between disputants and the restoration of harmony within the community. In order to confirm acceptance by both parties, they may be expected to eat from the same bowl or drink from the same cup. This forms part of the reconciliatory approach intrinsic to African traditional arbitration. It confirms the agreement and makes it notorious. The public also partake in the eating and drinking as an expression of the communal element inherently present in any individual conflict and of their acceptance of the offender back into the community."¹⁰² A large diversity of rites and symbols are used in different cultures.

⁹⁷ Ewa Wojkowska, [Doing Justice: How Informal Justice Systems Can Contribute](#), (Oslo: United Nations Development Programme, Oslo Governance Centre, December 2006), p. 5.

⁹⁸ Penal Reform International (PRI), [Access to Justice in Sub-Saharan Africa: the role of traditional and informal justice systems](#), (London, November 2000), p. 22.

⁹⁹ *Ibid.*, p. 26.

¹⁰⁰ Lucy Hovil & Joanna R. Quinn, [Peace First, Justice Later: Traditional Justice in Northern Uganda](#), (Kampala, Uganda: Refugee Law Project, July 2005), p. 12.

¹⁰¹ Joanna R. Quinn, "[The Role of Informal Mechanisms in Transitional Justice](#)", (Paper prepared for presentation on the panel, "Transitional Justice: Local and International Dimensions", at the Canadian Political Science Association Annual Meeting, 2 June 2005), p. 10.

¹⁰² Penal Reform International (PRI), [Access to Justice in Sub-Saharan Africa: the role of traditional and informal justice systems](#), (London, November 2000), p. 34.

These range from very elaborate celebrations and ceremonies to more common rituals. These may include blood pact alliances, marriage, intimate friendships, and communal celebrations to consolidate peace. Others include eating and drinking together, the shaking of hands, and the exchange of gifts to show the restoration of peace, as well as the slaughter of animals, and the exchange of dried coffee beans.¹⁰³

As a result, *traditional/informal justice is thought "to strengthen levels of social trust and civic engagement within these societies, for, if the people believe in and trust such mechanisms, it is believed that they will participate in the activities promoted by them".*¹⁰⁴ Because traditional/informal justice systems are, by definition, local and community-based, it is believed that they will foster the reconstruction of social trust among survivors.

3.4 Beyond romantic and essentialist visions, putting local 'tradition' under scrutiny

In no way does this mean that everything that is "local" or "traditional" is "good". In particular, traditional and informal mechanisms may have been tainted in the process of violence and war and "must be subjected to scrutiny by communities seeking to re-assert a reality that is not war-based. [...] Without some outside tools and options local communities may remain trapped in the power of war-based structures of thought, with little to move them to another perspective."¹⁰⁵ Moreover, these systems often entail significant drawbacks and dangers, especially regarding human rights, gender equality and the rights of juveniles.¹⁰⁶ Thus, their capacity to contribute to the different dimensions of political and social reconstruction must be assessed in relation to a certain number of limitations that can be observed in a variety of contexts, but, more specifically, in post-conflict situations: the erosion and potential distortion of traditional authorities and norms;¹⁰⁷ the risk of abuse of power and domination patterns;¹⁰⁸ the risk of political manipulation;¹⁰⁹ the question of the legitimacy and effectiveness of the system; and the limited applicability across regions/ethnic groups. However, these limitations should not imply that we should ignore them. As for any other actor or institution, traditional and informal mechanisms must be subject to a detailed and contextualised assessment. Their limitations are also generally perceived as better addressed by the involvement of

¹⁰³ Joanna R. Quinn, "[The Role of Informal Mechanisms in Transitional Justice](#)", (Paper prepared for presentation on the panel, "Transitional Justice: Local and International Dimensions", at the Canadian Political Science Association Annual Meeting, 2 June 2005), p. 15.

¹⁰⁴ *Ibid.*, p. 20.

¹⁰⁵ Roberta Culbertson & Béatrice Pouligny, "Re-imagining Peace After Mass Crime: A Dialogical Exchange Between Insider and Outsider Knowledge", in: Pouligny *et al.*, *After Mass Crime: Rebuilding States and Communities*, (Tokyo/New York/Paris: United Nations University Press, 2007), pp. 271-287.

¹⁰⁶ Wilfried Scharf, "Non-State Justice Systems in Southern Africa: How should Governments Respond?", (University of Cape Town, South Africa: Institute of Criminology), p. 16. On the subject of women and traditional justice, see Aisling Swaine, [Traditional Justice and Gender Based Violence](#), (International Rescue Committee, August 2003). On the rights of children, see Khalid Koser, [The Return of Refugees and IDPs and Sustainable Peace](#), The Brookings Institution, 10 February 2008.

¹⁰⁷ Kristina Thorne, *Rule of Law through imperfect bodies? The informal justice systems in Burundi and Somalia*, (Geneva: Centre for Humanitarian Dialogue, November 2005), p. 6. On Mozambique, see Alcinda Honwana, "Sealing the past, facing the future: trauma healing in rural Mozambique", *Accord 3* (1998).

¹⁰⁸ Penal Reform International (PRI), [Access to Justice in Sub-Saharan Africa: the role of traditional and informal justice systems](#), (London, November 2000), p. 37.

¹⁰⁹ Luc Huyse, "Conclusions and Recommendations", in: Luc Huyse & Mark Salter (eds), [Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences](#), (Stockholm: International Institute for Democracy and Electoral Assistance, 2008), p. 189.

local civil society actors as they may help promote and support necessary change and adaptation in existing systems. Some argue *that donors and governments should engage with traditional/informal systems precisely to address their problematical features*. As one report puts it, “the fact that these may not correspond to our concept of justice, or fully comply with international standards, is, in reality, only another reason why we should engage with them. If we are seeking to guarantee a quality of justice rather than just recreating a formal structure, work with the informal justice structures becomes an imperative”.¹¹⁰ Another author argues that *“we need to develop strategies to take advantage of the benefits of informal systems while encouraging appropriate reforms”*.¹¹¹

Part of the difficulties comes from the fact that traditional practices may be improperly romanticised as somehow intrinsically benign, monolithic in construction, and conducive to harmony. However, customary laws “have undergone their own troubled history and evolution, and their content may not necessarily be uniformly acceptable to all citizens or communities in the country”.¹¹² Moving beyond the simplistic, romantic, and essentialist traps, an alternative conceptualisation is one that emphasises that *traditions are dynamic—constantly changing and being changed according to evolutions in the societies in which they are embedded*. As noted in an insightful ethnographic study of northern Ugandan traditional justice practices:

“These practices, far from being dislocated in a past that no longer exists, have always continued to be situated socially. They are called upon and performed to address present concerns. Of course, like any culturally informed practice, with time they shift in meaning and appearance.”¹¹³

In other words, “innovation is part of every culture’s reality, and [...] borrowing and grafting ideas from the outside and reshaping old concepts to new experiences are also important local strategies”.¹¹⁴ Indeed, traditional or informal practices “are hybrids and move back and forth between their origin and capture by the state”.¹¹⁵ It is important to note, however, that the capture by the state may not always be the prominent output. In some cases, traditional and informal practices may have always been either ignored or repressed by the state. Thus, it is always important to develop a local historical understanding of the mechanisms.

Ultimately, a pragmatic approach to those systems is warranted.

“Neither glorifying [them] as the only cure nor relegating them to the realm of the devilish is helpful to people seeking assistance in their suffering. It is only prudent to acknowledge the positive potential of traditional rituals and beliefs, not as contradictory or competing with other approaches but as complementary to them. To

¹¹⁰ Thorne, *Rule of Law through imperfect bodies?*, (Geneva: Centre for Humanitarian Dialogue, November 2005).

¹¹¹ Ewa Wojkowska, *Doing Justice: How Informal Justice Systems Can Contribute*, (Oslo: United Nations Development Programme, Oslo Governance Centre, December 2006), 13.

¹¹² Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War*, (Cambridge UK: Polity Press, 2002), p. 81.

¹¹³ Sverker Finnstrom, *Living with Bad Surroundings: War and Existential Uncertainty in Acholi in Northern Uganda*, (Durham NC: Duke University Press, 2008).

¹¹⁴ Roberta Culbertson & Béatrice Pouligny, “Re-imagining Peace After Mass Crime: A Dialogical Exchange Between Insider and Outsider Knowledge”, in: Pouligny *et al.*, *After Mass Crime: Rebuilding States and Communities*, (Tokyo/New York/Paris: United Nations University Press, 2007), pp. 273-274.

¹¹⁵ Luc Huyse, “Introduction: Tradition-Based Approaches in Peacemaking, Transitional Justice and Reconciliation Policies”, in: Luc Huyse & Mark Salter (eds), *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*, (Stockholm: International Institute for Democracy and Electoral Assistance, 2008), p. 8.

ignore or discard traditional ways that have been seek to work in the past makes no sense. On the other hand, they cannot provide the cure for all ills.”¹¹⁶

In other words, *as for any other existing mechanism or institution, a detailed and contextualised pre-assessment is essential.*

3.5 The interest of hybridation: including informal and traditional mechanisms in reform and reconstruction processes

Increasingly, a middle ground is suggested: one that recognises and supports the hybrid character of most systems. While the mainstream approach is centred on the state as the primary provider of a number of functions, the reality, in many fragile contexts, is that the state’s capacity to deliver efficient and fair services to ordinary people is extremely limited.¹¹⁷ As Bruce Baker and Eric Scheye observe:

“if we are interested in improving the experience of justice and security of the end user [the ordinary person], it seems misguided to focus...on reforming the state security and justice agencies. It would make more sense to recognise the nature and composition of the post-conflict and fragile state without imposing upon it an idealised Western conception of what the state should be; acknowledge its inherent weaknesses and limitations; accept the ways in which state and non-state actors inter-penetrate, mingle, and merge, and then, attempt to strengthen the performance and capacities of those who actually deliver most of the security and justice in addition to building state capacities.”¹¹⁸

Two experiences in Sierra Leone show how “official” programmes may successfully include existing mechanisms in local communities to facilitate re-integration and disarmament processes or provision of justice. The third experience actually constitutes a counter-example; it concerns decentralisation programmes, which have largely ignored the role of traditional authorities and the diversity of their situations after the end of the war.

3.5.1 Traditional reconciliation mechanisms supporting DDR programmes

In Sierra Leone, the National Committee for Disarmament, Demobilisation and Re-integration (NCDDR) relied on traditional reconciliation mechanisms to facilitate the re-integration of former combatants into communities in areas of critical tension in the south, east and northern parts of the country. Indeed, locally, re-integration processes were not always easy. “Ex-combatants fear[ed] they [would] be targeted and ostracised, while civilians fear[ed] a return of violence, or resent[ed] the crimes the ex-combatants [were] frequently alleged to have committed.”¹¹⁹ To reduce tension and facilitate that re-integration, the National Committee for Disarmament, Demobilisation and Re-integration (NCDDR) set up social reconciliation programmes. In potentially serious cases, where war crimes were alleged, NCDDR called to traditional leaders to facilitate

¹¹⁶ James Latigo, “[Northern Uganda: tradition-based practices in the Acholi region](#)”, in : Luc Huyse & Mark Salter (eds), *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*. (Stockholm: International Institute for Democracy and Electoral Assistance, 2008), pp. 117-118.

¹¹⁷ See Bruce Baker & Eric Scheye, “Multi-layered justice and security delivery in post-conflict and fragile states”, (2007) 7: 4 *Conflict, Security & Development*, pp. 503-528.

¹¹⁸ See Bruce Baker & Eric Scheye, “Multi-layered justice and security delivery in post-conflict and fragile states”, (2007) 7:4 *Conflict, Security & Development*, p. 514.

¹¹⁹ Jeremy Ginifer, “[Reintegration of Ex-combatants](#)”, in: Jeremy Ginifer, *Sierra Leone: Building the Road to Recovery* (Pretoria: Institute of Security Studies, 2003).

the return of ex-combatants.¹²⁰ Ex-combatants were encouraged to undertake tasks that might be beneficial to communities, such as civil works, street cleaning, and helping to rehabilitate shelter. In addition, a Community Arms Collection and Destruction (CACD) programme was established in 2001 to address the large numbers of unaccounted for weapons circulating among civilians, and to alleviate the fear of increased insecurity and criminality in communities. The public destruction of weapons also served as confidence building mechanism among the community in disarmament. The symbolic burning of about 3,000 weapons in Lungi Town, on 18 January 2002 marked the completion of the programme.¹²¹ In this case, most accounts largely praised the way traditional and informal mechanisms existing at community level were often involved in the process, for the best.

3.5.2 Paralegals and a dual system of justice

An innovative access to justice initiative in post-war Sierra Leone was implemented by Timap for Justice, a local non-governmental organization, in collaboration with the Open Society Institute's Justice Initiative and the World Bank. It utilized paralegals and a grassroots approach to address problems of justice sector reform. Timap for Justice trains and deploys local paralegals to help regular citizens, especially those living in rural areas, address their everyday justice problems through education, mediation, organising, and advocacy. Timap's experience shows how a project providing paralegal assistance can help "mediate" between the formal and the informal systems of justice. Vivek Maru, one of Timap's founders, explains the role of these paralegals:

"Their methods are diverse. For individual justice-related problems, the paralegals provide information on rights and procedures, mediate conflicts, and assist clients in dealing with government and chieftom authorities. For community-level problems, paralegals advocate for change from above and assist in organising collective action from below. The project employs three distinct approaches to reforming customary law and the dualist legal structure. First, the formal legal system is sometimes invoked to check unfairness and exploitation in the customary system. Where local court decisions are severely unjust, the project's supervising lawyers will lodge appeals in the formal court system to seek both redress for the client and a precedent-setting ruling. Sometimes, the very fact that paralegals can speak the formal legal language and are associated with formal law is enough to inhibit would be exploiters in the customary setting. [...] But we are not legal missionaries, banishing the darkness of customary law with the light of the formal legal system. Customary institutions, as noted, deserve respect both for their traditional origins and for their greater accessibility and relevance to most Sierra Leoneans. A second reform effort acknowledges this by working to improve the customary system from within. Paralegals identify fair-minded chiefs and elders who can assist with internal advocacy. They hold community meetings to engage people in dialogue on justice issues in the chieftom. When paralegals mediate local conflicts, they provide an alternative and fine-free process that synthesises traditional and modern approaches. A paralegal mediating between a delinquent child and a father who has resorted to beating might, for example, begin with something from the Convention on the Rights of the Child and end with the ritual of a child placing his head on his father's feet. We hope that as our paralegals gain respect in their chieftoms, their presence will decentralize some of the power that is now concentrated in the hands of the chieftaincy. Finally, paralegals can serve as bridges between the two regimes. One effect of legal dualism is that rural people are marginalised from and fearful of the structures of government and the formal legal system. Paralegals have assisted rape victims, for example, in pursuing prosecution

¹²⁰ *Ibid.*

¹²¹ Béatrice Pouligny, "[The politics and anti-politics of 'Disarmament, demobilisation and re-integration programmes'](#)", (Centre d'Etudes et de Recherches Internationales Sciences Po/CNRS, Secrétariat Général de la Défense Nationale (France) and Programme for strategic international security studies (Geneva), September, 2004), p. 27.

with the Sierra Leone Police (rape is outside the jurisdiction of customary courts). If the government is not paying teachers in a particular community, paralegals will raise the issue with the Ministry of Education. Our hope is that these piecemeal, grassroots efforts will contribute to a reform of Sierra Leone's dualist legal structure that draws on the experience of ordinary Sierra Leoneans and meets their needs by combining the strengths of the formal and customary legal systems, rather than exalting one over the other."¹²²

3.5.3 Decentralisation programmes challenging chiefdoms' authorities

The decentralisation programmes in post-conflict Sierra Leone provide a revealing counter-example. Different donors and agencies (multilateral, bilateral and non-governmental) are involved in different decentralisation programmes, with a large diversity of views and, at times, conflicting agendas. They have received significant critiques, in particular, for their lack of consideration of the local context and their attempt to institute systems according to externally determined structural reform projects. One of the crucial points of those critiques regards the way traditional authorities have been dealt with in this process. First, not enough attention has been paid as to how to co-ordinate roles between chiefdom authorities and the new local councils; this remains a key consideration for devolving control in Sierra Leone.¹²³ Second, during the war, local power structures were deeply challenged, in particular, by young belligerents who often perpetuated violence against elders and traditional leaders.¹²⁴ This has had varying implications on the role played by chiefdoms today and the support they still have in rural communities, something that has led to vivid debates, even among scholars who strongly disagree about the extent to which these traditional authorities should be maintained, reformed or removed altogether.¹²⁵ At a minimum, this means that the same approach should not be applied everywhere. Such a situation (and the polemic associated with it) reflects both a deficit in knowledge and a lack of assessment of local situations on the part of the different agencies intervening in the decentralisation programmes. As one analyst noted, "'one size fits all' institutional remedies may blind practitioners to the political imperatives that bind the rural poor to non-liberal modes of governance and therefore leave hastily erected 'democratic' institutions vulnerable to political capture by the very forces the project seeks to thwart".¹²⁶ The answer is probably not to choose between the two systems, but to find ways to make sure that the parallel systems of local councils and chiefdom authority deliver the services expected and remain accountable to the citizens.¹²⁷

¹²² Vivek Maru, "The Challenges of African Legal Dualism: An Experiment in Sierra Leone", *Justice Initiatives, Open Society, February 2005*. See, also, Vivek Maru, "Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide", in: (2006) 31 *The Yale Journal of International Law*, pp. 427-476.

¹²³ UNDP, *Sierra Leone Human Development Report 2007: Empowering Local Government for Sustainable Human Development and Poverty Reduction: The District Focus Approach to Development*, (New York: United Nations, 2007), p. 36.

¹²⁴ Stefan Meyer, "Sierra Leone: Reconstructing a Patrimonial State", in: (2007) FRIDE *Development 'In Perspective' Case Studies*, p. 6.

¹²⁵ See, in particular, Edward Sawyer, "Remove or Reform? a Case for (Restructuring) Chiefdom Governance in Post-Conflict Sierra Leone", (2008) 107 *African Affairs*, ppl 387-403, and the comment by Paul Richards published by the journal in August 2008.

¹²⁶ Richard Fanthorpe, "On the Limits of Liberal Peace: Chiefs and Democratic Decentralisation in Post-War Sierra Leone," (2005) 105 *Africa Affairs*, p. 45.

¹²⁷ Edward Sawyer, "Remove or Reform? a Case for (Restructuring) Chiefdom Governance in Post-Conflict Sierra Leone", (2008) 107 *African Affairs*, p. 403.

These mechanisms have gained increasing interest in the international community, at least at a rhetorical level, as there is a growing recognition of the importance of more holistic approaches. As a UNDP report notes, by focusing on “formal institutions”, there is not only a risk of diminishing the overall impact of reforms (by overlooking critical components of the existing system) but also of limiting opportunities to strengthen the access to crucial services – by ignoring mechanisms which are used by, and are more accessible to, local communities.¹²⁸ However, concrete support and the experience of engaging them in mainstream practices remain relatively limited. In too many cases, “justice sector reformers have failed to acknowledge, and thus comprehend, the systems—which, at least in rural areas, are predominantly customary, idiosyncratic to specific sub-regional and cultural contexts, and residing only in oral form—by which many people (if not most poor people) in developing countries order their lives function”.¹²⁹ However, these systems assist communities to deal with daily conflicts. Paying attention to them is, at the minimum, a way to get a more accurate picture of what is actually functioning in a given context. As one observer noted in the context of justice reforms, “with increasing discussion about complementarity efforts and local ownership of development efforts, should we not also take account of and accept what the local population wants? It would be logical to build on the local perception of justice, and thus on systems that are acceptable to the local population”.¹³⁰ For donors and international agencies, an absolute priority should be to enhance understanding of how populations respond to their daily problems when the reach of the state system is weak, or when states themselves are the cause of the problems (such as with insecurity and injustice).¹³¹

4 Better addressing those dimensions: policy recommendations & avenues for future research

It is time for international programmes to move more decisively towards a greater consideration of and support of the intangible, qualitative dimensions of state resilience and state-building, including a wide range of political, social, cultural, spiritual and emotional resources that African societies present. In this concluding section, I would like to suggest some avenues to do so and to make a few concrete recommendations. The main points that I suggest to address as important corner stones in the process are:

- the persistent knowledge deficit;
- the necessary shift in donors’ policy and agencies’ priorities;
- the improvement of the design and management of aid programs (in particular with regards to pre-assessment and monitoring);
- a greater engagement with local societies and support to local ownership.

¹²⁸ United Nations Development Programme (UNDP). *Programming for Justice: Access for All-A Practitioner’s Guide to a Human Rights-Based Approach to Access to Justice*, (Bangkok, Thailand: UNDP Regional Centre, 2005), p. 181. See, also, the OECD Development Assistance Committee (DAC) Issue Brief, *Equal Access to Justice and the Rule of Law* (2005), pp. 3-4.

¹²⁹ Leila Chirayath, Caroline Sage & Michael Woolcock, “[Customary Law and Policy Reform: Engaging with the Plurality of Justice Systems](#)”, (Prepared as a background paper for the *World Development Report 2006: Equity and Development*, July 2005), p. 1.

¹³⁰ Kristina Thorne, [Rule of Law through imperfect bodies? The informal justice systems in Burundi and Somalia](#), Centre for Humanitarian Dialogue (HD Centre), November 2005.

¹³¹ OECD, *Security System Reform and Governance*, DAC Guidelines and References Series, OECD/DAC, 2005.

4.1 Addressing the persistent knowledge deficit

A series of major deficits need to be addressed:

- The most detailed and empirically documented analyses of local societies are sometimes really outdated; in particular, they sometimes date from way before the war. Most recent ethnographic work is often too partial to allow larger conclusions to be drawn. Other information rely more on outsiders' anecdotic perceptions. In some cases, (such as in Somalia, DRC, Burundi or Sierra Leone), this is, in part, at the origin of lively debates and strong contradictions about the state of the society and the actual resources than can be relied on. *More financial support is needed for the conduct of detailed empirical social research on fragile situations.*
- Decision-makers and practitioners are faced with a double knowledge gap. First, as they function in a "crisis mode", outsiders, in particular, have little time to think and accumulate knowledge, especially about the specific historical, political, and cultural context in which they are going to intervene. Second, even in their own practices, they have limited accumulated knowledge. International interventions in the field of state-building are relatively recent. And despite roughly two decades of experimentation, little is known about how to bring about legal change and create sustainable legal institutions in post-conflict countries. "While rule of law reform appears to have been moderately successful in the non-conflict context, there are heightened difficulties in the post-conflict context (a very low institutional starting point and urgent law and order and dispute resolution problems), and there is insufficient analysis or understanding of how to adapt these positive experiences smoothly to the post-conflict context."¹³² In most sectors, experts confess that they do not know the long-term impact of the measures that they suggest.¹³³ More fundamentally, aid providers "do not know what the process of change consists of and how it might be brought about".¹³⁴ *Research on international programmes supporting state-building is still in its infancy; particularly in some areas such as judicial reforms and, even more, history education, memorial work or psycho-social recovery; serious empirical studies are rare. The actual impact of such endeavours remains understudied and more time will need to pass to assess them accurately. This knowledge deficit is noticeable in all components of the state building agenda. One may consider it to be progressively reduced as important good practices are now known and better understood, although part of this knowledge remains anecdotal and fragmentary. Concrete field experiences need to be documented in depth and in a critical way; otherwise, we will continue to suffer of a lack of solid empirical data on which informed international programmes could be designed, and then monitored and assessed in depth.*
- Moreover, this literature remains informed by many normative and theoretical premises as well as value-based judgements, more than actual empirical analysis. While some critical literature has been developed, in particular, on the ideological framework of the state-building agenda, it is not sufficiently connected to empirical studies and to practitioners' concerns. There is a need to bridge those gaps, and produce knowledge which can more adequately answers decision-makers and practitioners' concerns regarding the concrete implementation challenges that they encounter. This does not mean that scholars need to follow a

¹³² Kirsti Samuels, "Rule of Law Reform in Post-Conflict Countries: Operational Initiatives and Lessons Learnt", World Bank Social Development Paper No. 37 (October 2006), 23.

¹³³ OHCHR, *Rule-of-Law Tools*, 6.

¹³⁴ Thomas Carothers, "Promoting the Rule of Law Abroad: The Problem of Knowledge", Carnegie Endowment for International Peace, Rule of Law Series no. 34, January 2003, 9.

research agenda formulated by others, but that they need to be more concerned about the social context in which they work and the social use of their production.

- There is too little trans-disciplinarity among academics and a lot of disconnection between fields of expertise, including in each single sector; this in part explains why so many issues are approached in such a technical way. When looking at the intangible dimensions of state resilience and state-building, it is clear that the different components of the agenda are intrinsically connected and should be better integrated. While everybody agrees on this in theory, it is almost never applied in practice. To support such an evolution, we need to develop knowledge that answers the nature of the challenges: trans-disciplinary, in-depth, and empirically-based. The constitution of trans-disciplinary research agendas and teams needs to be encouraged and receives adequate financial support.
- *We need to diversify the origin of this knowledge and hear more different voices.* Very little attention is paid to the local understandings of the issues at stake (in the literature on state-building and peacebuilding, there is very little, if any, reference to this aspect). This means that *research needs not only to integrate more the points of view of local actors, but also to associate local researchers more systematically, and valorise existing local and regional knowledge as well as capacities.* In international conferences, we too often hear that local universities and research capacities would be as “failed” and inexistent as the states are. This generally reflects only part of the reality and reveals a lack of both interest and effort on the part of outsiders *to take the time to identify, meet and assess research capacities in local universities (professors and students) as well as local civil society actors, and build concrete partnerships. More incentives and financial means are needed to develop such research partnerships.*

4.2 A shift in donors’ policy and agencies’ priorities

All organisations that have started implementing this process attest to the importance of:

- institutional commitment translated into more means;
- programmes specially dedicated to address the intangible dimensions of the state-building agenda;
- staff trained and dedicated to the task.

This supposes a shift in donors’ policy and agencies’ priorities; contrary to the rhetoric, “funds are more willingly affected to quantifiable results than to substantial expenditures”.¹³⁵ *Additional attention needs to be paid to programs which more specifically support individuals and communities in their effort to transform their values, belief systems, forms of behaviour and relationships* so that they can support lasting peace. These have to do with reconciliation processes, memory and history work, religion, trauma-healing and psycho-social well-being, as well as the empowerment of individuals and groups that are under-represented in the society and run the risk of being excluded and disadvantaged. They also require the inclusion of dimensions and expertise that have been largely disconnected from the field of peacebuilding until recently, such as the fields of trauma studies, religion studies, historiography, memorialisation, or media and arts. Innovative programmes in these different domains have been developed by non-governmental organisations in different African countries. They show promising avenues

¹³⁵ CDA, Collaborative Learning Project, The Listening Project Issue Paper: “Discuss Together, Decide Together, Work Together”, (CDA: Cambridge MA, 2008).

but remain too isolated and often lack consistent and durable support. Such initiatives need more financial support, including facilitating the exchange of experiences among regions and countries.

4.3 Improving the design and management of aid programmes: pre-assessment and monitoring systems

"Many state-building efforts involve externally-driven strategies that reflect ignorance of cultural and political specificities. They often lack a clear understanding on the kind of states that should be rebuilt and the relationship between central state authorities and the society at large."¹³⁶ This diagnosis made at a recent international encounter between academics and practitioners is often repeated in the field. *It partly echoes the knowledge deficit mentioned above, but also refers to a larger deficit in the design and management of aid programmes. Improvements are needed at every step of a programme cycle.*

4.3.1 In-depth pre-assessments

The diagnosis phase is a first crucial step. It means that in-depth qualitative (and not just quantitative) pre-assessments are essential. A recent OECD/DAC paper clearly presents the basics of such a work:

"...State-building policy in any given fragile state must be grounded first and foremost in a specific, historically informed assessment of the state of the state. General typologies may be of value in helping to identify relevant pathways and lessons, but only at the broadest level. This assessment should take note of informal and non-state service provision and security mechanisms, as well as those of the state, and pay due regard to informal and non-western forms of organisation, rule-making and conflict resolution, whether religious or communal."¹³⁷

As each actor may conduct parallel assessments and will reach slightly different conclusions, the OECD/DAC report recommends "integrated or joint assessment" in order to produce "shared strategy", something that one might consider as not being sufficiently realistic.

4.3.2 Monitoring mechanisms

The OECD/DAC report also notes that "as important as locally and historically informed analysis – although more amorphous as a point of policy – is the need to recognise that state building is a process of negotiation among contending interests. This requires ongoing political analysis of the shifting dimensions of the state-formation process. The concept of state building as negotiation should inform bilateral and multilateral policy". This is an important point: situations usually qualified as "fragile" correspond to *periods of change, including violent ones. Therefore, outsiders, as much as insiders, need to be able to understand and monitor what these changes are about.* Important changes are brought by war and violence, and, as we have seen in a few examples, such changes may be uneven and not easy to grasp. Additional transformations may be brought by state-building programmes. These changes maybe uneven and may put some individuals and groups in the society (such as women and youth, for instance) at greater disadvantage than in the past, or, in contrast, may expand their role, depending on which

¹³⁶ The Peacebuilding Roundtable, Ottawa: International Development Research Centre / UN Peacebuilding Support Office / Carnegie Corporation of New York, December 2008, Summary Report, p. 6.

¹³⁷ OECD, Concepts and Dilemmas of State Building in Fragile Situations: From Fragility to Resilience (OECD/DAC Discussion Paper, 2008), p. 23.

area of their life is concerned. These non-linear evolutions need to be taken into consideration more fully. Generally speaking, the different processes referred to in this paper are dynamic processes in nature. Their dynamism and diversity are both their strength and one of their key challenges. They may be at the origin of a number of contradictions inherent to systems of meanings that are heterogeneous by definition. They may contradict visions which, in the name of “reconciliation”, would like to promote some forms of consensual visions of the past and the future, a forced “order” or illusion of “harmony”.¹³⁸

All of this calls for a serious improvement in the micro-monitoring of the interventions and their impact. Therefore, *the focus should be on processes as much as on results* of international aid. Here, also, a shift is needed in aid practices. An increasing number of field evaluations also look at the methodologies involved and qualitative indicators as much as quantitative ones. However, this fundamental re-orientation needs to be mainstreamed by donors as well as agencies, and also needs to find concrete implications at all levels of intervention.

4.3.3 Increased attention to the interaction with local societies and cultures

Cultural awareness and sensitivity is equally essential. Many practitioners and scholars alike emphasise the importance of designing programmes and interventions that are culturally appropriate and sensitive, taking into consideration communities’ frames of reference and strategies. They stress the need to widen the concepts used in the different programmes and to adjust them both for an understanding of the cultural meanings of the different dimensions of the state-building agenda and in defining strategies that can actually support recovery processes. “Local customs must be respected in order not to suppress indigenous values and identities, which tend to be weakened by armed conflicts.”¹³⁹ Of course, this is easier to state than to do, in order to support an actual dialogue with local actors.¹⁴⁰ The respect for local resources and belief systems also requires that their diversity (among regions and communities inside a same society) be understood and acknowledged. The literature now largely emphasises the need to address these cultural dimensions, and the necessity to take on a “do no harm” (DNH) approach,¹⁴¹ *i.e.*, to be cognisant of the unintended consequences that some aid programmes may have.

A key related issue entails *who decides what the local “cultural resources” and norms are and presents them to outsiders*. This relates not only to an understanding of the power dynamics within these societies, but also the strengths and liabilities inherent to them. Outsiders, in particular, need to be vigilant in this assessment of their interlocutors (noting that some may be unrepresentative or have a stake in maintaining the old order) and put in place processes and mechanisms that allow such identification and dis-

¹³⁸ Béatrice Pouligny, “Building Peace in Situations of Post-Mass Crimes”, (2002) 9: 2 *International Peacekeeping*, pp. 214-215.

¹³⁹ Michael Odenwald, Kees Steenken, & Adrian Wilkinson. *Disarmament, Demobilization and Reintegration: A Practical Field and Classroom Guide*. (German Technical Cooperation, The Norwegian Defence International Centre, Pearson Peacekeeping Centre, and Swedish National Defence College, 2004), p. 58.

¹⁴⁰ Luc Huyse, “Theory and Practice”, in: Grainne Kelly and Brandon Hamber (eds), *Reconciliation: Rhetoric or Relevant?*, (Belfast: Democratic Dialogue, 2005), 10; Roberta Culbertson & Béatrice Pouligny, “Re-imagining Peace after Mass Crime: A Dialogical Exchange Between Insider and Outsider Knowledge”, in: Pouligny *et al.*, *After Mass Crime: Rebuilding States and Communities*, (Tokyo: United Nations University Press, 2007), pp. 271-287.

¹⁴¹ Mary B. Anderson, *Do No Harm: How Aid Can Support Peace — Or War*, (Boulder CO: Lynne Rienner Publishers, 1999), p. 38.

ussions at community level.¹⁴² Participatory methods and processes help enhance ownership of decisions and actions. The need for safe and confidential forums to address people's concerns and help transform conflicts is an important factor. These processes require, from outsiders, a particular sensitivity to make sure that they play their limited, but important, roles as facilitators of a particular delicate process.¹⁴³

This also means that the aid community and each organisation *per se* need to put more effort into *improving knowledge management*, taking into consideration the diversity of regions and communities with respect to their administrative structures and capacities, economies, social and cultural conditions, populations distribution, and financial and workforce resources, local skills and materials, *etc.* This supposes a certain knowledge that needs to be better developed, as suggested earlier in this paper, but also better managed by the organisations, notably through thorough *qualitative micro-level needs assessment as well as micro-monitoring systems*, so that it actually informs daily decisions and practices.

4.4 Engaging more clearly with local societies and supporting local ownership

All discussions at international level, in particular at the UN, now stress the importance of local ownership. This echoes an old and persistent criticism of international aid, in particular, from the host societies: international aid programmes tend to be mainly designed and driven from the outside. However, a differentiation between involvement and actual ownership must be made. Too often, the main moment when beneficiaries are asked to give their opinion is during field assessments; this is too limited and too late, and also tends to keep them in a passive role. Local people are asking for active roles in the entire project cycle and aid process. They want "a two-way relationship, a sharing of know-how and experiences".¹⁴⁴ This means that concrete mechanisms need to be put in place to reach out concretely to the local citizens, involve them in the process and give them oversight roles. This means that a "learning culture" needs to be created in which international staff want to learn from the local actors and share knowledge because they think that it is useful. This also supposes more responsiveness and accountability on the part of international actors towards the local population; the lack of those qualities remains one of the most fundamental obstacles to the enhanced legitimacy of most reform projects.¹⁴⁵ In other words, concrete mechanisms are needed so that the discourse on local ownership does not appear as mere rhetoric.

More efforts and financial resources also need to be devoted to the support to local capacity development. The notion of "capacity-development" (defined by UNDP as "a means for strengthening and maintaining individuals', organisations' and societies' capabilities to set and achieve their own development objectives")¹⁴⁶ has been gradually replacing the previous notion of "capacity-building" which was considered as implying a value judgement about the non-existence of capacities where they actually do exist,

¹⁴² Roberta Culbertson & Béatrice Pouligny, "Re-imagining Peace after Mass Crime: A Dialogical Exchange Between Insider and Outsider Knowledge", in: Pouligny *et al.*, *After Mass Crime: Rebuilding States and Communities*, (Tokyo: United Nations University Press, 2007), pp. 281-284.

¹⁴³ *Ibid.*

¹⁴⁴ CDA, Collaborative Learning Project, The Listening Project Issue Paper: "Discuss Together, Decide Together, Work Together", (CDA: Cambridge MA, 2008).

¹⁴⁵ See, for instance, Agnes Hurwitz, "Toward Enhanced Legitimacy of Rule of Law Programs in Multidimensional Peace Operations", (International Peace Academy), p. 17; Béatrice Pouligny, "Civil Society and Post-Conflict Peace Building: Ambiguities of International Programmes Aimed at Building 'New Societies'", (2005) 36: 4 *Security Dialogue*, pp. 447-462.

¹⁴⁶ UNDP (2008), *Capacity Development: Empowering People and Institutions*, Annual Report, New York: UNDP.

even in a rudimentary form, and simply need to be unfolded, developed, or enhanced. In most situations, some sort of capacities, however nascent or, in part, destroyed, is, indeed, present prior to any international presence or any capacity-building work. *Efforts should therefore be geared towards identifying existing capacities, building on them, supporting them at best. New forms of supports also need to be defined*, including those which support the development of relationships and exchanges between regions and countries in order to share experiences and practices. Indeed, it is often surprising to note that local innovative experiences remain unknown in their own country. These evolutions are necessary if we want to be serious about better addressing the different dimensions of contemporary state fragility.