



Making human rights 'work' in fragile states

**Exploring the policy dilemmas of
promoting and protecting human
rights in states lacking the
capacity or willingness to provide
basic services to their citizens**

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ABSTRACT

“Making human rights ‘work’ in fragile: Exploring the policy dilemmas of promoting and protecting human rights in states lacking the capacity or willingness to provide basic services to their citizens” by Gitte Dyrhagen, International Development Studies, Roskilde University, Denmark. August 2008.

With an outset in the decision by the Danish Government to step up its efforts in fragile states in 2008-2012, the thesis analyzes how Denmark as a donor government can contribute to improve the human rights situation in some of the world’s poorest and worst conflict-affected states. Although there is no official definition of fragile states, most donors align themselves with the OECD/DAC definition, which holds that “states are fragile when state structures lack political will and/or capacity to provide the basic functions needed for poverty reduction, development and to safeguard the security and human rights of their populations”.

Based on the assumption that fragile states lack some of the basic conditions for living up to the responsibility as primary duty-bearers of rights, the problem examined in the thesis is how Denmark as a donor government can best contribute to the promotion and protection of human rights in fragile states, if the state as a duty-bearer is either incapable or unwilling to fulfill its basic functions in this field. The research purpose is to illustrate emerging trends and tendencies in the ‘fragile state debate’ from a human rights perspective and to explore if the merging of the two agendas – human rights and fragile states – represents a strategic shift in the way that donors perceive problems and solutions to weak state performance, both at a conceptual and operational level.

This is done by comparing central debates and analytical frameworks with the practical implications of promoting human rights in two states: Afghanistan and Nepal. The case studies demonstrate that while the overall goal of Denmark’s interventions sought to strengthen the role of the state as a primary duty-bearer of human rights, the existing policy frameworks did not adequately capture the way that Denmark as a donor government contributed to making human rights ‘work’ in these two states in practice. Due to the fragile nature of the states, interventions often worked *around* the state and not only *through* the state to achieve the overall objectives of providing basic services and safeguarding the rights of the populations.

Two critical observations can be drawn from this thesis. First, that the underlying assumptions of the state as a main driver of change in fragile states risk neglecting the way that human rights are in fact protected in a fragile states environment. This calls for a pragmatic approach to state fragility, which gives equal weight to the role of state and non-state actors as drivers of change in fragile states. Second, that Denmark’s attempts to link the fragile states agenda with a normative framework based on human rights has politicized the international debate about how international donors *ought* to engage in fragile states. In effect, the launch of this debate may have a spin-off effect on the way that international donors perceive their own role in fragile states, and on the way that they choose to respond to human rights problems in fragile states, if international donors and affected states are willing to commit to such an agenda.

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ABBREVIATIONS

AIHRC	Afghan Independent Human Rights Commission
ANDS	Afghanistan National Development Strategy
BOGs	Basic Operating Guidelines (Nepal)
CIFP	Country Indicators for Foreign Policy
CPIA	Country Policy and Institutional Assessments (WB)
DAC	Development Assistance Committee (OECD)
DFID	Department for International Development (UK)
DIHR	Danish Institute for Human Rights
DIIS	Danish Institute for International Studies
HRBA	Human rights-based approach
HRC	Human Rights Council
IHL	International humanitarian law
IHRL	International human rights law
LICUS	Low Income Countries Under Stress (WB)
MDGs	Millennium Development Goals
NHRC	National Human Rights Commissions
NCG	Nordic Consulting Group
NGO	Non-governmental organization
ODA	Official development aid
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UPR	Universal Periodic Review
USAID	U. S. Agency for International Development
WB	World Bank

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INTRODUCTION

PREFACE

With the turn of the Millennium, some of the world's poorest and most conflict-ridden countries, referred to as "fragile states" have turned to the centre of attention on the international policy arena. In this discourse, the strong and effective state is considered a prerequisite for human and international security (Andersen, 2008:1). In recent years, international donor agencies have increasingly sought to address state fragility as one of the root causes of threats to national, regional, and international peace and security, which is reflected in the formulation of a large number of policies for international interventions in fragile states (DFID 2005; USAID 2005; OECD/DAC 2007). In this connection, development assistance is used as an instrument to prevent and tackle state fragility and its effects such as terrorism, migration, poverty and human rights violations in affected states. This represents a policy change from the Cold War period, when threats to international peace and security were primarily considered to emanate from strong authoritarian states and repressive dictatorships as opposed to weak states (Ignatieff, 2002:115). Critics argue that this is an illustration of the emerging security-development nexus, where the promotion of peace and security in developing countries is seen as vital for the protection of national security (Beall *et al.* 2006: 52).

At the same time as the international debate about fragile states is taking speed, human rights concerns have been at the core of discussions on how to tackle threats to international peace and stability both in negative and positive terms. While attempts to combat international terrorism in the "war on terror" through the legitimization of drastic methods have been seen as hampering the international human rights regime, it has also kicked off a debate about the need to preserve fundamental freedoms as a foundation for democratic societies. Some states, including Denmark, have as a result taken the position that human rights should explicitly go hand in hand with development interventions in fragile states.

The two agendas, fragile states and human rights, have until recently been seen as separate spheres on the policy arena (Menocal, 2008:4). However, a new debate has taken off about the perceived links between these agendas, both in normative and

operational terms, following recent initiatives taken by the Danish Ministry of Foreign Affairs to raise the debate to a general level. This has implied a reassessment of – and perhaps a recommitment to – the role of international donor agencies in protecting human rights in such states, that have traditionally been seen as troublemakers and “donor orphans”. While this debate is loaded with values and politics, the contention is that human rights ought to be the normative framework for development interventions in fragile states. As this thesis attempts to demonstrate, this offers new perspectives on how donors can contribute to the promotion of international peace and security in accordance with international human rights standards, if they are indeed willing to.

1. FIELD OF CONCERN

The term “fragile states” refers to an increasingly common terminology, which is used by international donors about a broad category of states that are either incapable or unwilling to provide basic services to its citizens.¹ The increased donor focus on these states is the result of the recognition that international interventions needs to be more effective in fragile states, as prescribed by the Paris Declaration on Aid Effectiveness (2005). In effect, donors have identified the need for preparing new strategies and adjusting methods to respond appropriately to the extraordinary challenges represented by such states. While donors tend to agree that there is an increasing need for intervening in fragile states, there is no official definition of fragile states. In fact, the definitions differ considerably from donor to donor and so does the indicators used to measure state fragility (Stepputat and Engberg-Petersen, 2008:4). Researchers, practitioners and policy makers currently debate the practicality of the terminology, which has received a lot of criticism due to its vague and immeasurable nature. Despite this, donors continue to use the term and develop new policies as a response to state fragility, without a common understanding of which states actually fall under this category. For the purpose of this thesis, the most important definitions and notions are explained in table 1: ‘Central terms – definitions and notions’ p. 4.

¹ See “Table 1: Central terms – definitions and notions’ below for a definition of “fragile states” and Chapter 4 for a further discussion about the terminology.

In this thesis, the starting point for analysis is the commitment by the Danish Government to step up its efforts in fragile states as a part of the priorities of the Danish Government for Development Assistance in 2008-2012. The Government wants to strengthen its initiatives to promote democracy and human rights in developing countries in the next four-year period (Danida, 2007:15). In line with earlier initiatives by other development agencies, the Government has decided to formulate “guiding principles for a coherent Danish approach to fragile states and politically difficult situations” (Danida, 2007:16). Although not published until autumn 2008, the Danish Ministry of Foreign Affairs (MFA) has made it clear that the Government intends to make international human rights standards the basis for Denmark’s engagement in fragile states.² According to the MFA, this fits well into Denmark’s role as an active player in the current debate on the relationship between human rights, fragile states and the Paris Declaration, and as an active member in the DAC Fragile States group.³

The guiding principles for a coherent Danish approach to fragile states and politically difficult situations (hereafter “the Danish guiding principles”) are based on the OECD/DAC Principles for Good International Engagement in Fragile States, which have set the main standard in the international debate about fragile states. The OECD/DAC definition of fragile states holds that “*states are fragile when state structures lack political will and/or capacity to provide the basic functions needed for poverty reduction, development and to safeguard the security and human rights of their populations*” (OECD, 2007a:2). This definition, which is centered on the “basic functions” of the formal state institutions, has been regarded as one of the most explicit efforts to link the human rights and state-building agendas at policy level (Menocal, 2008b:2). Ways to achieve greater coherence between policy and practice, however, merit further attention. So does the operational challenges of implementing a rights-based framework in fragile states.

² This is according to Christian Lotz, the responsible person in the Danish MFA for the formulation of the guiding principles. In a background interview, he said: “*Human rights will be incorporated in the guiding principles. We (the Danish MFA) have made a decision about that. We see human rights as a basis for what we do in fragile states.*”

³ Danish MFA (2008): TOR, “International Workshop on human rights and state fragility – a new paradigm in development assistance”, p. 2

TABLE 1: CENTRAL TERMS – DEFINITIONS AND NOTIONS

<p>Fragile states, fragile situations and state fragility</p>	<ul style="list-style-type: none"> • Although there is no official definition, most donors align themselves with the definition in the OECD/DAC Principles, which holds that “states are fragile when state structures lack political will and/or capacity to provide the basic functions needed for poverty reduction, development and to safeguard the security and human rights of their populations” (OECD, 2007a:2). • The OECD/DAC definition will be used as a main reference to define “fragile states” in this thesis, although the definition will be discussed extensively in the thesis. For a further discussion about the terminology, see chapter 4. • In addition to the term fragile states, some donors use “fragile situations”, “politically difficult situations” and “difficult partnerships” to reflect the fact that in many cases it is only part of the state territory, which is fragile, but also because the term is not officially accepted by some affected governments and the UN. • The terms “fragile states”, “fragile situations” and “state fragility” are used interchangeably in the thesis to refer to environments affected by fragility.
<p>The state</p>	<ul style="list-style-type: none"> • In the OECD/DAC Principles, the state is defined by its ability to provide core functions to citizens, such as ensuring security and justice; mobilizing revenue; establishing an enabling environment for basic service delivery; strong economic performance and employment generation (OECD, 2007a:2). • With a point of departure in this definition, the notion of “what is the state” will be subject to further debate throughout the thesis, in particular in chapter 3.3. and 4.
<p>Human rights framework</p>	<ul style="list-style-type: none"> • The term “human rights framework” refers to a framework for development assistance, which is guided by international human rights law standards i.e. international treaties, declarations, treaty body recommendations, and other monitoring instruments established under the UN system. • Fundamental human rights principles such as equality, non-discrimination, participation and empowerment, and accountability are at the core of this framework (Evans, 2008:8) • This approach has also become known as a rights-based approach to development. For a further discussion of this framework, see chapter 3.1. and chapter 5.
<p>Mechanisms and instruments</p>	<ul style="list-style-type: none"> • The term human rights “mechanisms” refers to the processes whereby human rights are monitored and implemented, e.g. through national human rights institutions, international monitoring mechanisms under the UN human rights system, etc. • The term “instruments” is normally applied differently according to context and field. In IHRL, instruments refer to legal sources such as international treaties, declarations and recommendations. In development studies, it often refers to different intervention methods according to sectors and financial disbursements (e.g. security, development, diplomatic, and humanitarian instruments). • In this thesis, the term “mechanisms” will be used in the context of human rights, whereas the term “instruments” will be used in accordance with the understanding in development studies to avoid further confusion.

In a paper commissioned by the Danish Ministry of Foreign Affairs, Evans (2008) notes that despite policy commitments, there is a lack of an “*apparent or explicit operating definition or common conceptual approach*” in policies for engagement in fragile states (Evans, 2008:5). Based on this conclusion, the thesis goes one-step further by examining how a human rights framework can be operationalized in fragile states, and which mechanisms have proven to be effective in such situations. This is done by analyzing the effects and challenges of Danida-funded development interventions in two states that have been heavily affected by conflict: Afghanistan and Nepal. Often classified as “worst” and “best” case examples in terms of ensuring a stable and inclusive transition from conflict to peace, these two states represent examples of how Denmark as a donor government has sought to promote and protect human rights vis-à-vis the government. With a point of departure in the following problem statement, the thesis examines the operational challenges and opportunities when applying a human rights framework in fragile states and fragile situations.

1.1. PROBLEM STATEMENT

How can Denmark as a donor government best contribute to the promotion and protection of human rights in fragile states, if the state as a duty-bearer is either incapable or unwilling to fulfill its basic functions in this field?

1.2. ASSUMPTIONS AND DILEMMAS

One of the main assumptions underlying international interventions in fragile states is that democracy, respect for human rights, and a strong state are prerequisites for achieving development, security, and stability in fragile states. In this discourse, the establishment of well-functioning and effective state institutions becomes the vision that donors aim to achieve in fragile states (Menocal, 2008a:6). In Principle 3 of the OECD/DAC Guidelines, it is held that in fragile states state-building should be the central objective: donors should focus on supporting the legitimacy and accountability of states and on strengthening the capability of states to fulfill their “basic functions” to reduce poverty (OECD, 2007a:2). This is done with a view to strengthening citizens’ confidence, trust, and engagement with state institutions and increasing state legitimacy between the state and its population. This thesis attempts to challenge some of these underlying assumptions based on the following four research dilemmas:

a) How can fragile states ensure adequate promotion and protection of human rights if the formal state institutions are so weak that they cannot fulfill their basic functions? According to the OECD/DAC definition, fragile states are defined by its inability to safeguard the security and human rights of their populations (OECD, 2007a:2). From this perspective, the promotion and protection of human rights is imperative to the success of development interventions in fragile states. Yet, given the high normative standards that human rights impose on the state as a duty-bearer, this becomes one of the most challenging tasks in states characterized by weak and ineffective institutions, lack of accountability and legitimacy. Another precondition for effective human rights protection is the existence of an independent judiciary and a strong civil society to mobilize support and bring claims against the government. In transition phases between conflict and stability, however, these preconditions are rarely in place. Weak state sovereignty and legitimacy, the lack of control over territory, and state fragmentation are some of the elements that characterize fragile states (Andersen et al. 2007: 29). This triggers the need to identify which institutions will carry out these functions in this phase (Lockhart 2005:98).

b) What is the role of non-state actors, if the Government does not live up to its duties, and how will donor governments target non-state actors vis-à-vis state actors? The effectiveness of formal state institutions is essential to human rights protection as the state is the main duty-bearer rights. Then what happens if non-state actors and informal structures provide the minimum guarantees that the state is unable to provide, and how will donors react to this? When non-state actors are the main service providers, the dilemma is that these informal “illiberal” institutions rarely work in conformity with human rights standards (Andersen, 2007:233). Therefore, weighing the role of formal institutions in providing basic functions to citizens up against the role of informal institutions as service providers is one of the fundamental challenges for donors working in fragile states. The risk is that the emphasis on the state as the main driver of change undermines the existence of the *de facto* structures and institutions, which have taken over in the absence of an effective state. This also concerns the difficulty of establishing strong state-society relations, when both the state and civil society are too weak and fragmented to establish such links.

c) Can a human rights-based approach be operational and effective in fragile states affected by severe conflict? One of the characteristics of fragile states is

that they are in transition between one of the three stages of conflict: conflict intensification, armed conflict, or the post-conflict stage (Mertus and Helsing, 2006:6-7). Working rights-based in fragile states influenced by conflict can be an enormous challenge because unsatisfied needs and deprivation of human rights may be the root cause and intensifier of conflicts (Mertus and Helsing, 2006:3). Being in a state of conflict heavily affects the state's capability of dealing with human rights violations and upholding the rule of law. This is more complicated by the fact that failed states often represent some of the most repressive and aggressive states in terms of human rights violations (Rotberg, 2007: 1). The assumption that fragile states are exporters of instability as a threat to regional and international stability may pose an even greater challenge to overcoming such problems. For duty-bearers and other stakeholders such as donors, this situation leads to difficult policy choices between meeting social and economic needs and helping to reinstate peace and justice (Lockhart, 2005:100). The clash between the 'justice versus peace' agenda is one of the main sources of disagreement between the theoretical fields of human rights and conflict resolution. A practical element of this discussion relates to the difficult prioritizations, which donors are forced to take with the limited resources available to them.

d) To what extent can existing human rights mechanisms help prevent and address state fragility? In the discourse about fragile states, there is an underlying assumption that it requires a new set of tools to respond adequately to the extraordinary challenges posed by such states. As a result, the call for developing new policies, principles and guidelines has been made by donors to secure a systematic and more coherent approach to the work carried out in fragile states. However, critics have argued that there are in fact many frameworks and tools available to prevent, address, and measure state fragility, especially from the peace-building field; it is just a matter of making use of what is already available. Not only does this argument point to a gap in adopting comprehensive approaches to address state fragility, it also points to the lack of complementarity between the different fields of human rights, peace-building, development and state-building. Furthermore, it concerns the question to what extent the international human rights system does in fact provide mechanisms that can help prevent and address state fragility, and to what extent this system can help facilitate change in the domestic sphere for those states that are either incapable or unwilling to undertake their responsibilities and duties as primary duty-bearers.

These research dilemmas will form basis for a critical assessment in this thesis of how donors can to improve the human rights situation in fragile states, and in the final chapter they will be revisited to assess the findings that this thesis has brings to the international debate about fragile states.

1.3. DELIMITATION

The aim of this thesis is to review critically donor policies for international engagement in fragile states, not to prescribe what international donors should do. The emphasis is on the role of the state vis-à-vis international donors in achieving this objective. By making the OECD/DAC definition a main reference point in this thesis, the focus is automatically on the state as a driver of fragility and change. This, however, does not mean that the roles played by informal institutions and non-state actors in providing security and safety for the people will be ignored in this thesis. In fact, the dichotomy between the formal and informal structures is an in-built dilemma, which is essential to this thesis. On the other hand, this is not a comprehensive analysis of all involved parties and dilemmas in a fragile state. For example, the role played private and military actors in fragile states is not part of the analysis, including the discussion about civil-military cooperation. Nor does the thesis include an analysis of the status of non-state actors in IHRL and international humanitarian law, including the legal interpretation of the status of so-called “unlawful combatants”, which is a complex, evolving area of law that has been devoted separate attention in another study (Clapham, 2006).

Although the criticism of the definition of ‘fragile states’ is central in the debate, the main purpose of this thesis is not to discuss the terminology as such, as it has been done extensively elsewhere.⁴ However, substantial elements from the debate are used to provide a fundamental understanding of how the fragile states agenda interacts or differs in rationale, objectives and underlying assumptions from the human rights agenda. The lack of distinction between different categories of fragile states has been one of the main critiques of this debate. The broad category cover everything from weak-weak states, to repressive states, conflict-affected states, post-conflict states, failed or collapsed states, etc.

⁴ For a comprehensive overview, see also Cammack et al (2006): “Donors and the “Fragile States” Agenda: A Survey of Current Thinking and Practice.” Moreover, this was a task assigned to the Danish Institute for Development Studies (DIIS) as part of the process to prepare the Danish guiding principles (see explanation in “Empirical data”, chapter 2).

In this thesis, the focus is on states, which lack the capacity and will to undertake their duties to promote and protect human rights, often as the result of conflict. Despite the fragile situation they are in, such states are not “collapsed” or “failed”, as for instance Somalia, because the state apparatus still exists to some degree. Nor are they in the category of authoritarian states, such as North Korea and Zimbabwe. This is a deliberate choice because the aim is to see how human rights protection can be enhanced by the state itself in an environment with weak – but not failed – state institutions. The focus is therefore on how fragile states can overcome such challenges, with the assistance from international donors as partners in the process. Moreover, the focus is on states that have displayed some level of willingness to undertake such duties; otherwise, the part of the human rights system, which builds on cooperation and participation between states, has its inherent limitations. Failed states characterized by extreme transitional periods, where the UN or other institutions take over the national administration, are not included in this category either. To what extent the UN as an international organization promotes a normative and legal framework in post-conflict situations is another emerging debate, which has been addressed by others (White and Klaasen, 2005).

In the international legal system, there are different mechanisms to prevent and address state fragility. One is the international criminal system, which through the establishment of ad hoc courts and the International Criminal Court (ICC) is a way to ensure transitional justice and to rebuild societies in the post-conflict stage. Due to limited space, this thesis will not include an assessment of such mechanisms, although it has been argued that the complex relationship between the work of the ICC and fragile states deserves closer attention by both the development assistance community and international criminal lawyers (Mennecke, 2008:1-2).

Another option is within the sphere of international military interventions, including the question of the legality of humanitarian interventions and preemptive strikes to prevent threats to international peace and security. However, the element that concerns jus ad bellum, i.e. the right to use force under article 2(4) of the UN Charter, does not fall under the scope of this thesis, including the “responsibility to protect” doctrine adopted at the UN World Summit in 2005. The doctrine prescribes that the international community has the responsibility to intervene in a situation if a humanitarian emergency is emerging. Although recent initiatives suggest that this doctrine may become an organizing principle with a basis in human rights norms, there is still considerable

disagreement on the effectiveness and interpretation of the principle (Evans, 2008:13-14). Consequently, the focus in this thesis will be on the legal instruments and human rights mechanisms available, mainly under the UN human rights bodies, on means to find peaceful and diplomatic solutions to state fragility.

2. METHODOLOGY

The problem statement and research dilemmas presented in the field of concern are intended to serve as a basis for an open and explorative discussion about ways to enhance human rights protection in fragile states. The aim of this thesis is therefore not to fill in a 'knowledge vacuum' but to analyze how general debates, policy commitments and case studies can provide a more in-depth understanding of the complex realities linked to working rights-based in fragile states. Conducted as a desk study, this method implies both opportunities and limitations as reflected in this chapter.

2.1. RESEARCH PURPOSE

The research purpose of this thesis is to illustrate emerging trends and tendencies in the 'fragile state debate' from a human rights perspective and to assess the applicability and adequacy of a human rights framework on what is perceived to be a new policy arena. The aim is to explore whether the merging of the two agendas – human rights and fragile states – represents a strategic shift in the way that donors perceive problems and solutions to weak state performance. The thesis should be seen as a supplement to the debate how these two agendas can be linked – both from a theoretical and practical perspective – and as an in-depth assessment of how donors can pursue such an approach in practice. This calls for an actualization of international human rights standards in the fragile state debate by linking the success criteria for development with the states' ability and willingness to promote and protect human rights. Hence, this thesis contributes to the fragile states agenda in multiple ways:

First, it assesses to what extent human rights protection is incorporated in donor policies on fragile states, and examines the possibilities and implications of applying a human rights framework as a guiding principle for interventions in fragile states.

Secondly, it examines the role of the state vis-à-vis the international community in effectively promoting and protecting fundamental human rights in fragile states based on the complex realities dominated by political instability and weak institutional capacity nationally.

Thirdly, it compares policy priorities with the applicability of existing methods and standards in a new policy debate and attempts to operationalize how to work rights-based in conflict-affected states.

Fourthly, it explores what values lie behind international engagement in fragile states and the legal and normative standards that are emerging in relation to engagement in conflict-affected states. This will shed light on some of the tendencies and dilemmas that the increased focus on state fragility poses if human rights protection is to be a priority in donor policies and a serious commitment for donor governments.

2.2. THESIS STRUCTURE

The thesis is structured into five main parts: Introduction, Part One, Part Two, Conclusion and Contextualizing Remarks. After the Introduction, Part One: 'Analytical Frameworks' establishes the conceptual links between the human rights and fragile states agendas. In chapter 3, it is explained how relevant theoretical fields – human rights, conflict resolution, development, and state-building – interrelate and how an integration of these fields can contribute to a comprehensive understanding of state fragility. Chapter 4 expands on the policy framework for international development interventions in fragile states, and compares how other donor agencies have incorporated human rights into their fragile states policies. Chapter 5 builds on the foundations of a human rights framework and explores how national and international human rights mechanisms can contribute to enhance the promotion and protection of human rights in fragile states.

Part Two: 'Linking Policy and Practice', compares the issues and observations raised in Part One with the implementation of such frameworks in practice. In chapter 6, Denmark's interventions in Afghanistan and Nepal are reviewed to examine the effects of Danish efforts to promote and protect human rights in a fragile state setting. Chapter 7 follows up on the lessons learnt from the Danish experiences, and compares the two cases in a final discussion about the policy implications of enhancing human rights protection in fragile states. The Conclusion sums up the main findings and the Contextualizing Remarks looks ahead and put these findings into a broader perspective.

2.3. EMPIRICAL DATA

The increased focus on state fragility has resulted in a vast production of policies, papers, and books on causes and effects of this phenomenon from different perspectives.

Efforts to analyze state fragility in academic circles began in the 1990s, and as a result a number of assessment systems have been developed to translate this into practice (Cammack *et al*, 2006:x). Nevertheless, donors only began formulating policies on this area over the last five years.

The thesis takes its point of departure in the pre-generated knowledge and ongoing debates and compares the different theoretical frameworks, analytical concepts and operational guidelines on how donors perceive ways to address this issue. In addition to the abovementioned studies and policies, it draws on the studies and papers prepared as part of the process leading up to the formulation of the Danish guiding principles in early 2008.⁵ In this period, the Danish MFA commissioned a number of studies and organized several debates and workshops “*to stimulate debate among academics and development practitioners about the linkages between human rights and state fragility.*”⁶ The meetings included a Danish information meeting in February 2008; a Danish public hearing with workshops in March 2008; and the International Workshop on Human Rights and State-Building co-organized with the Overseas Development Institute (ODI), followed by a Danish workshop co-organized with the Danish Institute for Human Rights (DIHR) in April 2008. Following the International Workshop, a report was prepared by ODI (Menocal, 2008b), and some of the discussion points from the workshop report will be drawn in to bring a new perspective on the issues raised.

Three papers/studies have been of particular importance to this thesis. The paper prepared by Derek Evans (2008) has provided useful perspectives on how to incorporate human rights thinking into the field of state-building. In addition, the Ministry commissioned two studies prepared by the Nordic Consulting Group (NCG) and the Danish Institute for International Studies (DIIS). The NCG undertook a review of Danish experiences in three fragile states and fragile situations: Nepal, Northern Uganda and Sudan.⁷ DIIS was assigned to provide an overview of current debates and central

⁵ See the Bibliography for a full list of the relevant papers and studies produced as part of this process. Most of these papers have not been published, but have been made available to the participants at the meetings.

⁶ Danish MFA, Terms of Reference for the International Workshop, February 2008.

⁷ In addition to the three case studies, a synthesis report was made to compare the three cases; reviews the Danish comparative advantages in fragile states; and evaluates on the use of instruments, channels and modalities in Danish development aid to these countries in the period 2002-2007.

dilemmas in relation to fragile situations.⁸ Both studies have provided insight into the practical and theoretical dilemmas connected to state fragility.

The studies, notes and observations from this process have served as a valuable source of inspiration for this thesis. The number of meetings and publication of studies coincided perfectly with this study's drafting process. As a result, the thesis gives an up-to-date impression of where the debate stands today, even before the Danish guiding principles have been published. The challenge, however, has been to navigate in the debate following the large amount of papers presented, and various views shared. The result is a study, which draws in many different positions, while trying to stick to the initial dilemmas that were the motivation for writing the thesis in the first place.

Background interviews: Three interviews were conducted as part of the study process to get a broader perspective on the dilemmas raised. One interview was with Christian Lotz (CL), the person responsible for the drafting of the Danish guiding principles in the Danish MFA, to learn about the Ministry's motives behind the principles. A more informal conversation was made with Ivan Nielsen, formerly employed as a Human Rights Officer at the Danish Embassy in Nepal, who is now going to Afghanistan. His experience offered insight into the Nepalese peace process, and he has also contributed to drafting the new Afghanistan Strategy 2008-2012. The last interview was with Mie Roesdahl (MR), employed at the Danish Institute for Human Rights. The interview mainly concerned the relation between the fields of human rights and peace-building studies, and the applicability of existing instruments to address state fragility. The thesis does not include an annex with the full transcriptions of the interviews, but relevant quotes from the interviews with CL and MR are included in the text or in the footnotes where appropriate.

Policy analysis: The study is conducted as a desk study. It applies a deductive method to extract tendencies and trends in the debate by analyzing donor policies, guidelines and strategies of international donor approaches to state fragility. Four agencies, which have been leading in the fragile states debate, have been singled out for this purpose. This includes the OECD/DAC, which has been a driving force in formulating principles and resource guides for engagement under the Fragile States Group, the World

⁸ The study included a synthesis report and twelve policy briefs discussing development issues in relation to fragility.

Bank, and two government agencies: DFID (UK) and USAID (USA). The policy analysis is supplemented by studies, evaluations, and human rights reports relevant to explore how to integrate human rights and development interventions in fragile states and situations.

As a policy analysis, there are obvious limits to what can be said about the effects that the policies have had on the ground. Despite the fact that policy papers do not necessarily reflect practice, however, they influence and shape it, and they are often an expression of the political priorities and underlying values behind the interventions. It can also be difficult to determine if certain developments can be attributed to specific donor interventions, not to mention a relatively small donor like Denmark. Yet, the evaluation of the effects and challenges of Danish interventions in the two cases indicates to what extent such interventions have worked, and which lessons can be learnt from it.

Case studies: As an illustration of the practical implications of applying a human rights framework in fragile states, this thesis analyzes Denmark's interventions in Afghanistan and Nepal. The case studies cover a five-year period starting from 2001/2002 respectively, and the analyses are structured into two parts. The first part is a background analysis of the human rights situation, and the second part is an assessment of Denmark's intervention to enhance human rights protection in the given country. The reason why these two countries have been selected is that they have been regarded as a "worst case" (Afghanistan) and a "best case" example (Nepal) of how national and international actors have invoked human rights as a mechanism for improving the overall human rights situation.

In Nepal, human rights played an explicit role in the conflict resolution, as the international human rights framework provided a common basis to support the claims by national groups and the international community. During the peak of the conflict in 2005-2006, Denmark stayed engaged as a donor government and continued to support vulnerable groups, while encouraging a dialogue with the Government both nationally and in international forums such as the EU and UN. Apart from Danida's development strategies and programmes, the analysis builds on the case study of Nepal prepared by NCG to evaluate the results of Denmark's assistance to Nepal.

In Afghanistan, major human rights concerns continue to influence the country's efforts to achieve turn-around, and although some progressive steps have been taken towards democratization, the Government is still struggling with overcoming past crimes

and showing full commitment to the responsibilities and obligations contained in international agreements and conventions. Denmark In 2005, a Joint Evaluation (hereafter “the Joint Evaluation”) was conducted of Danish, Swedish, Irish, British and Dutch humanitarian and reconstruction assistance to Afghanistan in the period 2001-2005.⁹ In the analysis, the evaluation is used as a source to analyze the country situation and the results of the implementation of Danish assistance to Afghanistan until 2005, in addition to Danida’s own development strategies and programme documents for Afghanistan.

2.4. THEORETICAL FIELDS

Due to the interdisciplinary nature of the subject, the analytical frameworks of this thesis draw on several theoretical fields, positions and debates. Although often perceived as distinct, these traditions are often overlapping in practice. The attempt to bridge different theoretical fields, in particular international development studies and international law, is the result of the interdisciplinary character of my own educational background.¹⁰ Too often, there is a lack of understanding between development researchers and human rights experts, which leads to misconceptions and inadequate responses in the intersection between these fields. The following four theoretical fields are applied and integrated in the thesis: A) international human rights law, B) international development studies, C) conflict resolution, and D) state-building. These fields are used to define and understand particular concepts and act as competing and supplementary explanations (Andersen, 2005:97-102). The argument in this thesis is that despite the differences, each field contributes in its unique way to the debate. Whether or not a complimentary and coherence is possible to accomplish in actual implementation, however, is open for discussion and will be debated throughout the thesis.

In table 1: ‘Theoretical fields: Objectives, methodology and indicators’ on p. 18 the fields have been compared to demonstrate the complementarities and inconsistencies

⁹ The *Joint Evaluation: Humanitarian and Reconstruction Assistance to Afghanistan 2001-2005* was commissioned by the five donor organizations and prepared by the Chr. Michelsen Institute, Copenhagen Development Consulting and German Association of Development Consultants. The evaluation was unique in the sense that the five donor organizations agreed in 2003 to undertake a joint evaluation of their contribution to Afghan humanitarian and reconstruction assistance.

¹⁰ In addition to two years of social science studies (SAMBAS) and a bachelor degree in International Development Studies from Roskilde University, I took three semesters at master level of the Faculty of Law, University of Copenhagen to study international human rights law, international humanitarian law, etc.

between them. One of the noticeable differences is in the methodologies, in particular the approaches applied and relations between stakeholders. For instance, where international development studies builds on the notion of an inclusive partnership between donor and recipient, the foundation of IHRL is the dichotomous – and often confrontational – relationship between the state and the individual.

Another example is that international development studies are more process-oriented and evidence-based than human rights law. This difference is, among other things, reflected in the fragile states debate about how to measure state fragility. There are a number of impediments to making precise measurements, mainly because there are different perceptions about what aspects should be given most weight. For example, how can levels of the sense of freedom and dignity be measured? International development studies have a tradition of measuring progress on a large set of economic, social, and political indicators. IHRL is not as such evidence-based; it is a normative approach to how things should be. This has made researchers from other fields criticize the field of human rights as being *too* normative and value-driven: that it sets too high standards for what the state *ought to be* (Menocal, 2008b:2).

It has also been argued that the human rights field operates from the human rights principles as a given, whereas in the field of development and peace-building the objectives are being defined and negotiated with stakeholders.¹¹ This shows the competing notions between the fields, and the potential conflicts that lie beneath the surface in the debate. I would argue that all fields build on certain beliefs and values of what society ought to look like; in the field of human rights it is just more explicitly articulated. It would simply be misleading not to accept that the fragile states debate is permeated by values, principles and notions about how donors perceive state fragility.

Current debates suggest that the merging of a human rights perspective into other fields introduce new ways of overcoming such differences. In the next chapter, it is explored how these fields interrelate in practice and how such debates can contribute and pose challenges to the ‘fragile states debate’.

¹¹ Mie Roesdahl from DIHR argued in her interview that: “There is a conflict between the field of human rights and peace-building, and a lack of connection between them. The human rights field operates from the human rights principles as a goal in itself. [...] While a lot can be gained from the interest-based approaches, the development field and peace-building field work from evidence and develop the objectives together with the recipients. The objectives are not a given: you have to identify in which way you want to go. In the human rights field it is a given.”

TABLE 2: THEORETICAL FIELDS - OBJECTIVES, METHODOLOGY AND INDICATORS

Theoretical field	Objectives	Methodology	Indicators (examples)
A. International human rights law (IHRL)	<p>The state has the duty to respect, protect and fulfill all human rights (both civil, political, economic, social and cultural)</p> <p>Prevention of misuse of the state's power against citizens under its jurisdiction</p> <p>Establishment of accountable and effective justice mechanisms</p> <p>A state based on the moral authority and normative foundation of human rights</p>	<p>Human rights monitoring (national and international)</p> <p>Rule of law</p> <p>Justice sector reforms</p> <p>Individual complaints mechanisms</p> <p><i>Approach: Confrontation, pressure or dialogue</i></p> <p><i>Relation: Duty-bearer (state) versus rights-holder (individual)</i></p>	<p>Number of human rights violations have decreased</p> <p>Increased state accountability and legitimacy (independent judiciary, effective justice sector, efficient police sector, etc)</p> <p>Freedom of speech, press, information, religion, thought, etc. (human rights education and awareness)</p> <p>Level of protection and fulfillment of human rights</p>
B. International development studies	<p>Poverty reduction and fulfillment of basic human needs (MDGs)</p> <p>Social, political and economic empowerment</p> <p>Aid effectiveness, policy coherence and harmonization</p>	<p>Poverty-oriented</p> <p>Help to self-help</p> <p>Long-term engagement at grass-root level</p> <p><i>Approach: Process-oriented, bottom-up</i></p> <p><i>Relation: Donor versus recipient (partnerships)</i></p>	<p>Reach the Millennium Development Goals by 2015</p> <p>Evidence-based progress (social, political, economic indicators)</p>
C. Conflict resolution	<p>Restoration of peace and justice in post-conflict situations</p> <p>Conflict prevention, resolution and transformation</p> <p>Human security and protection of civilians</p>	<p>Conflict Analysis Framework</p> <p>Transitional justice</p> <p><i>Approach: Negotiation and mediation</i></p> <p><i>Relation: Conflict resolution between contesting parties</i></p>	<p>Promote peace and prevent conflicts (human security)</p> <p>Restore justice (independent judiciary, effective justice sector, rehabilitation of victims, compensation)</p>
D. State-building	<p>Establishment of a strong state which is capable of fulfilling core state functions</p> <p>Address problems of state fragility to create stable and democratic states</p>	<p>State- and nation building</p> <p>Economic management</p> <p><i>Approach: State-centered, top-down</i></p> <p><i>Relation: Social contract between state and society</i></p>	<p>Increase legitimacy and accountability between the state and society</p>

PART ONE: ANALYTICAL FRAMEWORKS

Part One establishes the relevant analytical frameworks to analyze the links between human rights and state fragility, and to assess how international donor agencies perceive these links in their policies. This part takes a point of departure in three central debates relevant to understanding policy responses to state fragility and dilemmas between the fields. It then explores how human rights are emphasized in the fragile states debate, and how policy makers have incorporated human rights in donor responses to state fragility. Finally, it examines how the international human rights framework can offer ways to prevent and address state fragility for national and international actors.

3. CENTRAL DEBATES

Since the 1990s, there has been a tendency to merge different theoretical fields to respond more effectively to complex situations. In fragile states, a complimentary approach is needed to tackle issues of fragility, including gross human rights violations, threats to physical and human security, food shortage, poor infrastructure, regional instability, etc. The following three sections explain the links between the theoretical fields from a theoretical and practical viewpoint, with a point of departure in the field of human rights.

3.1. HUMAN RIGHTS AND DEVELOPMENT

The integration of human rights principles and legal instruments in support of development policies and interventions has become known as the ‘human rights-based approach to development’ (HRBA). From the beginning of the 1990s, UN agencies like UNDP¹² and OHCHR¹³ as well as bilateral donors such as Danida¹⁴ and DFID¹⁵ have

¹² As reflected amongst others in UNDP policies from 1997, 1998 and 2003 (UNDP Practice Note)

¹³ OHCHR (2002); OHCHR (2006)

¹⁴ In DANIDA’s strategy “Partnership 2000”, it is stated that human rights is an integrated element in development activities (p. 13).

¹⁵ In “Realising Human Rights for Poor People”, DFID states its commitment to a rights-based approach to development (p. 8). See: <http://www.dfid.gov.uk/pubs/files/tsphuman.pdf>

integrated human rights as a cross-cutting theme in their development policies, and so have many NGOs. In this sense, human rights have become increasingly recognised as a normative framework guiding the fundamental principles in the development discourse. In the HRBA to development, fundamental human rights principles guide development priorities, such as those contained in the International Bill of Rights and 'soft law' instruments such as declarations and recommendations. Thus, poverty is regarded as a denial of fundamental human rights, in particular the principles of non-discrimination and equality (UNDP, 2003:iv). The methods to achieve these objectives centre on the social empowerment of people often through a participatory, bottom-up approach.

The effect of the rights-based discourse on the 'fragile states debate' is both normative and instrumental. In a paper about the links between human rights and state fragility, Evans (2008) argues that the international human rights framework constitutes the normative framework expressed in international and national *legal* structures, and it is an expression or function of the *moral* authority that human rights are inherent to the humanity of all persons (Evans, 2008:6). In the study, Evans recommends an analytical model for state-building that integrates human rights by emphasizing fundamental principles of social, economic and political exclusion as a guide for how donors should work rights-based in fragile states both in design and implementation (*ibid*:3-4).

The production of a vast number of practical guidelines and toolkits developed by agencies (e.g. UNDP 2003; OHCHR 2002) offers programmatic solutions to the implementation of this approach in practice. Despite the increased popularity of the HRBA among donors, though, the correlation between human rights and poverty reduction, including the effectiveness and impact of a rights-based approach as opposed to other approaches, has been contested and questioned. One of the arguments presented at the International Workshop on Human Rights and State-Building in April 2008 was that "*there is no clear evidence base to support the normative claim that human rights is an indispensable component of successful and inclusive state-building*" (Menocal, 2008b:2). Moreover, the challenges of applying a HRBA in a conflict-affected environment, where the basic conditions for advancing human rights are sometimes not present, are sometimes neglected in the discourse.

3.2. HUMAN RIGHTS AND CONFLICT

Conflict is often referred to as a cause and effect of state fragility, in the nexus between security and development, in peace-building literature. This builds on the recognition that unmet human needs may lead to human rights violations and create a “cycle of dehumanization based on fear” (Mertus and Helsing, 2006:4). The denial of basic human rights and human needs may therefore intensify the conflict, especially if the state is unable or unwilling to protect human rights and human security. Development researchers argue that the reciprocal causal links between low incomes, low growth and conflict suggest that the effects of war undermine development, and that in return, underdevelopment intensifies the likelihood of falling into conflict (Fukuda-Parr and Picciotto, 2007:1). An important contribution from the peace-building agenda is the classification of the three transitional stages from conflict intensification, to armed conflict, and to post-conflict/post-crisis situations (Mertus and Helsing, 2006:10). Overcoming challenges of working in conflict-affected situations is a basic premise underlying the conflict transformation agenda, which makes it particularly relevant in relation to fragile states that often have often have a record of violent conflict.

The debate linking the human rights and conflict resolution agendas is also known as the ‘peace and justice’ debate, which defines peace as the assurance of rights and justice (Mertus and Helsing, 2006: 8). With conflict prevention and transformation as a common goal, this debate tries to integrate the peace-building agenda on the one side and transitional justice mechanisms on the other. The fundamental dilemma concerns what should be promoted first, peace or justice. While conflict resolution specialists argue that hostilities must end before human rights can be advocated for, human rights activists argue that there can be no peace without justice (Mertus and Helsing, 2006: 8). In recent years, the plethora of overlapping terminologies and strategies applied in the beginning – similar to those now encountered in the ‘fragile states debate’ – have slowly lead to analytically clear and measurable instruments to support the transitional phase from conflict to peace on the peace-building agenda (Call and Cousens, 2007:2).

3.3. HUMAN RIGHTS AND STATE-BUILDING

A key feature in the fragile states debate is that the state has returned to the centre of donor attention as a main driver of change. This comes after a period in the 1980s and early 1990s where emphasis was placed on the liberal economy as a catalyst for change. The OECD/DAC Principles institutionalizes this state-centric approach by identifying state-building as a central objective for international engagement in fragile states in Principle 3 of the Guidelines. In this approach, there is a particular focus on supporting the “core functions” of the state, which reflects a functional approach to the understanding of the state.

What has attracted most criticism in this debate is the notion of what is “the state”. The state is often depicted as an ideal type of a Western liberal democracy, and state-building is seen as automatically leading to the formation of democratic and legitimate states. As commentaries concludes: “*The fragile and failed state agenda is permeated by Weberian ideals of what the state should look like in terms of monopoly of force, legitimate authority, and clear-cut distinctions between state/society, public/private and civil/military*” (Engberg-Pedersen and Steputtat, 2008:9). However, critics have argued that while an ideal type model of the state may be useful as an analytical and normative concept, it is not a model for how fragile states function in reality (Jung, 2008:1).

Political scientists and sociologists, most notably Max Weber, have tried to grasp the essence of the state as an expression of the state’s power monopoly. From this perspective, the state is either determined by its ability to possess enough crude power to control its territory, or it receives enough support not to be disputed by its people. The problem with the definition of fragile states is that state institutions may not fit the Weberian definition, when the functions of the state are fragile, and sometimes upheld by non-state groups, such as traditional leaders, clans or “religious civil society”. Furthermore, history has showed that state formation has been non-linear, conflict-ridden, top-down and violent processes (Menocal, 2008a:6). This questions the notion that transition towards stability is a peaceful and non-conflicting process. The fragile state debate has also been criticized for representing a more interventionist international role, where international actors are expected to intervene and support certain state functions, if

the state does not provide human development and security nationally, regionally and internationally (Andersen, 2008:1).

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As this chapter demonstrates, there are many different approaches and views on how to tackle state fragility. A complimentary approach is therefore needed in order to address the complex problems in fragile states comprehensively. As the next chapter demonstrates, the integration of different theoretical fields is a constant challenge in the fragile states debate. The relevance of a complimentary approach is particularly evident in this debate, where policy responses to fragility include a number of elements that are equally important to consider in such complex situations, such as the enforcement of rule of law, conflict management, state-building and peace-building efforts.

4. FRAGILE STATES AND HUMAN RIGHTS

Building on an understanding of the interaction between the theoretical fields, this chapter explores the defining features of state fragility and policy responses to state fragility from a human rights perspective. Almost all main international donors have policies to guide their interventions in fragile states; yet, this chapter concludes that much remains before the links between human rights and state fragility are fully recognized both at a conceptual and operational level.

4.1. WHY DO HUMAN RIGHTS MATTER IN THE FRAGILE STATES DEBATE?

Daily reports in international media about conflicts, repression, terror attacks and food crisis in states such as Afghanistan, Iraq, Somalia, Zimbabwe, Myanmar and Sudan, is a clear manifestation of the interlinks between human rights violations and state fragility. While some of these states are more repressive than fragile in nature, they all figure on the fragile states indexes and share the common feature that many fundamental human rights are not protected and fulfilled by the state.

4.1.1. DENMARK AS AN ADVOCATE FOR HUMAN RIGHTS

Given the international awareness about the problem, the question about the relevance of promoting and protecting human rights in fragile states may seem banal to some. Nevertheless, the link is often neglected in the fragile states debate. This has created vacuum in the debate, which Denmark intends to fill out by declaring that human rights should be the basis for engagement in fragile states. In an interview with Christian Lotz (CL), he said that: *“human rights is something that we (the Danish MFA) want to bring up and be seen as an advocate for in the international debate on state fragility, because we also think it is politically correct and because there is an absence of actors that do this. So there is a space to fill out.”*

This decision, which according to the Ministry is fully in line with the OECD/DAC Guidelines, was a “common sense approach” taken by the Danish MFA. As CL said: *“If you look at the DAC Principles, they talk about human rights. It is clear that the basis and international agreement is there. But in our day-to-day approach to fragile states in recent*

years and in the policy and research community there has been a tendency to avoid this linkage. We want to speak for human rights in fragile states; it is a common sense approach to take. If you look at a group of fragile states, then what makes this group stand out is that they are widely seen as having human rights problems.” Hence, the decision was taken for a number of reasons. First, because human rights problems are seen as a common denominator that makes the group of fragile states stand out. Second, to build on the international consensus about human rights in the donor community. And third, because the absence of actors pursuing such an approach makes it even more relevant to advocate for it. According to CL: *“Denmark wants to be at the forefront of making explicit references to human rights. We have done that with success in specific countries, so this is an attempt to raise it to a more general political level.”* To what extent Denmark has been successful in incorporating a human rights approach in its interventions in fragile states, and to what extent the debate has been raised to a general level in the debate is what this thesis sets out to review critically.

4.1.2. HUMAN RIGHTS AS A CAUSE AND SYMPTOM OF CONFLICT

What evidence do we have that enhancing human rights protection in fragile states will help creating more stable and peaceful states? Several studies and reports suggest that human rights violations are one of the main elements that characterize state fragility, both as a cause and as a symptom of fragility. Fragile states are often characterized by elements of discrimination, marginalization and unequal access to opportunities and resources. The fact that violations of, and demands for, human rights can be the root cause of conflicts, underlines the importance of recognizing the entrenched links between human rights and conflict in such states (Mertus and Helsing, 2006:4-5).

The problem is that in these states there can be less willingness to address these issues because it is often linked to the underlying causes of fragility. Yet, in order to tackle the structural causes to conflict, this aspect must be addressed when intervening in fragile states. Otherwise, interventions may run counter to the initial objectives for engagement and multiply negative effects unintentionally. To avoid this situation, a proper conflict analysis must be undertaken to understand the structural causes to fragility. A result of the increased focus on fragile states may therefore lead to an increased use of tools and instruments to make such assessments.

According to research done at the Danish Institute for Human Rights, inadequate and ineffective mechanisms to deal with conflict and human rights abuses may likewise be a cause and a consequence of state fragility.¹⁶ Other attributing factors include inadequate or unequal access to justice, limited access to social and economic resources and opportunities, unequal participation and recognition, discrimination and marginalization. This leads to a “vicious circle” characterized by a downward spiral, which results in a weakening of the legal system in fragile states. In order to achieve a turn-around, donors should help to create a “positive circle” by supporting building blocks that will lead to the reestablishment of an effective legal system. But the challenge of working in fragile states is that it requires differ set of tools depending on the stage of conflict that the country is in.¹⁷ In ‘weak-weak states’ there is one set of tools from the development and state-building fields, for example. Instruments to guide development interventions can draw on existing methods from the peace-building field. But to achieve a more complimentary approach to addressing state fragility, it may be necessary to develop a more comprehensive framework, which includes aspects from all fields.

4.2. MEASURING STATE FRAGILITY FROM A HUMAN RIGHTS PERSPECTIVE

The question about ‘what works’ in fragile/failed/collapsed states has been debated extensively among researchers, experts and policy makers for years. As demonstrated below, many of these studies and tools include human rights concerns either directly or indirectly. However, there have been few attempts to develop an empirical basis to demonstrate the causal relations between the level of fragility and of human rights violations (Evans, 2008:16).

As noted by Browne (2007) in a discussion paper about donor approaches to fragile states, the attempt to measure states’ development performance is not a new phenomenon. Individual country assessments have been carried out since the 1970s with

¹⁶ At a Danish workshop on human rights and state-building organized by the Danish Institute for Human Rights (DIHR) together with the Danish MFA on 22 April 2008, Mie Roesdahl and Fergus Kerrigan presented the work that DIHR is currently undertaking when developing an operational framework for human rights and justice sector interventions in fragile states,

¹⁷ Mie Roesdahl, DIHR: *“There are a lot of analytical and strategic tools and instruments out there to use, but they all come from the peace-building field. But the human rights field has presented this as if it requires a whole new agenda and a new set of tools, but the tools are already there, they just have to look beyond their field.”*

the rating of Least Developed Countries and in the 1990s with the UNDP Human Development Index (Browne, 2007:2-3). The most comprehensive set of indicators are the Millennium Development Goals (MDGs), which are included as indicators for development by most donor governments today.

The difference between these instruments, however, is that compared to the “fragile states indexes”, they apply different methodologies and often show different results. In a study about the conceptual links between different approaches to measure fragility, Steward and Brown (2008) conclude that although there are many overlaps, the MDG indicators do not always apply in the context of fragility. First, the MDGs do not consider the authority or legitimacy of a state. Secondly, the MDGs can be obtained at country level without equal distribution. Thus, one part of the population can still be poor and victims of human rights violations, as a cause of conflict, although the country level may show something different (Steward and Brown, 2008:15). Such a phenomenon could apply both to Nepal and Afghanistan, where some parts of the rural population live in isolation and cannot benefit from the distribution of resources from central level.

The difference between indicators used for measuring state fragility reflects not only methodological inconsistencies. It also reflects the inability to reach an agreement about the definition of fragile states, and the different political standpoints by relevant stakeholders. The puzzling thing is that donors do not follow these indexes in practice either; they are more used for conceptual purposes, statistics and for monitoring resource flows. The list of fragile states varies from donor to donor, which shows that it is more a political choice than one based on statistics. The differences are a reflection of the different values, principles and interests in the debate, which shows that the debate is really about politics (Andersen, 2008:10). Others base it on random selection criteria or, as someone said at the International Workshop, “you know one, when you see one”. This raises the question about the applicability and relevance of such indexes, especially as a basis for monitoring states’ human rights compliance. In reaction, critics have argued in favor of a harmonization of definitions among donors to enhance aid effectiveness and policy coherence.¹⁸

¹⁸ Fukuda-Parr and Piciotto (2007) demonstrates in Annex 2 the diverse list of African countries according to different donor definitions and call for increased harmonization.

4.2.1. HUMAN RIGHTS AS AN INDICATOR FOR FRAGILITY

A vast number of “fragile states indexes” have been developed internationally to measure state fragility.¹⁹ Some research institutes have developed indexes with the specific aim of linking human rights and state fragility, which has helped bringing human rights concerns to the centre of the debate about fragility. One example is the Country Ranking Table produced by the Country Indicators for Foreign Policy project (CIFP). The perhaps most authoritative source developed by the World Bank, however, is not very sensitive to human rights in its approach.

The first index of its kind, which is the used by the OECD/DAC and its member organizations, is produced by the World Bank based on Country Policy and Institutional Assessments (CPIA).²⁰ The yearly lists show the countries under the category of “Low Income Countries Under Stress” (LICUS), which since 2002 has been the WB’s differentiated approach to country strategy development in fragile states. In 2007, 34 countries were categorized as fragile, including Afghanistan but not Nepal. Out of these countries, Denmark provides development aid to Afghanistan, Cambodia, Somalia, Sudan, Zimbabwe and Kosovo. Over the medium to long term, there is significant movement in and out of the fragile states category. As an example, the 2006 list included six more states, which receives Danish aid: Nepal, Zambia, Mozambique, Bangladesh, and Iraq.

The criteria against which the CPIA is rated give weight to good governance and economic growth, but not to human rights or conflict aspects as such. The closest criteria are “social exclusion and equity”. Generally speaking, this illustrates the World Bank’s preference of rating country performance based on economic factors, in accordance with its mandate, and the almost systematic exclusion of human rights language in its policies. It is therefore ironic that the OECD/DAC principles, which have been seen as one of the most explicit efforts to link human rights and state-building, refers back to an index that does not include indicators for human rights performance.

¹⁹ For a comprehensive overview of tools and methodologies to measure fragility, see Cammack *et al* (2006), Annex 2.

²⁰ The 2006 and 2007 list of LICUS countries can be found on the World Bank’s website: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/STRATEGIES/EXTLICUS/0,menuPK:511784~pagePK:64171540~piPK:64171528~theSitePK:511778,00.html>

Compared to the World Bank's index, the Country Ranking Table produced by the Country Indicators for Foreign Policy project (CIFP) is quite different in its approach.²¹ This project has developed an analytical framework, which measures the state's effectiveness based on three "fundamental properties": authority, legitimacy and capacity. It is based on structural indicators that are grouped into six clusters capturing different facets of democratic processes and governance: rule of law, human rights, government transparency and accountability, government and market efficiency, political stability and violence, and democratic participation. Many of the crosscutting indicators and variables explicitly refer to human rights. The approach is characterized by the fact that it considers state effectiveness from the point of the "duty-bearer" as opposed to the "rights-holders" (Evans, 2008:16). According to Evans (2008), the model produced by CIFP provide a good example of how the diversity and complexity of state fragility can be incorporated in programmatic responses with an emphasis on human rights concerns (Evans, 2008:14).

While these indexes bring interesting perspectives on how to assess such causality, it seems relevant to question the usefulness of such studies in relation to the debate about the links between human rights and state fragility. How may another set of indicators contribute to a more enhanced understanding of state fragility? Can we even measure human rights compliance? The lesson learnt is that while these indexes may not be useful to determine which states are fragile or not, they offer perspectives on how human rights concerns can be incorporated in the attempts to measure fragility, from a methodological point of view. But they do not provide many concrete suggestions and guidelines on how to enhance human rights protection in fragile states.

While there may not be a need for additional frameworks, the challenge is how to transform them into practice. With an emphasis on a functional and contextually oriented approach to state-building, Evans argues that "*given the right conditions and appropriate forms of intervention or support, programs to promote human rights would be an essential element in state-building initiatives, and that effective state-building should intrinsically serve to strengthen human rights*" (Evans, 2008:16). Therefore, we turn to a discussion about how human rights can be incorporated in policy responses to state fragility in the context of state-building.

²¹ It is a university-driven project supported by the Canadian government to prepare indicators, tools and policies to address state fragility.

4.3. POLICY RESPONSES TO STATE FRAGILITY

In the donor-driven attempts to build effective and strong states, donors have increasingly shown an interest in “bringing back the state”. Although this is not in itself groundbreaking, the new thing about this policy debate is that it has led to increased high-level political attention about this problem (Andersen, 2008:3). The renewed emphasis on the capability and willingness of states provides a basis for exploring how international donors have responded to state fragility from different perspectives. This final section of chapter four explores how donors pursue the fragile states agenda by discussing the following questions:

- How has the aid effectiveness agenda affected the fragile states agenda?
- How do donors define “fragile states” and what are the underlying assumptions of “the state” in this debate?
- What is the role of non-state actors in fragile states, and to what extent do donors include them in their policies?
- To what extent have donors emphasized human rights protection in their policies for engagement in fragile states?

4.3.1. AID EFFECTIVENESS IN FRAGILE STATES

The aid effectiveness agenda has been instrumental in promoting the fragile states agenda. After a focus on the “good performers” in the 1990s, donors saw that the abandonment of poor-performing states led to the ineffective distribution of aid. In effect, the need for creating effective and stable states became seen as an instrument to prevent and reduce national, regional and international threats to security and stability. The need for engaging effectively in fragile states thus became a high priority for donor governments and partner states with the adoption of the Paris Declaration on Aid Effectiveness in 2005. The Paris Declaration states that a “*long-term vision for international engagement in fragile states is to build legitimate, effective and resilient state and other country institutions*”.²² With this principle, donors made a commitment to align and harmonize their activities to make aid more effective in states with weak government leadership. On the other side of the table, partners committed to building institutions and establishing governance

²² Paris Declaration on Aid Effectiveness (2005), § 37-39

structures; engage in dialogue with donors on simple planning tools; and encourage broad participation in setting development priorities.

Yet, one of the dilemmas is that the vision of an effective government-to-government partnership is difficult to carry out effectively in fragile states. Such partnerships, including the Poverty Reduction Strategy Paper (PRSP) approach, require political stability and sufficient administrative capacity among other things, which most fragile states lack (Moreno Torres and Andersen, 2004:10-11). If ownership is the long-term goal, this poses major challenges for recipient countries as well as donors in the transition phase. It can therefore be questioned if fragile states, which are characterized by lack of effective government leadership, are fit for the vision of cooperation presented in the Paris Declaration.

Working in fragile states and situations demands a large degree of flexibility, which donors are not always capable or willing to give. It requires a change of mind-set, which takes time. According to Christian Lotz, there is an internal resistance in the professional development community to work with fragile states, because it does not fit with the traditional notion of partnership.²³ Alternatives may therefore have to be identified in the medium-term (Moreno Torres and Anderson, 2004:11). If the national administration is too weak, new partners have to be identified outside the government system, or international agencies have to take the role as it has been done in countries such as Kosovo, Iraq and Afghanistan. Apart from the need for clear intervention plans and exit strategies, engagement in fragile states thus calls for a discussion about the notion of partnership and the role of actors outside the formal governance institutions, not least if human rights are the main objective for intervention.

²³ Interview with CL: *"There is a clear recognition of the Paris Declaration modalities about programme cooperation with states and governments. This is what many colleagues in the Ministry want to do and see as their success criteria. So working with non-state actors is not always very popular as a suitable partner, and then success becomes difficult in fragile states. We need to introduce the idea that we can work for development also in fragile states. The knowledge about the practical approaches is out there, but there is still lack of clarity and consensus in our own system about the relevance of a different approach from the ideal Paris approach."*

4.3.2. DEFINING FEATURES OF FRAGILE STATES

The increased international focus on state fragility has resulted in a long list of studies, many of which have been prepared or commissioned by donor governments, including Denmark, to seek guidance on the defining features of fragile states.²⁴ In a comprehensive study of the current thinking and practice of donors in relation to the fragile states agenda, Cammack *et al* (2006) conclude that the international development community has engaged in fragile states based on the following objectives: (i) human security and peace building; (ii) economic development, good governance and aid effectiveness; and (iii) global security (Cammack *et al*: x). They also conclude that the category of fragile states are defined either in terms of functionality, relationships, or outputs. These observations provide a useful framework for discussing how donors perceive fragile states, both as threats to global peace and stability and as service providers of basic functions.

Fragile states as global threats: Fragile states are also sometimes defined in terms of its outputs with the objective of enhancing global security, i.e. addressing threats that these states are generating or cannot cope adequately with. Many donors argue that fragile states require attention because their weakness and lack of development is a threat to national security and the interests of the broader international community. In this discourse, states are considered to be globally destabilizing forces that have an impact on national, regional, and international security as they “export instability” such as conflict, disease epidemics, refugees, radicalization and terrorism (Danida 2007: 15). Addressing problems in fragile states thus becomes paramount to safeguarding national and international peace and stability, both in recipient and donor countries. After the 9/11 attacks USAID has been leading this argument (USAID 2005: v). Critics have argued that with this argument, global security and national self-interests becomes more important than helping the poor, and that security concerns – and not poverty reduction – will guide aid allocations (Christian Aid 2004: 2). Instead, the focus should be on the protection and empowerment of the poor, not national security.

²⁴ The DIIS study on fragile states (2008) commissioned by the Danish MFA is an example of this. Other examples include studies carried out in the UK for DFID by Vaillings and Moreno-Torres (2005) and in Japan by Cammack *et al*. (2006).

Fragile states as service providers of basic functions: Another prevailing discourse defines the state in terms of functionality. This view is most notably reflected in the OECD/DAC definition, which centers on the state's role as a provider of "basic functions" to its citizens. In this discourse, the promotion and enforcement of rule of law is seen as a key element in creating stability and peace. Ghani and Lockhart (2008) consider law making as one of the most important aspects of state-building, as "the glue" that binds all aspects of the state, the economy, and society together (Ghani and Lockhart, 2008:125). The enforcement of rule of law is thus identified as a mechanism for creating accountability and legitimacy.

Weak state institutions are often considered the central drivers of fragility, and it is assumed that other features of fragility are somehow linked to this deficit. In this view, states are fragile because they do not have enough "strength" to maintain stability in society meaning that *"under diverse political and institutional arrangements, individuals and groups in society act in ways that serve to maintain the effectiveness and authority of the Rule of Law, and guard against abrupt challenges from within political institutions"* (Vaillings and Moreno-Torres, 2005:7). This approach is based on a "driver of change" approach, which emphasizes the role of agents in affecting structural features and institutional performance in bringing about change in society.²⁵ From this perspective, human rights can also be seen as a driver of change by political and state-building actors domestically.

In this discourse, policy responses are linked to strengthening state institutions and to creating an effective accountable system, as prescribed by the OECD/DAC Principles in Principle no. 3. The definition of "state institutions" is essential because it refers back to which actors should be strengthened and how. As an example, Vaillings and Torres (2005) define "political institutions" as the rules structuring the behavior of political actors both in the formal or informal sector.²⁶ This opens for a more inclusive approach than the one in the OECD/DAC Principles, which mainly focus on the formal

²⁵ The "drivers of change" approach has been developed by a policy team working under DFID, UK: Drivers of Change Public Information Note September 2004.

²⁶ Vaillings and Moreno-Torres (2005:6) define political institutions as "the frameworks of rules structuring the behavior of political actors that exercise, distribute and enforce political. They can be formal (national police) or informal (customary legal courts), state (parliaments) and non-state (NGOs) institutions, and they vary in scope and force."

institutions of the state. The exclusion of non-state actors is in itself problematic, because the definition risks overlooking the role of non-state actors when the formal state institutions are inefficient in fragile states.

One of the problems with the functionality approach is that the understanding of “state functions” is sometimes portrayed as overly instrumental. For example, Ghani and Lockhart (2008) have created a framework for state-building that includes ten primary functions, which the state has to provide.²⁷ While this approach stimulates a discussion about how best to intervene in states with weak state capacity, it risks undermining the complexities of the specific country situations. Moreover, it reproduces a picture of what the state should look like, which shows that it is not only in the field of human rights that there is a certain understanding of the state.

In conclusion, the fragile states debate is intrinsically linked to the competing definitions of the state, which is reflected by the large variation of working definitions of fragile states among donors (Stepputat and Engberg, 2008:3). The problem with these typologies is that they narrow down the diversity of fragile situations to a few trends and characteristics and do not always catch the essential elements of why the state is fragile. The risk is that this ideal type of the state becomes a blueprint for interventions in state-building exercises (Jung, 2008:1). Hence, researchers remind donors that they have to adjust their expectations to what the state can and should do accordingly (Webster, 2008:1).

4.3.3. THE ROLE OF NON-STATE ACTORS IN FRAGILE STATES

A key dilemma in relation to fragile states, which is often neglected in policies, is that in the absence of an effective state, informal systems and non-state actors take over some of the functions and services that the state was incapable of doing. There is a risk that international actors who presumably work “from scratch” may not take into consideration the existence of *de facto* structures, local traditions and non-state actors that are already present when international actors step in. The recognition of such structures and traditions has a clear impact on how the state is perceived and how international

²⁷ The ten functions of the state are: rule of law; a monopoly on the legitimate means of violence; administrative control; sound management of public finances; investments in human capital; creation of citizenship rights through social policy; provision of infrastructure services; formation of a market; management of public assets; effective public borrowing. Ghani and Lockhart (2008).

development agencies should engage in fragile states. This may explain the resistance of adopting a broader and more inclusive definition: because it contradicts the notion that state-building should be the primary objective in fragile states, and it delegitimizes the large-scale interventions *through* the state by donors.

According to Kyed and Engberg-Pedersen (2008), there is never a vacuum of local governance even in fragile situations; non-state actors act as gap fillers in fragile situations through more or less organized and legitimate forms of “non-state authorities” (Kyed and Engberg-Pedersen, 2008:2). Donors should therefore recognize that the central power may be a coalition of *de facto* local governance system – represented by traditional leaders, warlords, militias, religious leaders, vigilante groups, or NGOs – and adopt an integrative approach, which mutually reinforce and strengthen central and local structures and institutions. Consequently, donors should adopt a political strategy, which integrates informal non-state authority as an element of building formal local governments (Kyed and Engberg-Pedersen, 2008:2).

There are both pros and cons to adopting a more inclusive approach in policy responses to state fragility. The difficult policy choice is how to balance between observing informal non-state actors, while not undermining efforts to build formal institutions at central level. One of the risks is that a parallel system may be put in place unintentionally. Ghani and Lockhart (2008) argue that working *outside* the state and ceding the functions of the state to non-state actors such NGOs and private companies may undermine the functions of the state and weaken the link of accountability between the state and its citizens (Ghani and Lockhart, 2008:28).

Another challenge, which has greater implications from a human rights perspective, is that non-state authorities do not necessarily respect and attach importance to the liberal-democratic values, including human rights norms, in their ways of governing. As a result, donors have to regard such actors as “targets of change”, including the group of “spoilers”, if those with power and resources to bring about change are to be included (*ibid*:4).

With regard to internationally funded NGOs working in fragile states, the risks of undermining state-building efforts are also present, especially if they take up some of the “basic functions” of the state, and cannot easily be replaced. The perception of them as foreign interveners has to be carefully considered, which is why those working through local partners is a particular advantage. A forum of Danish NGOs has been active in

formulating the “added value” and comparative advantages of civil society organizations working in such environments, in relation to an update of the Danish Civil Society Strategy.²⁸ One of the particular advantages identified by the NGOs was in relation to human rights, where the ability to work around the state was a crucial aspect in providing help and capacitating those groups that were neglected or marginalized. Compared to aid donor governments, non-state actors are able to work through local partner networks and thereby build on the established structures locally. According to Danish NGOs, this has been a significant feature in for example Zimbabwe, Myanmar and Sudan, and in Afghanistan and Nepal as demonstrated later by the case studies.

4.3.4. “HUMAN RIGHTS” IN POLICY RESPONSES

Most multilateral and bilateral donor agencies have been formulated policies to guide their responses to state fragility. To what extent is the promotion and protection of human rights emphasized in these? This section analyzes the role that human rights protection have been given in policy responses to state fragility, and if the understanding of weak state institutions and the “functions” of the state have contributed to shaping a framework conducive to enhancing human rights protection in such situations.

A comparison of the policies for engagement in fragile states by OECD/DAC, the World Bank (WB), DFID and USAID illustrates that emphasis on human rights protection varies considerably from donor to donor. It also shows that there is still a long way before such policies are operationalized to guide interventions at a more practical level. Annex 1: ‘Emphasis on human rights in donor policies on fragile states’ compares the definitions of fragile states and to what extent the policies contain references to human rights.

OECD/DAC: The OECD/DAC makes the most explicit references to human rights by incorporating such language in principle no. 2, 3, and 6. As a component of the strong focus on state-building in Principle 3, ensuring justice and security are considered one of the state’s priority functions. According to this principle, donors are encouraged to focus on two main areas: supporting the legitimacy and accountability of states by addressing issues of democratic governance, human rights, civil society engagement and

²⁸ The Danish NGO Forum formulated a paper about weak and fragile states and situations as part of an update of the Danish Civil Society Strategy in the spring of 2008. The paper identified a number of comparative advantages of Danish NGOs working in fragile situations and presented some recommendations to the Danish government.

peacebuilding and strengthening the capability of states to fulfill their core functions in order to reduce poverty.

The two other principles, no. 2 and 6, also include human rights concerns. Principle no. 6 reiterates that non-discrimination should be a basis for inclusive and stable societies, otherwise interventions may end up leading to service delivery failures. It was this focus, together with principle no. 3, which has led to the conclusion that the OECD/DAC Principles represents one of the most explicit efforts to link the human rights and fragile states agendas (Menocal, 2008a:1). Principle no. 2 states that donor interventions must “do no harm” as a result from their interventions. Donors’ decisions to withdraw based on a suspicion of corruption cases or human rights violations should therefore be weighed against the impact that it would have on the prospects of development. In this principle, the OECD/DAC calls for a “strong conflict and governance analysis” to ensure that interventions do not lead to societal divisions and increased abuse.

World Bank: Compared to the OECD/DAC, the World Bank (WB) represents almost the opposite in terms of including human rights language in its policies. The WB aligns itself with the OECD/DAC in terms of defining fragile states. However, instead of using the word “human rights”, the WB refers to weak institutional capacity, social exclusion and equity. This is a reflection of the fact that the main objective for the WB’s engagement in fragile states is economic management and state-building, as it was in the indicators for the list of LICUS countries which the WB produces.

While it can be expected from the WB’s mandate that it is not very sensitive to apply a human rights approach to state fragility, the question is whether the OECD/DAC Principles add something new to the policy arena, or whether they are just conventional knowledge. According to Christian Lotz, the OECD/DAC Principles are important because they highlight the role of the state and that the Principles represent a deviation from previous approaches to conflict resolution, which did not focus on the state.²⁹ In contrast, Mie Roesdahl from DIHR argues that there is nothing new in the Principles and that it does

²⁹ Interview with Christian Lotz, Danish MFA: *“The OECD/DAC Principles they introduce the state at the centre of attention and highlight the role of the state. [...] There is a clear tendency internationally to focus on the state, which didn’t exist before. This is the deviation from previous approaches to conflict resolution, which didn’t focus on the state and state power itself but on social group, social/economic explanations for conflict, etc. This is the new aspect, which is clearly reflected in the Principles, in particular principle 3 and 6.”*

not give practitioners anything concrete to work from.³⁰ In fact, she argues that the Principles may set the agenda back by not promoting concrete practical coordination and actual complementarity between different types of efforts.

When comparing policy responses to state fragility, one should bear in mind that the policy documents serve different purposes. The WB has developed tools about how to engage in fragile states, i.e. fiscal management tools, etc. As a policy statement, the OECD/DAC Principles provide a common framework to guide development interventions and point to specific directions and objective. According to the Danish MFA, the Danish guiding principles will not be more than a 5-6 page statement of intent either. This will be disappointing to those in the Danish community development, who during the meetings with the Danish MFA raised the need for more comprehensive tools to address state fragility.

The question is to what extent member governments will implement the principles and follow these guidelines. With the formulation of the Danish guiding principles, Denmark has the opportunity to fill out a space by making even clearer links to human rights as a basis for engagement in fragile states. Yet, when looking at the two bilateral donors, DFID and USAID, which published comprehensive policies to address state fragility already in 2005, there is little inspiration to be found in this regard.

DFID: DFID has been the leading development agency in the fragile states debate, and early studies were commissioned in 2004-2005 to develop a better understanding of what constitutes fragility. Many findings from these studies, including the definition of incapability and unwillingness, have been incorporated by other agencies, and they are now reflected in the OECD/DAC Principles. The policy document “Why we need to work more effectively in fragile states” (DFID, 2005) has a strong focus on aid effectiveness and poverty reduction. DFID emphasizes in the definition of fragile states that the government should deliver core functions to the majority of its people, including the poor, based on a “driver of change approach”. However, DFID has not adopted a rights-based approach to their work in relation to fragile states. But they do not include human rights specifically in

³⁰ Interview with Mie Roesdahl, DIHR: *“What I have seen so far doesn’t take us further because it is not concrete. It doesn’t give people on the ground anything to work from. The OECD/DAC Principles is a good illustration of this. It is the same things that have been said for the last 10 years – it may even be less ambitious in terms of e.g. promoting concrete practical coordination and not actual complementarity between different types of efforts.”*

their fragile state policy as such. Instead, they focus on poverty and social exclusion as the main elements to be addressed in fragile states.

USAID: USAID’s “Fragile States Policy” (2005) is perhaps the most politically biased policy of them all. USAID’s definition includes both failing, failed and recovering states and distinguishes between states that are *vulnerable* and already *in crisis*. The rationale for engaging in fragile states is to prevent them from being a threat to US national security. This policy is a typical illustration of the criticism that donors’ response to state fragility serves the main purpose of promoting and protecting national interests. Compared to DFID’s policy, which has poverty reduction as a main objective, the purpose of US engagement in fragile states becomes self-serving and dangerously politicized. When development aid to fragile states becomes an active instrument in the “war on terror”, the risk is that the interventions do not benefit the interests of the people living in fragile states, but those living at home.

While preparing for the formulation of the Danish guiding principles, Christian Lotz was also surprised to learn that other bilateral agencies had neglected the link between human rights and fragile states.³¹ So does this mean that major international donors do not think that human rights protection matter in fragile states? My answer would be yes and no. No, because there are other ways of attaching importance to human rights than making explicit references to them in the policies; hence, some agencies demonstrate the need for preventing conflict, increasing human security and stabilizing the economy, which in the end all contribute to a more improved situation for those living in fragile states. But I would also say that the negligence of the articulation of human rights language can be interpreted as a way of de-politicizing the objectives of engagement in fragile states. The following are suggestions for why agencies have chosen not to emphasize human rights protection in relation to state fragility:

First, some agencies have a tendency to exclude human rights language in their policies and programs due to lack of support for such an approach and/or because it is outside their mandate.

³¹ Interview with CL: *“I have been surprised by the fact that this link has been forgotten by other donors. Other like-minded donors, including the UK, Sweden, Germany, agree with us and are on our line. If you look at the DAC principles, you will see references to human rights and that is an expression of the fact that it is not just Denmark, which believes in it. DFID has been the most advanced in relation to donor responses to state fragility, and since DFID does like to talk about human rights it is not reflected in its policies.”*

Second, it can be seen as a reflection of the fact that the policy debate about fragile states grew out of the development discourse, where poverty reduction and aid effectiveness are dominating the agenda.

Third, there may not be sufficient international agreement about how a human rights framework can contribute to overcoming the challenges of state fragility, especially in relation to state-building.

And fourth, the debate about fragile states is still a sensitive issue to many actors, in particular the affected governments themselves, and development agencies and donor governments may not be interested in pursuing such a normative approach to state-building.

The inconsistency in the policies can be seen as “the fragmented nature of the so-called international community” as a reflection of the conflicting views at policy level among key actors on in the debate, as argued in a synthesis report on fragile states prepared by the Danish Institute for International Studies (DIIS, 2008). This is not without reason, especially in relation to human rights, because bringing this issue into the discussion about fragility is a highly sensitive matter. In the DIIS synthesis report, it is argued that the fragile states definition suffers from the weakness that the definition may be harmful to diplomatic relations and cooperation (DIIS synthesis report, 2008:3).

While the international debate about fragile states has been ongoing for some years, the term “fragile states” is still not recognized by some of the affected governments. Nor does the UN recognize the term, due to opposition from the G77 group, although in practice the UN works with many of the problems through its mechanisms to promote peace-building and prevent international terrorism, among other things.³² The critique from the South has been term “state fragility” has been seen as undermining the sovereignty and territorial independence of states, which is one of the fundamental principles in public international law. Hence, arguing in favor of a human rights approach

³² In a presentation at a public meeting about fragile states organized by the Danish MFA on 22 February 2008, Lars Fåborg Andersen, a Danish representative working in the UN, said that the term “fragile states” is not recognized by the UN. The UN talks about sovereign states as opposed to other classifications such as “weak, failing, and collapsed states”. This comes from the opposition by the G77. It also means that there is no UN policy on the area. As an alternative, the UN has established the Peace Building Commission. But in practice, he said, the UN is heavily involved in terms of its mechanisms such as the responsibility to protect doctrine, and counter-terrorism instruments.

has to be done carefully and with respect for the local and national context. Nevertheless, the international human rights system offers a common ground on which normative claims can be made by donors, based on fundamental and universal values that all states adhere to as explored in the next chapter.

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Summing up, the fragile states agenda is driven by attempts to increase aid effectiveness and policy coherence, and on the assumption that the state should be the main driver of change. Attempts to measure state fragility are maybe used as conceptual frameworks, but not as guidelines for how and where to intervene. With a focus on the formal state institutions, there is, however, little recognition of the role of non-state actors in the development process in the policies. This speaks against the fact that informal structures are often the service providers in fragile states. The reason why there is resistance to adopt a more inclusive approach may be that it would risk undermining the donor-driven interventions to achieve turn-around *through* the state. Nevertheless, the focus on the state has emphasized the need to promote and protect human rights as a primary function of the state. The challenge is now to what extent donors will implement these principles. As this chapter has highlighted, there are many considerations for donors to make, and the lack of practical guidelines does not make this task any easier. Mechanisms and instruments through which this can be done are explored in the following chapter.

5. A HUMAN RIGHTS FRAMEWORK FOR INTERNATIONAL ENGAGEMENT IN FRAGILE STATES

Putting the state at the centre of promoting change presents a number of challenges and opportunities for international engagement in fragile states and situations from a human rights perspective. The question is if states can live up to the high normative standards about what the state ought to be, and most importantly, what the conditions are for moving from an international framework to domestic implementation. This chapter analyzes how existing mechanisms under the international human rights machinery can respond to situations of fragility, and how the international human rights framework can act as a catalyst for change in the domestic sphere.

5.1. NATIONAL PROTECTION OF HUMAN RIGHTS

The basic condition in international human rights law (IHRL) is based on a mutual relation between the state and its citizens: the state has the obligation to implement human rights as the primary duty-bearer, and citizens have the obligation to respect human rights and the rule of law as rights-holders. This condition is challenged in a fragile state environment, where the state is characterized by its incapability or unwillingness to undertake such duties and the citizens can be disempowered or corrupted to be effective drivers of change themselves.

5.1.1. THE STATE AS THE PRIMARY DUTY-BEARER

In article 55 of the UN Charter it is established that member states shall promote universal respect for, and observance of, human rights and fundamental freedoms of all without distinction as to race, sex, language, or religion. The principle that the promotion and protection of human rights “is the first responsibility of governments” was reaffirmed in the Vienna Declaration and Programme of Action of 1993.³³ National legislation and policies must contain provisions of how human rights obligations will be discharged at national, provincial and local levels (OHCHR, 2006:4). It is on this basis that human rights

³³ The reaffirmation of the obligations under article 55 and 56 of the UN Charter is found in the Preamble of the Vienna Declaration and Programme of Action, and article 1(3) reads: *Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.*

can be seen as the foundation of a state in the political framework and legal instruments nationally.

As signatories to international treaties, states have to live up to three kinds of obligations: the duty to respect, protect, and fulfill human rights. The obligation to *respect* means to refrain from the interference with rights; to *protect* means to take steps to ensure that others do not interfere with these rights; and to *fulfill* means to take steps to progressively realize the rights (OHCHR, 2006:2). Some states argue that the implementation of human rights depends on additional resources and funds, in which case the human rights dialogue may translate into a claim for increased external funding from the South. It is recognized in IHRL that the lack of resources can impede the implementation of human rights; therefore some rights are considered progressive while others are immediate (*ibid*:2). With regard to economic, social and cultural rights, states are obliged to fulfill a minimum essential level of rights.

Nonetheless, the obligation to *respect* and *protect* human rights, i.e. to refrain from interfering with rights and preventing others from interfering citizens' rights, prevails regardless of the country's economic and political situation. The fact that civil and political rights are considered as "negative" refers to the notion that it should not cost anything extra for the Government to live up to them. Maybe this explains why donors mainly focus on the implementation of civil and political rights when they talk about the promotion of human rights, because meeting economic, social and cultural rights often demand more resources.

5.1.2. NATIONAL IMPLEMENTATION SYSTEMS

Human rights principles must be reflected in the legal foundation of the state, i.e. the constitution, as underpinning values of the state. As an enforcement of this principle, it is the institutions established by the state under the legislature, judiciary and executive branches, which are responsible for ensuring that such rights are implemented. In some states, however, the rule of law is purely formal and has no operational effect on the ground. Fragile states are often faced with an implementation gap between the constitutional safeguards and the effective enforcement of such provisions. Additional efforts are therefore needed to bridge this gap, and one way to do this is by supporting the establishment of special institutions with a specific mandate to protect human rights.

Where state capacity is weak, special national institutions may provide new approaches and methods to enhance human rights protection as a supplement to the traditional state institutions. Today, national human rights commissions (NHRC) exist in most states, although the status, independence, functions and legitimacy vary greatly. In some cases, the NHRCs have been a primary catalyst for change as they have enabled the state to undertake such duties and created a much stronger link between the international and the domestic human rights framework. In other cases, the establishment of special human rights institutions as subsidiary organs of the state has led to a situation, where the responsibility is channeled outside the main branches of the state.

5.2. THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK

The international legal framework provides a set of rules and principles that all states are obliged to respect, protect, and fulfill as members of the UN and as signatories to international human rights conventions. Held together, articles 55 and 56 of the UN Charter establish that UN member states shall promote universal respect for, and observance of, human rights and should take joint action for the achievement of this purpose. These articles have been interpreted as creating legal obligations requiring states to cooperate constructively with the UN to obtain such purposes (Salomon, 2007:68).

5.2.1. UN HUMAN RIGHTS BODIES

Addressing state fragility and instability is not a new phenomenon in the context of the United Nations. Since the adoption of the UN Charter and the Universal Declaration of Human Rights (UDHR), the UN has sought to create mechanisms to enhance the objectives of promoting and protecting human rights under the UN structure – some of which provide useful openings for addressing state fragility by the international community and others, which are less effective. The international human rights bodies monitor states' human rights compliance with the objective of promoting and protecting all human rights. Such mechanisms include the UN treaty bodies, the newly established Human Rights Council (HRC) including the monitoring mechanisms established under this body, and the Office of the High Commissioner for Human Rights (OHCHR).

After the release of the report “In Larger Freedom: towards development, security and human rights for all” by the former UN Secretary-General, the UN human rights architecture has undergone a lengthy reform process. As a result of the reform

process, the Human Rights Council (HRC) has replaced the former Commission on Human Rights. The proposed reform of the UN treaty bodies into a unified system has, however, not been implemented, mainly due to the opposition that the specificities of each treaty body would be lost. Instead, the HRC has led to some changes, which may offer new openings as discussed below.

UN treaty bodies: The UN treaty body system monitors the implementation of the seven core international human rights treaties, and states are only reviewed based on the conventions they have ratified.³⁴ When a state is up for review, the Committees invite the state to engage in an interactive dialogue about the successes and challenges of implementing the convention since last review. Unfortunately, there is considerable delay in the consideration of the periodic reports and a heavy work backlog of pending reports. Above all, the non-compliance with reporting obligations applies to many fragile states, which do not have the will or capacity to engage constructively with the Committees. This is one of the greatest weaknesses of the treaty body system, in addition to the lack of public awareness about the process and the content of the recommendations. Yet, states they decide to engage despite the lack of resources and expertise, the system can be a very constructive way of assisting states in developing advanced capacity and thinking about human rights. Civil society organizations can also take advantage of the possibility of submitting alternative reports before a state review takes place. This can be an effective advocacy tool and a way for affected groups to raise concerns at an international venue to bring more visibility and legitimacy to their claims.

Human Rights Council: The motive behind the reform process was first and foremost to alter the image of the former Commission on Human Rights as a highly politicized and ineffective body.³⁵ The result of the reform has been disappointing to many in the human rights community: despite the enormous resources spent, the HRC is not remarkably different from the Commission. The result of the geographical distribution of members is that the Asian and the African groups have the majority of the votes, which means that the HRC is in a deadlock if these two groups decide to oppose certain initiatives. The political reality is that human rights dialogues can be hijacked by opposing

³⁴ The seven core treaties monitored by Expert Committees are the ICCPR, ICESCR, CERD, CEDAW, CRC, CAT and CMV: <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

³⁵ In larger freedom: towards development, security and human rights for all, Report of the Secretary-General (A/59/2005).

TABLE 3: HUMAN RIGHTS MECHANISMS UNDER THE HUMAN RIGHTS COUNCIL

Special Sessions of the HRC:

The Human Rights Council (HRC) was created as a standing body meeting six times a year, instead of once a year as the former Commission did. One of the ideas behind this was to allow the HRC to respond more adequately to deteriorating human rights situations. In addition to the regular sessions of the HRC, the HRC can decide to convene Special Sessions to address urgent matters, which are not on the agenda of the regular sessions. Such sessions may prove to be effective in raising issues of particular importance in relation to state fragility. For example, at the 7th Special Session in May 2008, the HRC convened to talk about “the negative impact on the realization of the right to food of the worsening food crisis, caused inter alia by the soaring food prices”. It is, however, not likely that all urgent fragile situations will be addressed at such sessions, because it demands the consensus of the HRC; politically difficult situations such as the situation in Tibet and Zimbabwe, for example, may therefore not be eligible for scrutiny under this mechanism.

Universal Periodic Review (UPR) under the HRC:

The most noticeable innovation of the HRC suggests the kind of progress and dynamics that was intended with the UN reform process. The Universal Periodic Review (UPR) is a new mechanism which reviews all UN member states in a four year cycle. What makes this mechanism more effective than the treaty body system is that all states are examined on the overall human rights performance of the state, regardless of the number of treaties they are signatories to. During the review, states are asked to make an account of the challenges they face in implementing human rights in front of all other member states, the world press, and NGOs involved in the process. The three-hour reviews are also broadcasted on the web, so that in principle everyone can follow them live. The review is based on a report produced by the state itself; the main recommendations produced by treaty bodies (which gives the recommendations the visibility they lack); and a compilation of alternative information submitted by civil society organizations. The downside of this mechanism is that although the modalities of the review invite to an honest and open debate about human rights issues in countries under review, other states are reluctant to raise too critical questions because they are going to be under review at a later stage themselves. In addition, whereas the review provides an opportunity for civil society to engage, the impact of their work first of all depend on the willingness of the state to engage with them at national level, and on their own capacity and knowledge about how to engage with the UN system.

Special Procedures:

Thirdly, the system of Special Procedures is a mechanism whereby independent mandate holders monitor the implementation of certain norms and standards, either at a country specific or thematic level. The UN Special Rapporteurs conduct country missions to investigate the overall situation in the country, and to engage in dialogue with state officials and civil society. Some mandate holders are more respected and effective than others, and the scope of their activities are regulated by their specific mandate and a newly adopted Code of Conduct. Although this system has been criticized for being inefficient, it has survived the reform process and new mandates have been established. There are many examples of mandate holders, who have contributed to the development of new norms and human rights standards. For example, an updated study (A/HRC/7/15) was recently presented at the 9th session of the HRC by the independent expert on the question of human rights and extreme poverty, a study which could be relevant in establishing the links between human rights and state fragility.

regional groups, which may limit the responsiveness of the HRC to some fragile situations. Even so, three mechanisms established under the HRC – the Special Sessions, the UPR and the Special Procedures - provide opportunities for raising matters that need the international community’s attention (see text box “Human rights mechanisms under the Human Rights Council” p. 46).

Office of the High Commissioner for Human Rights: The OHCHR provides support to the High Commissioner for Human Rights and the UN human rights programme, including the administration of the field offices. The role of the OHCHR in the field cover four priorities: ensuring justice and accountability in peace processes; preventing and redressing human rights violations; building capacities and strengthening national institutions; and mainstreaming human rights in all UN programmes.³⁶ The OHCHR has contributed to promoting an agenda going from standard-setting to standard-implementation, and from a reactive approach to prevention of human rights violations (Kedzia, 2003:27). Within recent years, OHCHR field programmes have become an integral part in the operations of UN peace operations established by the UN Security Council. The integration of human rights protection in all components of UN Peace Missions is an illustration of the merging of the peace-building and human rights agendas.

5.3.HUMAN RIGHTS PROTECTION IN FRAGILE STATES - A PRAGMATIC APPROACH

Based on an overview of the state’s responsibility to respect, protect and fulfill human rights and on the international monitoring mechanisms, this part adopts a pragmatic approach to explain how a human rights framework can guide international interventions in fragile states. Similar to the structure in the final section of chapter four, the following questions are discussed:

- In what ways can the international human rights framework be a driver for change in the domestic sphere?
- How can a human rights framework guide state-building initiatives in fragile states?

³⁶ OHCHR’s website, “*Work in the Field*”: www.ohchr.org

- What are the conditions for enhancing human rights protection in fragile states, and which mechanisms are available to international development agencies to achieve this objective?

5.3.1. FROM INTERNATIONAL FRAMEWORK TO DOMESTIC IMPLEMENTATION

It has been argued that the field of human rights, which relies on extralegal mechanisms and on the promotion of human rights norms through diplomacy, the building of human rights institutions, education, and post-conflict reconstruction and reconciliation, does not converge with the conditions in such states (Mertus and Helsing, 2006:9). Moreover, the international community is faced with the challenge that most of the instruments available, in particular human rights instruments, depend on the existence of an effective state (Andersen, 2007:21). This, however, should not rule out a human rights framework for international engagement in fragile states as a way to bring about change at domestic level. Otherwise, what is the point about an international human rights framework, if it cannot be used as a way to promote better and more secure lives? This part argues that the internalization of the international human rights framework can serve as a powerful instrument and a driver of change at domestic level, even though it may be a long, gradual and non-evolutionary process.

Based on empirical studies of states in transition, Risse and Sikink (1999) have construed a theoretical framework to explain how international human rights norms can be internalized and implemented domestically and affect political transformation processes. Risse and Sikink propose a “spiral model” of human rights change to explain the different steps from state repression to internalization of human rights and the causal mechanisms by which international norms affect domestic change. This process of norms socialization is divided into three ideal types of social action: processes of adaption and strategic bargaining; processes of moral consciousness-raising, “shaming”, argumentation, dialogue, and persuasion; and processes of institutionalization and habitualization (Risse and Sikink, 1999:11).

The process of change happens when national actors such as opposition groups, NGOs, and social movements link up with transnational actors to bring pressure on a norm-violating state, thereby creating pressure “from above” and “from below” (*ibid*:18). This creates a “boomerang effect” between the state and the international human rights community,

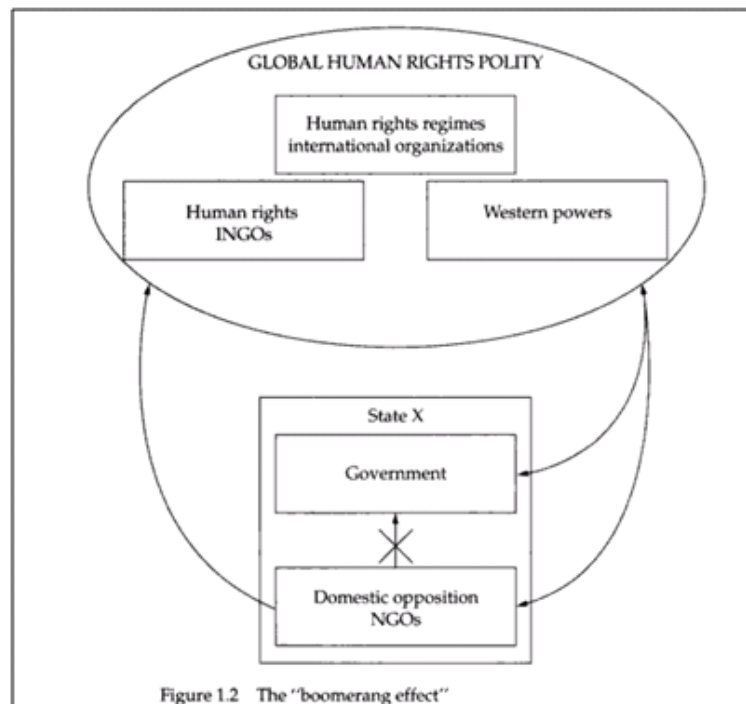


Figure 1.2 The “boomerang effect”

Source: Risse and Sikkink (1999) p. 19. “The Power of Human Rights”

which results in political transition at national level through the appropriation of international human rights norms, as demonstrated in the figure. The role of international actors and bodies working to promote this kind of change is therefore a crucial aspect of the internal process to undergo political changes. The influences of such networks, which share a collective understanding and a collective identity with regard to human rights norms, have increased over time as reflected in the universal acceptance of human rights (*ibid*:21). The “common-sense approach” expressed by the Danish MFA can be seen as a reflection of the generally accepted nature of the international human rights regime.

In relation to this thesis, the lesson learnt from this model is that a precondition for creating political change in fragile states comes when sufficient pressure is exercised by domestic and transnational actors on norm-violating states based on the common understanding of an international human rights regime. This will eventually lead to change in the behavior of states going from phases of repression, to denial, to accept and finally to an institutionalization of human rights norms in a spiral towards the acceptance of human rights standards as a politically accepted basis for the state.

This argues in favor of how an international human rights framework can act as a catalyst for change, with the existing instruments available, if the right conditions are in place and pressure is exercised from “above” and “below”. It also explains why it is

important for donors to make explicit references to human rights as a basis for intervention in fragile states and not just “assume” that there are universally accepted standards on which all actors rely.

The existing international human rights instruments, such as the treaty bodies and the HRC, can function in support of national processes for change. To promote the preconditions for change, donor governments can actively support the work of the human rights bodies to give them more visibility and political backing. As an example, the fact that the United States of America has publicly announced that it does not want to participate actively in the work of the Human Rights Council, works in contradiction of the purpose of the system. Innovations, such as the Universal Periodic Review mechanism under the Human Rights Council, however, offer new opportunities for donor governments to engage constructively in dialogues with affected states to hold them accountable for their obligations. But international actors cannot act as drivers of change alone. National actors are needed to kick-start the political opposition against the regime in the specific state.

The theoretical framework proposed by Risse and Sikking suggests that enhancing human rights protection in fragile states is a gradual process between various actors and with different levels of impact depending on the specific circumstances. They do not argue that the international call for human rights is the *only* factor in turning states around: their point is that such claims can support and legitimize domestic efforts.

5.3.2. HUMAN RIGHTS AND STATE-BUILDING

As a first step to recognize the links between human rights and the fragile states agenda, international development agencies may adopt a functional approach to state-building which takes a point of departure in human rights standards as the normative basis for the state. Human rights can provide a normative base – both conceptual and practical – for the state-building agenda because a human rights framework “*puts issues such as politics and power relations, state accountability, state-society relations, and genuine participation at the centre of state-building efforts*” (Menocal, 2008a:5). According to Evans (2008:9-10) this is possible because human rights help define the role and purpose of the state; establish the core principles of the state; prescribe a framework of obligations or duties; and provide a set of key analytical criteria to assist in identifying contextual priorities for implementation or fulfillment of obligations.

This means that in practice the criteria guiding the institution building processes in fragile states should be informed by human rights principles such as the respect for dignity, political participation, inclusion, gender equality, and non-discrimination. Evans proposes three key elements that state-building should focus on and derive from in accordance with a human rights framework: a) ensuring protection and security to individuals and communities; b) supporting the development of a culture of democratic governance; and c) strengthening the capacity for equitable access to essential public services (Evans, 2008:19). At the International Workshop on Human Rights and State-Building in April 2008, there was a constructive debate about how human rights can contribute to a state-building agenda. Many of the critical points raised by workshop participants highlight important elements in this debate:

a) Ensuring protection and security: The first element proposed by Evans emphasizes the need for making policies alert to the protection of vulnerable and marginalized groups, especially in situations affected by conflict. It also includes the need for creating accountability mechanisms, for example by bringing perpetrators to justice or supporting the process to conclude a peace agreement. Evans argues that ensuring the inclusion and participation of vulnerable groups and key constituencies in this process is detrimental for the outcome of such efforts (*ibid*:21). During the workshop, a point was raised about the challenges of meeting the socio-economic needs and rights of vulnerable groups without harming the interests of the national elites. This may work against the objectives of building peace and stability in the country and the principle of “doing no harm” as prescribed by OECD/DAC Principle no. 2 (Menocal, 2008b:10-12).

b) Enhancing state legitimacy: The second element proposed by Evans refers to the support for democratic governance, for example through free and fair elections and electoral process, with a view to enhance the legitimacy of the state. According to Evans, such processes should be organized in an inclusive manner so that groups can exercise their right to freedom of association, assembly and expression (*ibid*:22). In the workshop, the understanding of legitimacy was debated extensively. Some argued that legitimacy should be seen as domestically driven process and that focus should be on the dynamic interaction between state and society, and on the complex interaction between formal and informal institutions. From this point of view, the external demand for human rights would therefore not have a considerable effect on the state-society relation, as it is mainly a domestic negotiation process (*ibid*:8).

c) Strengthening state capacity: The third element proposed by Evans concerns the strengthening of state capacity to deliver essential services, in accordance with the OECD/DAC definition of fragile states in Principle no. 3. Evans notes that such interventions must be based on an adequate analysis of exclusion and disaggregated data, otherwise the core sources of fragility may not be addressed (Evans, 2008:22). The participants at the workshop seemed to agree about this point, although it was noted several times that state-building should not only focus on the formal institutions of the state but also the informal institutions.

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The lack of clarity on how a human rights framework can be applied in fragile states may not only be a reflection of the lack of consensus on the normative and legal standard setting among donors working in conflict-affected states, but also on the role of the international community in promoting and protecting human rights standards in fragile states. The OECD/DAC Principles represent a benchmark in the debate about state fragility, as they provide a common framework for how OECD members should act as donors in such situations. Due to the high-level political attention on this issue, they may provide basis for a broader acceptance of the incorporation of human rights concerns on the fragile states agenda.

On the other hand, there is still some resistance among donors and disagreements between researchers about human rights should guide development interventions in fragile states. The assessment of donor policies in chapter four demonstrated that making explicit references to human rights in policies about fragile states and situations is a political and a sensitive matter, which does not enjoy the support of all development actors. One may also question the applicability of a human rights framework, which to a large degree relies on international cooperation and voluntary participation of the state, if the state is either incapable or unwilling to engage in human rights dialogues with donor governments. If there is no willingness, there is little basis for dialogue and cooperation, and little scope for referring to human rights as a common basis for partnership. To what extent Denmark has succeeded in supporting the promotion and protection of human rights through its interventions in Afghanistan and Nepal is to be examined in Part Two.

PART TWO: LINKING POLICY AND PRACTICE

The analytical frameworks in Part One provide a conceptual basis for analyzing the problem statement from a more practical and case-based perspective. As a follow-up to some of the key questions and dilemmas in previous chapters, it is now to be explored how and to what extent human rights have been incorporated in Danish strategies for intervention in Afghanistan and Nepal. These countries provide interesting examples of the opportunities and challenges of pursuing a rights-based approach in conflict-affected states with weak capacity. The lessons learnt and a comparative analysis of these cases will lead to a discussion about the overall policy implications of protecting human rights in fragile states, in a debate that revisits the four research dilemmas raised in the field of concern.

6. CASE STUDIES

The previous chapters outline a number of observations and questions to be examined in the two case studies. The disposition of the case studies is structured according to the following elements:

1. Background analysis (issues of state fragility, main human rights concerns, national and international monitoring mechanisms)
2. Denmark's interventions to enhance human rights protection (strategic objectives, implementation channels, donor alignment and harmonization)
3. Effects of Danish interventions on the overall human rights situation (results, good practices and challenges)

These three headings are the starting points for analyzing the case studies. The first section is a background analysis of the countries' issues of state fragility and main human rights concerns, as a follow-up to the questions about the defining features of fragile states. What are the issues of state fragility compared to the OECD/DAC definition? What are the main human rights problems in the two countries? How weak are the formal institutions compared to the informal ones? To what extent can the formal state institutions live up to its role as a duty-bearer of human rights obligations?

The second section examines Denmark's interventions in the two countries. What strategic objectives does Denmark pursue when engaging in fragile states? How has Denmark sought to promote and protect human rights? How is the role of non-state actors

perceived in fragile states? How has Denmark aligned its activities with other donors in accordance with the principles in the Paris Declaration?

Thirdly, the effects of Denmark's interventions are weighed against the main human rights concerns to see if they have contributed to an overall improved human rights situation. To what extent have the interventions overcome the challenges of major human rights concerns, when the Government was either incapable or unwilling to provide basic services to its population? Has there been complementarity between state-building efforts and human rights protection? Have the expectations for what can be achieved been too high?

6.1. AFGHANISTAN

The events of 9/11 have had wide-reaching consequences for how Afghanistan has developed over the last year: both as a military target in the “war on terror”, but also as a recipient of donor funding for reconstruction and humanitarian assistance purposes. In state-building literature, Afghanistan is often depicted as one of the worst hit countries after more than 20 years of state repression and protracted civil war have had on the country's economic, political, and social situation.³⁷ Scholars use this case to illustrate how international state-building efforts can contribute to – or risk undermining – progress and development under such difficult conditions, where conflict and the lack of efficient political leadership, legitimate state institutions, and civil society engagement has prevented an effective turn-around.

6.1.1. BACKGROUND ANALYSIS

Issues of state fragility in Afghanistan: Afghanistan's repeated failure of politics is a product of the its conflict-ridden history, which has taken it from the first coup in 1973, to the Communist invasion in 1979 followed by Taliban rule after the Soviets withdrew in 1989, and the US-led military intervention supported by the “coalition of the willing” in 2001. The results of the history are reflected in Afghanistan's top ranking on the fragile states indexes: in addition to being on the CPIA list produced by the World Bank in 2007, Afghanistan ranks as no. 3 on the Country Ranking Table by the Country Indicators

³⁷ See for example Chesterman, Ignatieff, and Thakur (2005); Ghani & Lockhart (2008); and Rotberg (2007)

for Foreign Policy (CIFP), and as no. 8 on the Failed States Index produced by the Fund for Peace in 2007.

Despite the international efforts to improve the situation in Afghanistan, the country is still described as facing “serious challenges” in a recent report about the situation in Afghanistan and its implications for international peace and security released by the UN Secretary-General in March 2008.³⁸ The report concludes that the Taliban, related armed groups, and the drug economy represent “fundamental threats to still-fragile political, economic and social institutions” and that many districts remain largely inaccessible to Afghan officials and aid workers.³⁹ Today, the security level is still low due to frequent insurgent and terrorist activities, which makes every-day living and working conditions for development workers extremely difficult and risky. A series of kidnappings of aid workers in the spring of 2008 has demonstrated the danger of working in Afghanistan, which may eventually lead to the withdrawal of some NGOs as it did in Iraq after the bombing of the UN headquarters in 2003. Unless the security situation is seriously improved, it may have a detrimental effect on the country’s prospects for development.

Compared to the OECD/DAC definition of fragile states, the issues of state fragility in Afghanistan are mostly characterized by incapacity rather than unwillingness to provide basic services to its citizens. According to Ghani and Lockhart (2008), the form of state dysfunctionality found in Afghanistan, which is reflected in a disconnection between the government and their people, can be termed the “sovereignty gap” (Ghani and Lockhart, 2008:83). This gap is characterized by a disjunction between *de jure* and *de facto* sovereignty and between the rulers and the ruled. It has been sought closed by the international donor community since 2001, when donor governments including Denmark, intergovernmental organizations, and transnational co-operations started injecting large funds into re-building the Afghan state.

In 2001, the Bonn Agreement provided a framework to guide the official transfer of power by setting up an Interim Authority and by establishing some principles on which

³⁸ The report (A/62/722) was submitted pursuant to General Assembly resolution 62/6 and Security Council resolution 1746 (2007), in which the Council decided to extend the mandate of the United Nations Assistance Mission in Afghanistan (UNAMA) until 23 March 2008.

³⁹ Report (A/62/722), §2

the Afghan state should build.⁴⁰ The agreement attached high importance to rebuilding a legal framework and a judicial system in accordance with Islamic principles, international standards, the rule of law, and Afghan traditions. It was followed by the formulation and adoption of national development strategies after the Presidential Election in 2004. The Afghanistan Compact from 2006 and the Afghanistan National Development Strategy (ANDS) 2008-2013 are comprehensive frameworks, which reflect that the visions of the Afghan state is very much a reflection of the ideal type in state-building literature. The five-year ANDS takes a starting point in the main objectives identified as the “three pillars” in the Afghan Compact: security; governance, rule of law and human rights; and economic and social development. Under pillar 2 in the Afghan Compact, the Government commits itself to build the capacity in the administration to uphold the rule of law and to promote respect for human rights. In the ANDS, which implements the principles in the Afghan Compact, the Government undertakes the responsibility of adopting measures to empower national institutions to protect human rights, take effective steps against corruption, and enhance political participation of vulnerable groups in society.

In addition to providing a common framework for the priorities of the Government and donor governments, the international agreements signed by the Government of Afghanistan reflect a certain type of the state resembling the elements of a Western liberal model of the state. In addition to Islamic principles, the agreements incorporate international human rights standards as a foundation for the state. For example, the Government’s obligations to comply with the six international human rights treaties to which Afghanistan is a party⁴¹ are incorporated in the national development strategies, such as the Afghan Compact and the ANDS, together with the shared responsibility for the international community to respect such principles. The Afghan Compact states that *“the Government and the international community affirm their commitment to the protection and promotion of rights provided for in the Afghan constitution and under applicable international law, including the international human rights covenants and other instruments to which Afghanistan is a party”*.⁴²

⁴⁰ The Bonn Agreement on Provisional Arrangements in Afghanistan pending the Re-Establishment of Permanent Government Institutions. II. Legal framework and judicial system.

⁴¹ Afghanistan is a signatory party to the six international human rights treaties: ICCPR, ICESCR, CAT, CEDAW, CERD, CRC and its three Optional Protocols.

⁴² Afghan Compact, pp. 3-4

However, the incorporation of the international human rights framework in the agreements has been difficult to align with local customs and practice. The development in Afghanistan has also shown that expectations may have been too high due to the substantial gap between the vision in the agreements and the realities on the ground. The lack of an effective reform of the justice sector is an example of this. In 2001-2005, the open conflict with the “Neo-Taliban” and the continuing appointment of former warlords and commanders in political positions were destabilizing and undermining factors in donor attempts to rebuild state capacity (Joint Evaluation, 2005:18). This affected the effectiveness of interventions related to the improvement of the rule of law and to undertaking a justice sector reform.

Main human rights concerns: The human rights situation in Afghanistan remains a constant destabilizing factor for the country’s progress and successful implementation of development programmes. During a country visit in late 2007, the former UN High Commissioner for Human Rights, Ms. Louise Arbour, highlighted a number of serious concerns, in particular the protection of civilians and transitional justice.⁴³ She condemned the deliberate attacks on civilians by “anti-government elements” and recommended the creation of a trust fund as compensation to civilian casualties resulting from insurgent activities and international military operations. Under the transitional justice agenda, she criticized the Government for not enforcing the rule of law effectively, reforming the justice sector, and putting perpetrators to trial, including those holding high positions internally, as otherwise agreed in the Afghan Compact and ANDS. Women’s rights and the resumption of the death penalty were two other issues raised by the High Commissioner.

This statement provides a critical insight into the challenges that the Government and donors still face in Afghanistan. Other human rights observant are equally concerned with the present situation. According to the Danish Institute for Human Rights (DIHR), the repression of women and children is detrimental for the country’s rehabilitation and development. Such practices often originate from radical interpretations of the status of women from Islamists movements, political parties, and ancient traditions and customs.⁴⁴

⁴³ OHCHR Press Release: “High Commissioner for Human Rights Concludes Visit to Afghanistan”. 20 November 2007.

⁴⁴ DIHR’s country profile: “*Afghanistan and Human Rights*”: www.humanrights.dk

After years of repression by the Taliban regime, there is particular attention on the empowerment of women in the donor community – maybe sometimes so much that it defers the attention from other vulnerable and marginalized sections of the Afghan population. In its country profile, the OHCHR highlights the pervasive culture of impunity, illegal and arbitrary detention and the worsening security situation as some of the worst impediments to the enjoyment of human rights in Afghanistan.⁴⁵ The lack of freedom of expression and threats against people, in particular journalists, coming from anti-government elements and the Government itself has also been brought up as an impediment of the enjoyment of fundamental freedoms in Afghanistan by various sources, including OHCHR, DIHR and the UN Secretary-General.⁴⁶

The armed conflict in Afghanistan has led to numerous reports about assaults against civilians and ill-treatment of captives in detention facilities. Complicity in such allegations involves all parts of the table, including rebel groups, the Government and the International Security Assistance Force (ISAF). Allegations about poor detention facilities and inhumane treatment of captives have questioned the Afghan Government's commitment to the principles in the Afghan Compact, and the complicity of the ISAF in such undertakings. In a comprehensive report from November 2007, Amnesty International argues that detainees risk facing torture or inhumane treatment when they are transferred to Afghan authorities by the ISAF, and the report criticizes the Government and the ISAF for not living up to their obligations in international agreements and international law.⁴⁷ In a Danish documentary "The Secret War" in 2007, the Danish Government was similarly criticized for transferring prisoners to US forces despite reports about inhumane treatment of prisoners in their custody. Although it stirred a heated public debate about the Danish Government's complicity in this, it did not lead to any major changes in Denmark's military operations in Afghanistan.⁴⁸ It did, however, attract negative attention to Denmark's engagement in Afghanistan at the time.

⁴⁵ OHCHR's website: *OHCHR in Afghanistan (2008-2009)*: www.ohchr.org

⁴⁶ The UN-SC's report (A/62/722) §38, OHCHR in Afghanistan (2008-2009), and DIHR's country profile of Afghanistan

⁴⁷ Amnesty International: Afghanistan. Detainees transferred to torture: ISAF complicity? 13 November 2007.

⁴⁸ Information. *Fakta eller forvirring*. 16 August 2007.

National and international monitoring mechanisms: The Afghan Independent Human Rights Commission (AIHRC) was established as part of the Bonn Agreement, and has since been established by law under the Afghan Constitution. As a NHRC, the AIHRC monitors the implementation and harmonization of national law in accordance with international treaties. It has received wide donor support, including from Denmark since 2002. The AIHRC works closely together with the OHCHR and the UN Assistance Mission in Afghanistan (UNAMA) to monitor human rights, to investigate reports and to file complaints about human rights abuses in Afghanistan.⁴⁹ Despite the important work undertaken by the Commission, however, many of its recommendations do not receive adequate attention in the implementation phase, as discussed later.

Following the many years of instability and conflict, Afghanistan is long overdue in its reporting obligations to the UN Treaty Bodies. This not only demonstrates the lack of capacity and willingness of the Government to engage in such processes, but also the deficiency of the system to function as an effective monitoring mechanism of the implementation of international conventions in such situations. One could expect, however, that the Government will be capacitated to cooperate more actively in the future with the technical assistance it receives. In 2005, UNDP established a Human Rights Treaty Reporting Project, which aims at building capacity within the Government in this field. As a result, the first state report in a long time was to be submitted to the Economic, Social and Cultural Committee in January 2008.⁵⁰ Under the UPR mechanism, Afghanistan will be considered by the Human Rights Council in 2009. This represents an opportunity for the Government to show its willingness to promote and protect human rights and for the international community and civil society to engage constructively in such dialogue. As such, it can be a catalyst for increased awareness and capacity building, if there is national commitment to the process by both the Government and civil society.

At this crucial time in history, the prospects of making use of the human rights mechanisms are looking better in Afghanistan. The question is whether the conditions are present. Donors have an important role to play in this by contributing to the process through various instruments, including diplomatic, development and security instruments.

⁴⁹ UNAMA's website: http://www.unama-afg.org/about/hr/Human_Rights.htm

⁵⁰ According to the UNDP programme description to be found at: http://www.undp.org.af/WhoWeAre/UNDPinAfghanistan/Projects/dcse/prj_hrtr.htm

Although the new Government of Afghanistan has shown its willingness to engage constructively in promoting the country's development and security by signing up to international agreements, the lack of commitment to undertake the necessary reforms in accordance with the international agreements is a concern which the Government should be held accountable for. At the same time, the rights-holders need to be empowered so that pressure will come from "below" as well to create the right conditions for facilitating a process of change. If not, the issues of state fragility and human rights concerns may risk undermining the efforts to promote and protect human rights. They should therefore be taken into considerations when development interventions are planned and implemented.

6.1.2. DENMARK'S INTERVENTIONS TO PROMOTE HUMAN RIGHTS IN AFGHANISTAN

Denmark is a relatively small donor in Afghanistan although it provides substantial assistance in relation to its size. Out of the approximately 11 billion US dollar provided in the period 2002-2007, Denmark has given 1.1 billion DKK (Afghanistan Strategy, 2008:4). Denmark's ODA to Afghanistan has been provided as a combination of civilian reconstruction and humanitarian assistance. The military component of Danish assistance to Afghanistan has been relatively large compared to civil assistance through official development aid (ODA), but according to the newly published Strategy for Danish Engagement in Afghanistan 2008-2012 the military component is supposed to take a less prominent role than the civil component in the future (Afghanistan strategy, 2008:1).

Strategic objectives for Danish interventions: The overall objective of Danish development cooperation in Afghanistan is to support the building up of a society that is democratic and stable (Danida, 2005a:18). Since 2002, Denmark has supported the promotion of human rights and good governance in Afghanistan. In the 2005-2008 Strategy, the following objectives are identified under the focus area 'democratization, good governance and human rights' (*ibid*:21):

- Free parliamentary and provincial elections have been held
- The parliament has been strengthened as an institution and mechanisms have been built up in parliament to ensure parliamentary supervision and monitoring of the administration of public funds
- The institutional capacity of Afghanistan's Independent Human Rights Commission (AIHRC) has been strengthened, especially at provincial level, the

legislative basis has been secured, and targets and indicators are utilized to assess progress in the human rights area

The objectives reflect the priorities established in the Bonn Agreement, as an attempt to align Danish interventions with the international agreements to achieve policy coherence and complementarity. They are also an example of how Denmark centers the promotion and protection of human rights on the formal institutions of the state. While this is important to strengthen weak state institutions, the risk is that the participation through informal structures may be undermined or neglected, and that the effect of development interventions is measured based on the successful conduct of national elections as opposed to the improvement of people's lives and opportunities.

Compared to the 2005-2008 strategy, the integration of development and security objectives is more explicit in the recently published strategy for Danish engagement 2008-2012, where the overall goal is to contribute to national, regional, and international security Afghanistan by preventing that it again becomes a refuge for terrorists (Afghanistan Strategy, 2008:1). The 2008-2012 strategy is unique because it has been prepared collaboratively by the Danish Ministry of Foreign Affairs and the Ministry of Defense. As such, it represents one of the most comprehensive attempts of integrating political, military and civil objectives to improve the overall security and development situation in a fragile state supported by Denmark. The question is whether this has an effect on how human rights are prioritized in the new strategy.

The impression of the 2008-2012 Strategy is that from a human rights perspective it represents an ambitious example of how Denmark as an international actor intends to use political and diplomatic instruments to enhance human rights protection. In the Strategy, Denmark declares that it will pursue an "active foreign policy" guided by international standards, UN resolutions, and NATO's political-military plans (*ibid*:24-25). The activities aim at enhancing the international coordination in international forums, such as the EU and the UN and enhancing Nordic cooperation in areas such as development assistance, human rights, and support to civil society. They also aim at encouraging the Afghan Government to promote and protect human rights; working for the inclusion of human rights in all national strategies; and contributing to an Afghan-led national reconciliation process with international backing (Danida, 2005a:30). These plans suggest that Denmark intends to step up its efforts and more actively use political and diplomatic instruments to achieve its objectives. With these plans, it will be

interesting to follow to what extent Denmark, as a relatively small player on the international arena, will in fact assume the role of a human rights advocate to pressurize the Afghan Government and other governments to respect and fulfill their duties in various agreements and treaties.

Donor alignment and harmonization: In accordance with the Paris Declaration, Denmark has worked closely together with other donors and the Government of Afghanistan in the implementation phase. Denmark has devoted particular attention to aligning the priorities with those established in the Bonn Agreement, the Afghan Compact and the ANDS to respect the Government's ownership of the reconstruction process to promote policy coherence. In fact, the Afghan Government recognized Denmark as a "model donor" in 2005 because Denmark has shown considerable respect for Afghan development priorities.⁵¹

Nonetheless, the Joint Evaluation of five donor governments' reconstruction and humanitarian assistance to Afghanistan in 2001-2005 points out that the donor coordination has not always been optimal. One of the critical issues is that among donors, some sectors have not received adequate attention, in particular the justice sector (Joint Evaluation, 2005:84). The lack of donor support to the justice sector in the first period from 2001-2005 effectively meant that there was little progress in the area during that time (*ibid*:21). This reduced the relevance and effectiveness of the interventions, and worked against the priorities and principles established in the Bonn Agreement, and in the Afghan Compact and the ANDS. The Joint Evaluation recommends that donors attach higher priority to the effective installation of the rule of law and the fight against corruption; align donor interventions with the priorities established together the Government of Afghanistan; and counteract the lack of protection of human rights and personal security (*ibid*:24).

Interestingly enough, little attention is devoted in the 2008-2012 Strategy to the subject of donor alignment. This represents a change from 2005 Strategy, as there is no attempt to explain how Denmark will align and coordinate its development activities with other partners. The Strategy mainly focuses on how Denmark will exercise pressure through diplomatic instruments in international forums such as the EU and the UN, but

⁵¹ From Årsberetningen 2005 - *Afghanistan*:
<http://www.netpublikationer.dk/um/6556/helepubl.htm#5.3>

unlike the 2005 Strategy it is not explained how this will be donor in coordination with others. It appears as if the attention on the need to develop an integrated approach between political, civil and military objectives has taken precedence over donor alignment and harmonization.

Denmark's interventions to enhance human rights protection: Denmark's support to human rights activities has been a consistent element in Danish assistance to Afghanistan in 2001-2007, both in the first period from 2001-2005 and the following period from 2005-2008.

Danish support to the establishment of the AIHRC

Denmark has been one of the lead donors of the AIHRC, both directly and through the Danish Institute for Human Rights (DIHR). The AIHRC was established after consultations with state and civil society representatives in 2002 and now has seven regional offices in the country.¹ Together with UNAMA, Denmark has been the focal point for the Human Rights Advisory Group (HRAG), which is a coordination forum between donors, the UN, international and local NGOs, and Government ministries.¹ Denmark has supported the AIHRC since 2002, and intends to continue its support until 2012 with a focus on a) capacitating the national institution to document, monitor and promote Afghanistan's adherence to national and international human rights obligations, and b) enhance the AIHRC's capacity to monitor the compliance with international conventions in relation to treatment of prisoners (Afghanistan Strategy, 2008:36-37).

In 2001-2005, the five donors mainly focused on meeting the basic needs of the population in education, health, water and sanitation, and livelihood sectors due to the immediate needs (Danida, 2005a:19). This illustrates how international donors "stepped in" and supported some of the basic functions of the state, when the existing one was incapable of doing so. In this period, Denmark supported a long-term reform of the public sector, which suffered from fragmentation and lack of capacity, through the Afghanistan Reconstruction Trust Fund (ARTF) (Danida, 2005a:17). Denmark also supported the Ministry of Education for teachers' training and educational material and demining activities, in addition to the assistance to the AIHRC (see text box above: "Danish support to the establishment of the AIHRC").

In the following period in 2005-2009, activities to promote human rights and democratization issues received 15% of the total 670 million DKK to Danish-supported activities (Danida, 2005a:21-22). With a focus on the preparation and holding of the parliamentary elections in 2005, Denmark also aimed at capacitating the parliament to ensure parliamentary supervision and monitoring of public funds. Again, this reflects the

particular emphasis on rebuilding the formal state institutions as a foundation of the Afghan state. The strategy, however, also opens up for support to civil society, women and returned refugees through the activities of the AIHRC, among other things. In this period, Denmark continued its support to furthering good governance and reconstruction of the public sector, and it placed a strong emphasis on supporting capacity building in national institutions (*ibid*:19).

Two good practice examples in Danish aid include Denmark's support to the AIHRC and the support to NGOs to promote human rights awareness in civil society.

The support to the AIHRC has been instrumental in creating a national monitoring mechanism for the promotion and protection of human rights. In 2005, the AIHRC published a report "A Call for Justice" which proposed a national strategy for transitional justice and addressing the abuses of the past based on consultations with more than 6000 Afghans.⁵² It was one of the most comprehensive accounts of how Afghans wanted to build peace and stability, deal with past abuses, reconcile victims, perpetrators and other stakeholders. The report led to the formulation of an Action Plan for Peace, Reconciliation and Justice in Afghanistan in 2006.⁵³ The Action Plan, which provides a comprehensive and ambitious framework for imposing transitional justice in Afghanistan, is to be implemented by Government of Afghanistan in collaboration with the AIHRC and UNAMA. Unfortunately, the realization of the Action Plan has been impeded by the inability of the Government to bring past perpetrators to justice, especially those now serving high political positions, as noted by the High Commissioner following her visit in 2007.⁵⁴

The funding to NGOs working in Afghanistan has been another particular feature in Danish aid (Joint Evaluation, 2005:50). Throughout its engagement, Denmark has emphasized the inclusion and empowerment of the poor, women and returned refugees, and has attached great importance to strengthening and working together with civil society. When donors first intervened in Afghanistan in 2001, NGOs had the comparative advantage of having the expertise and sector approaches needed. The 2005 Joint

⁵² AIHRC (2005): "A Call for Justice – A National Consultation on past Human Rights Violations in Afghanistan"

⁵³ Action Plan for Peace, Reconciliation and Justice in Afghanistan (2006)

⁵⁴ OHCHR Press Release: "High Commissioner for Human Rights Concludes Visit to Afghanistan". 20 November 2007.

Evaluation recommended that NGOs be used to an even greater extent, to reach the poor sections of the population and get geographical distribution of aid (*ibid*:24). In the Afghanistan-Denmark Partnership 2005-2008, it is stated that support to NGOs should focus on their comparative advantages, such as advocacy and capacity-building of local partners and the public sector. This echoes the recommendations made by Danish NGOs in discussions leading up to the reformulation of the Danish strategy for civil society engagement in fragile states, and the outcome paper presented by the Danish MFA in June 2008.

6.1.3. EFFECTS ON THE HUMAN RIGHTS SITUATION

So has the overall human rights situation changed in today's Afghanistan as an effect of the many promises and interventions? Has it improved the situation for people on the ground? And if not why, and what can be learnt from it?

Results of Danish interventions: In the 2008-2021 Strategy, it is stated that since the overthrow of the Taliban regime in 2001, the overall human rights situation has improved significantly, but that there are still considerable human rights violations in present-day Afghanistan (Afghanistan Strategy, 2008:18). The establishment of democratic institutions, free elections, and the adoption of a new Constitution are highlighted as important achievements on the country's way towards stability (*ibid*:1). The observation that the overall results of donor aid have helped Afghanistan on its way towards political stability is echoed by the Joint Evaluation. According to the evaluation, the accomplishment of the donors' assistance, combined with internal Afghan stabilization and economic recovery, has resulted in the installment of a government, the adoption of a new constitution, and the election of a President, which has increased state legitimacy in the eyes of the majority of Afghanistan's population (Joint Evaluation, 2005:17-18). It has also lead to the establishment of a Ministry of Finance, as a prerequisite for a functional state, and to some progress in meeting the basic needs of the people, in particular in education and water and sanitation.

According to 2008-2012 Strategy, the results of Danish assistance to state-building and human rights in Afghanistan in 2002-2007 have been (Afghanistan Strategy: 2008:20):

- The accomplishment of free elections and capacity building of the independent election commission. Denmark has contributed to a reform of and capacity building in the public sector through the ARTF.
- The establishment of the AIHRC that works to promote, protect and monitor human rights.
- A growing pluralistic civil society with support from Denmark, among others.

The successes of these results should be weighed against the effect they have had on the realization of human rights on the ground, and the change they have brought to the political system. As the background analysis demonstrated, there are still many challenges ahead, which both point to the constraints of promoting and protecting human rights in a fragile environment, still affected by conflict and traditional power structures.

The success of the national elections, as the first example, is relative depending on whose opinion is heard. Donors have seen the elections in 2004 and 2005 as a historic landmark for Afghanistan's transition towards democracy. Denmark saw the elections as a solid success with a relatively high participation rate (Afghanistan Strategy, 2008:20). Critics, however, have argued that the immediate success of the event can be questioned due to accusations of fraud and alleged assaults against registration officers and voters by international human rights organizations.⁵⁵ Another challenge was that the general knowledge of the country's new constitution was limited among the population before the Parliamentary Elections in September 2005 (Joint Evaluation, 2005:57). This shows some of the difficulties of projecting a Western liberal model of democracy onto a situation, which has been affected by years of state fragility.

Denmark's contribution to the public sector reform has also been evaluated as a success, but with modifications. The reform process has mainly benefitted the central administration, which has meant that the capacity building outside Kabul has not been very effective (Joint Evaluation, 2005:62). This, however, may be on reverse with the

⁵⁵ Ghani and Lockhart (2008:77) argue that the voting system managed by the UN proved to be inefficient, which led to a high margin of errors in the registration of votes. Furthermore, allegations about assaults against registration officers and intimidations against voters were reported by Amnesty International, questioning the general security situation and functioning of the criminal justice system to undertake such a demanding exercise given the country's general state of crisis (Amnesty International Press Release: *"Afghanistan: Election pains point to ailing state"*. 8 October 2004).

2008-2012 Strategy, which notes that attention now needs to be shifted to local governance structures as well (Afghanistan Strategy, 2008:36). It also declares that Denmark intends to include relevant local power structures if they contribute constructively to the development process. Yet, while it is important to collaborate with existing power holders, a distinction should be made between constructive and non-constructive forces. Although the co-option of the commander structure into the political system has brought some kind of stability in the short term, previous attempts have shown that it risks undermining the democratization process in the long term (Joint Evaluation, 2005:59). Besides, the inclusion of past perpetrators into the political system would be detrimental to the work to promote transitional justice.

As for the AIHRC, Denmark's role as a main contributor has been evaluated as a success due to the positive influence that it has had on promoting a culture of human rights in Afghanistan. The AIHRC's success is most importantly linked to the fact that it has brought unprecedented visibility to the human rights agenda in Afghanistan, especially women's rights (Joint Evaluation, 2005:70). Another impact has been the creation of a link between the state and the society, where rights-holders can make their claims heard, such as the broad consultations conducted for the preparation of the Action Plan in 2006. The effectiveness of the institution's work, however, largely depends on the Afghan Government's implementation of its recommendations. An inadequate example includes the lack of effective follow-up to the Action Plan for transitional justice in 2006. Without the Afghan Government's commitment, the AIHRC's work will not have the intended effect on the ground, and Denmark should therefore use its role as a donor government to hold the Afghan Government accountable to its responsibilities. One way for the AIHRC to take a stronger role could be in providing legal assistance and reparations from a trust fund to victims of human rights violations and relatives of civilian casualties, as a follow-up to the recommendation made by the High Commissioner following her visit to Afghanistan in 2007.

Lastly, the support to a growing pluralistic civil society in Afghanistan is an achievement, which should be weighed against the fact that before the intervention the civil society was in such a bad shape, that almost any assistance would be an improvement. Besides, the continuing problems such as marginalization and discrimination against some of the most vulnerable groups in society, the women and children, and pressure on the freedom of expression show that there are still many

obstacles to the realization of human rights in the daily lives of Afghans. The work to assist civil society organizations, amongst others through Danish funded NGOs and DIHR, should however be seen as an important contribution to alter this situation, although it can take a long time to reach the desired protection level. For this to happen, the *de facto* power exercised by warlords, traditional leaders and military commanders need to be challenged by rights-holders, which is an extremely demanding process in a society governed by traditional rules and norms.

Challenges: In conclusion, there are many challenges and dilemmas, which Denmark has been confronted with when protecting human rights through development assistance in Afghanistan. Compared to the background analysis, one of the challenges is the Afghan Government's lack of commitment to undertake necessary reforms in the public sector and the justice sector. Another area is the improvement of the detention facilities and the treatment of prisoners. To what extent will Denmark address these challenges in its future engagement? As a positive step, it seems as if Denmark intends to push more explicitly for the inclusion of human rights dialogue with the Government itself and with other donors.

However, in light of Denmark's declared objectives of promoting state-building and human rights, there are still some important areas which Denmark has chosen not to support. One such area is a reform of the justice sector. According to the new Afghanistan Strategy, Denmark does not intend to take this role, but will coordinate with other donors that are focusing on this task (Afghanistan Strategy, 2008:26). Yet, in a public statement in June 2007, Amnesty International called upon the Government of Afghanistan and the international community to "seize" the moment and reaffirm their commitment to a long-term plan for the reform of the justice sector to prevent that a deteriorating human rights situation impede the country's progress.⁵⁶

If the assumption that the establishment of an effective justice sector is essential in building effective and non-fragile states is correct, it is important not to neglect this element in the state-building activities in Afghanistan. Without an extensive justice sector reform, the state's accountability and legitimacy will not be restored, which this will have a detrimental effect on how the rule of law as "the glue" that binds everything together can

⁵⁶ Amnesty International, Public Statement: *"Afghanistan: Justice and rule of law key to Afghanistan's future prosperity"*. 29 June 2007.

develop in a society. In this context, the OECD/DAC Principles can be seen as a way of setting priorities straight for future state-building agendas, as they contain a clear recognition of the justice sector and human rights as the basic functions of the state. But they need to be followed up accordingly by their members in the implementation phase.

Another issue is the challenge of invoking the international human rights framework when working in an environment still partly governed by traditional norms and customs. In Afghanistan, the dilemma is that such systems are based on the application of local and traditional customs and Shari'a law, and that they may be ruled by warlords and military commanders. The 2005 evaluation notes that there is a pressing need in Afghanistan to create a strong and effective justice sector, which is connected to religious and customary standards, while complying with international standards (Danida, 2005a:25). Donors should recognize the existence and powers exercised by such systems, and work with them to the extent that they legitimately serve the same purposes that donors pursue, although it must be extremely difficult to strike a fair balance.

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Afghanistan is often portrayed in the fragile states debate as a country that fit the definitions of what constitutes state fragility. Compared to the OECD/DAC definition, state-building efforts have been the central objectives of interventions in Afghanistan. But maybe the focus on the state has been too strong and rigid compared to the conditions that existed in Afghanistan, when donors first engaged in Afghanistan in 2001. After years of concerted efforts by international donors to bring the state back on track, there are still many human rights concerns in Afghanistan, and the distance between the central and local administration levels has not necessarily been reduced. Nor has the efforts results in a much-needed reform of the justice sector.

The statement made by the High Commissioner following her visit in late 2007 suggests that much remains in state-building process in Afghanistan. The involvement of former military actors in high-level political positions has made this task even more pressing and difficult for the Government. Despite some successes, including the AIHRC, it has been a demanding task to align religious and customary norms and practices with international standards in a state still in transition from many years of conflict and authoritarian rule.

6.2. NEPAL

With the recent successful elections in April 2008, Nepal has been portrayed as a good example of how international and domestic pressure for human rights change has resulted in a long awaited transition from violent conflict to democratic progress. As a long-term partner, Denmark has contributed to Nepal's development since 1989. Still, major human rights concerns, unequal distribution patterns, and severe poverty issues are influencing Nepal's chances for development and peace.

6.2.1. BACKGROUND ANALYSIS

Issues of state fragility in Nepal: Ironically enough, Nepal did not figure on the CPIA list of 34 fragile states produced by the World Bank, while it ranked as no. 21 on the Failed States Index and as no. 20 on the CIFP ranking table. Apart from demonstrating the methodological inconsistencies of these indexes, it also shows that Nepal is showing some progress on its way away from state fragility.

Nepal has since the beginning of the 1990's been heavily affected by years of a rigid transition from monarchy to a federal state. During this process, three elements have mutually reinforced and challenged each other: the Maoist insurgency; the power struggles between the royal family and the political parties; and the marginalization of women, Dalits and ethnic groups (NGC case study, 2008:5-6). After the assumption of the power by the King in April 2005, where the constitutional safeguards and the rule of law were effectively undermined and international treaty obligations were ignored, an Interim Government was formed in May 2006. Peace negotiations formally began that same month. Two years later, in April 2008, the Constituent Assembly elections took place on 10 April 2008 with the historic result that the Monarchy was officially abolished. The Maoists became the biggest party, but without majority, in the new Constituent Assembly.⁵⁷ To what extent the new Government will cooperate constructively with the international community, and how this will affect donor governments' incentives for supporting Nepal's political system, especially the US, is quite determining for country's development in the years to come.

The analysis of country situation in the NCG case study concludes that issues of state fragility in Nepal have been caused rather by a crisis of legitimacy than of incapacity

⁵⁷ The Economist: *"The Maoist triumph"*. 17 April 2008

(NGC case study, 2008:6). A study by Steward and Brown (2008) of the Nepalese situation argues that state fragility emerged in Nepal as a combination of inadequate and inconsistent service delivery and lack of legitimacy, and as a result of social exclusion and horizontal inequalities (Steward and Brown, 2008:38). According to this study, internal political structures have been characterized by lack of integrity, and the constant undermining of political leadership has created mistrust between the government and its citizens. Steward and Brown (2008) argue that Nepal has also been effected by the fact that the country's development has largely depended on foreign aid to provide basic services (*ibid*:40). To that end, it can be argued that international donors have played a crucial role in providing the "basic services" to the population, as they did in Afghanistan.

The national system for the protection of human rights will be rooted in the new Constitution, which the Constituent Assembly has two years to finalize. The first Interim Constitution was presented in early 2007, and the drafting process is by many seen as a fresh start and a historic opportunity to provide constitutional guarantees for the prevention of serious human rights problems still facing the country today (CHRGJ, 2008:3).

Main human rights concerns: As one of the world's poorest countries, social development remains low in Nepal and poverty continues to deny people their basic rights (Danida, 2005b:9). In addition, deep-rooted practices of discrimination and marginalization of vulnerable groups has been – and continues to be – one of the main human rights concerns in Nepal. Especially in rural areas, Nepal is deeply divided by a hierarchy based on caste, gender, and ethnicity. In a recent report, which analyzes how to ensure Dalit rights in Nepal's new Constitution, it is found that the entrenched forms of caste discrimination still permeates Nepalese society and poses a major challenge to political participation, inclusion, hierarchal status and access to basic resources (CHRGJ, 2008:3). The principle of non-discrimination is an underpinning principle in many of the international treaties to which Nepal is a party (*ibid*:10). The inadequacies of the protection of vulnerable groups have been subject for concern for, among others, various UN treaty bodies, which have expressed strong concerns about the continuing practice of

“untouchability” in Nepal and lack of implementation of constitutional guarantees for marginalized groups in Nepal.⁵⁸

As party to most of the international human rights treaties, the Government of Nepal has neglected its reporting obligations to the treaty bodies in recent years (it is currently overdue with two reports), and it will not be examined by the UPR mechanism until 2011. Yet, when the Government has previously entered into dialogue with the Committees, it has been known for engaging constructively with the Committee Members and it has in fact recognized that Nepal faces many problems, including caste discrimination. Unfortunately, the past years’ experience has failed to demonstrate a translation of this recognition into enhanced human rights protection in practice.

Following the internal conflict in Nepal, serious allegations about atrocities, enforced disappearances and torture have been made by international human rights organizations and UN Special Rapporteurs. In November 2007, Amnesty International called upon the Government of Nepal to renew its commitment to the Comprehensive Peace Accord, signed in November 2006, which declared that transitional mechanisms, including a truth and reconciliation commission, should be established to address past crimes during the internal conflict.⁵⁹ In the public statement, Amnesty International claimed that during the conflict 13,000 people died, 900 people disappeared after they were contained by security forces, and hundreds were abducted by the Communist Party of Nepal (the Maoists). The former Special Rapporteur on the question of torture, Mr. Manfred Novak, went on a country visit to Nepal in September 2005. In his country report following the visit, he expressed strong concerns about *“the prevailing culture of impunity for torture in Nepal, especially the emphasis on compensation for acts of torture as an alternative to criminal sanctions against the perpetrator”*.⁶⁰

According to the OHCHR, the deep divides in society have lead to underrepresentation and exclusion of particular groups from access to justice. The peace

⁵⁸ See, for example, the Concluding Observations from the Committee on the Elimination of Racial Discrimination (CERD) in 2004; from the Committee on the Elimination of All forms of Discrimination Against Women (CEDAW) in 2004; from the Committee on the Rights of the Child (CRC) in 2005 and from the Committee on Economic, Social and Cultural Rights (CESCR) in 2007.

⁵⁹ Amnesty International, public statement: *“Nepal at a cross-road – urgent need for delivery on transitional mechanisms for truth, justice, inclusion and security”*, 20 November 2007

⁶⁰ Country report from Nepal (E/CN.4/2006/6/Add.5) p. 3

process has to some extent failed to address these issues, as expressed by frequent public protests and strikes.⁶¹ Such protests often end in violence and recent events suggest that human rights violations are still pertinent in today's Nepalese society. After public protests on 13-29 February 2008, the OHCHR Field Office in Nepal published an investigation report, which stated that six civilians were allegedly killed as a result of confrontations with police.⁶² In conclusion, OHCHR-Nepal recommended that accountability mechanisms within the police had to be strengthened to prevent and deter human rights violations.

National and international monitoring mechanisms: The National Human Rights Commission, which was established in 2000, has long struggled to gain autonomy and independence in Nepal. It was first recognized as a constitutional body under the Interim Constitution in 2007, and a draft law mandating the commission with its functions and powers under the Constitution is still underway. Recently, the Representative of the UN High Commissioner for Human Rights in Nepal has urged the Prime Minister and NHRC Commissioners to empower the body, so that it can take up the recommendations previously produced; contribute to the constitution-making process; and continue to address issues of impunity and discrimination as common goals shared with the OHCHR's work in Asia.⁶³

The large presence of international actors in Nepal has helped bringing attention to a number of human rights problems and has increased monitoring of human rights compliance. The OHCHR Field Office in Nepal was established following the Agreement between the High Commissioner for Human Rights and the Government of Nepal in April 2005.⁶⁴ The OHCHR has worked actively together with the special political mission to

⁶¹ OHCHR website - *OHCHR in Nepal*: www.ohchr.org

⁶² OHCHR-Nepal website: *Summary of human rights concerns arising from the Terai protests of 13-29 February 2008*: www.nepal.ohchr.org

⁶³ Statement by Richard Bennett, Representative of the United Nations High Commissioner for Human Rights in Nepal, Delivered at the 8th Anniversary of the National Human Rights Commission, 26 May 2008, Kathmandu

⁶⁴ The mandate was established in the Agreement between the UNHCHR and the Government of Nepal Concerning the Establishment of an Office in Nepal, signed in April 2005. OHCHR-Nepal has the mandate to observe IHL and humanitarian law in the country through investigations; to advise Nepalese authorities on the formulation and implementation of laws, policies and programs for the promotion and protection in Nepal; to provide advisory services to the National Human Rights Commission and civil society; and to submit analytical reports to the HRC and General Assembly.

Nepal, UNMIN, to protect human rights since the mission was established pursuant to Security Council resolution 1740, and began its work in January 2007. The mandate, which allowed the UNMIN to monitor the management of arms and armed personnel of the Nepal and Maoist Army and provide technical assistance to the Election Commission, expired on 22 July 2008.⁶⁵

6.2.2. DENMARK'S INTERVENTIONS TO PROMOTE HUMAN RIGHTS IN NEPAL

Nepal was established as a Danida Programme Country in 1989 with the overall aim of supporting the democratization process and contributing to poverty reduction. In the period 2002-2007, Denmark primarily made use of development, humanitarian and diplomatic instruments to achieve the overall development objectives of Danish assistance of supporting the democratic process in Nepal (NCG case study, 2008:9).

Strategic objectives for Danish interventions in Nepal: With poverty reduction as the main objective of Danish interventions, Denmark started increasing the funding of activities related to peace-building, human rights, and good governance in 2005. In June 2006, an Interim Strategy 2006-2007 was approved to outline Denmark's engagement in a difficult peace process. This strategy replaced what was supposed to be a new country strategy. Following the Royal Proclamation in 2005, the Interim Strategy was drafted and implemented without consultation with the Nepalese Government, due to the fragile political situation at the time. The medium-term strategic objectives of the Interim Strategy are (Danida, 2006:2):

- To facilitate and promote the development of a democratic political environment, respect for human rights and rule of law, and a peaceful resolution of the armed conflict
- To contribute to poverty reduction through the improvement of service delivery targeting the poorest segments of the population

These objectives are to be pursued through the following intermediate focal areas: support to democratic forces in Nepal; assistance to the people of Nepal through both non-state and state actors, staying loyal to their mandate of providing services on an apolitical basis; and support to efforts aimed at facilitating dialogue and increasing the incentives for peace.

⁶⁵ UNMIN's official website: www.unmin.org.np

Compared to the OECD/DAC definition of fragile states, the Interim Strategy emphasizes the need to increase delivery and efficiency of basic services to the rural population, and the promotion of rule of law and respect for human rights. There is a deviation, however, between the two approaches. The Interim Strategy recognizes clearly that Danish assistance to the people of Nepal can be achieved through support to both state and non-state actors, as long as the engagement pursues the same overall objective. The support to democratic processes both inside and outside government structures is more explicit in Denmark's development objectives than in the OECD/DAC Principles. The adjustment was a policy choice that Denmark had to make when the question about the illegitimacy of the Nepalese administration became too prominent in 2006. In practice, it meant that Danish support to civil society organizations and multilateral organizations increased significantly in 2006-2007 (NCG case study, 2008:10). This was particularly evident in relation to the human rights and good governance programme, which can be seen from an overview of the sectoral distribution of support to Nepal, 2002-2007 (*ibid*:8).

Donor alignment and harmonization: During the conflict in 2005, Denmark chose to stay engaged and pursued cooperation and alignment with other like-minded partners. Denmark aligned the implementation of its activities with the Basic Operating Guidelines (BOGs), which are a set of 14 principles agreed upon by international agencies working in Nepal at the time. These guidelines underlined the impartial nature of development activities, with an emphasis on the neutral delivery of services to the people of Nepal, and principles such as transparency, non-discrimination, and equality. This was a way for Denmark to de-link itself from the government, through a united donor platform (NCG case study, 2008:7). In the NCG report, the donors' adherence to the BOGs is described as a good practice, which enabled them to continue the activities as an effective and neutral tool in an unstable environment (*ibid*:12-13). The review, however, is quite uncritical about the challenges of working in a fragile environment and the impact it must have had on donor coordination. It is therefore difficult to determine if the complex working circumstances presented Denmark with some tough policy decisions in this period.

Danish interventions to enhance human rights protection: The promotion of human rights and democracy has been a key focus area in Danish aid to Nepal from the beginning. After the introduction of the multi-party system in 1990, Danida established a programme to help promoting the creation of democratic state and non-state institutions

(Danida, 2005b:1). In 2005, Denmark initiated a new Human Rights and Good Governance Programme (2003-2008) that built on the experience from past programmes. The programme, which has the overall goal of establishing functional and inclusive democracy based on respect for human rights, has seven components: human rights organizations, social inclusion, media, justice, anti-corruption, elections and democratic processes and local governance (Danida, 2005b:22). The aim is that efforts to promote human rights, good governance and conflict transformation become mutually reinforcing, as opposed to conflicting, thereby allowing for more flexibility as the political situation changes and unfolds (*ibid*:2). One of the groups, which have received considerable support from Denmark, has been the Dalits (see text box below: “Danish support to Dalit organizations in Nepal”).

Danish assistance to Dalits organizations in Nepal

Danida’s support to the “lower caste” groups in Nepal, the Dalits, was initiated soon after the restoration of democracy in 1990, and since 2000 Denmark has provided support to Dalit organizations. In 2003, Denmark prepared a five-year Dalit Support component under the Human Rights and Good Government Programme (Danida, 2003b). The Component Description is unique in the sense that it analyzes the constitutional and legislative provisions for Dalits in the Nepalese and international legal system. As an exemplar for other strategies, this creates a common platform for Denmark as a donor and for national and local partners. The immediate objective of the component was the achievement of “*strong, broad-based and democratic Dalit organizations actively working for the rights and interests of their members at national and local levels*” (Danida, 2003b:36). The process leading up to the Constituent Assembly elections in May 2008 was the real test of how far the Dalit organizations had come in speaking with a unified voice and making their claims heard. Although the Dalit organizations had difficulties in agreeing on a common agenda, they nevertheless formulated a “Dalit Rights Kathmandu Charter 2007” containing a number of concrete recommendations and specific proposals. As a concrete outcome of the process, Dalits have been provided 13% of the seats in Parliament, and the Interim Constitution also contains provisions which may improve the status and situation of Dalits as positive steps towards an inclusive and non-discriminatory society in Nepal.

The Human Rights and Good Governance Programme 2003-2008 is based on a detailed context analysis of the historical, political and social aspects of the conflict, including a mapping of different actors – including the spoilers – relevant to the conflict. This meet the recommendations of those who argue that all policies must take context as a starting point to enable an appropriate and timely response to the structural problems encountered.

In addition to the thorough country analysis, the Programme 2003-2008 includes considerations about the underlying assumptions and risks of implementing a human rights programme in Nepal under the politically and socially difficult circumstances. It is stated that the Programme builds on the assumption that the *“Government’s expressed commitments to upholding the rule of law, observing international human rights conventions, to which it is a party, and re-establishing multi-party democracy are followed through by a de facto minimum level of constitutional order and rule of law. As such it is assumed that a breakdown of rule of law does not assume such proportions as to render implementation of activities impossible”* (Danida, 2005b:3).

This statement, which deals in realistic terms with the consequences of working in a fragile environment, provides an interesting perspective on the policy dilemmas and compromises that donors have to make in such situations. First, the Danish approach defines the end goal with its interventions: that the state lives up to its obligation as a duty-bearer, at least in terms of providing minimal protection of human rights. Thus, although the engagement with state institutions can be restricted at times, it should not detract from the longer-term perspective that envisages increased cooperation with state institutions (*ibid*:32). Second, the assumption that activities must continue regardless of the protection level raises the dilemma about how far donors can go in promoting human rights activities, if there is a breakdown of rule of law. It has been argued that the rule of law is the foundation of a democratic society; the glue that binds everything together. What if the government is no longer capable of living up to its obligation as a duty-bearer, who will then protect human rights? Or as put in the Danida Programme Document: how can donors avoid that the assistance to state institutions potentially support *“essentially undemocratic and unconstitutional tendencies”*, when the state institutions are too weak to carry out these functions? (*ibid*:34) Can the support to human rights-related activities have the unintentional effect of undermining the purpose of state-building efforts, as argued by pro-state critics?

Danish experiences in Nepal suggest that if a government is deemed unfit as a partner, donors must adjust to the situation and identify new strategies and channels of delivery if they want to continue promoting and protecting human rights, even in times of state fragility. Instead of looking at institutions, Denmark turned its attention to key organizations, issues and actors who could bring about the needed change when the Government was incapable and unwilling to undertake such functions. The lack of

cooperation with the Nepalese Government in 2006 did not mean that human rights activities had to be discontinued; instead, Denmark identified non-state and multinational partners to carry out this work when the legitimacy of the Government was questionable. Denmark also maintained the political dialogue with state and non-state partners to seek a constructive solution to the conflict. Such a situation was foreseen in the 2005 Programme Document, which acknowledged *“the need to revise the logic and coherence of the Programme in relation to the realities, constraints and challenges of the present political and social context in Nepal”* (*ibid:30*). It also allowed for flexibility following to the development of the political situation.

However, turning the attention to civil society is not without risks, because non-state actors cannot and should not carry out the functions of the state. Placing such responsibilities on non-state organizations and actors builds on the assumption that they are willing and capable to carry out such tasks. Although the NCG case study does not mention such challenges in the evaluation, the “spoilers” can also come from within such organizations. Problems of corruption, political power struggles, and political biased values internally in civil society organizations may prove to be counterproductive. One example is the internal power struggles, which exists among different organizations and groups. This again calls for comprehensive country analysis, which includes an assessment of the internal power struggles between and within state and non-state structures, such as the Dalit Support component under the Human Rights and Good Government Programme (Danida, 2003b).

When the political climate was getting difficult, Denmark also used diplomacy as an instrument to address state fragility and resolve the politically unstable situation in Nepal. This was done by exercising international pressure through efforts in the UN and the EU and encourage the Government to engage in a political dialogue (*ibid:10*). Nationally, the diplomatic activities included frequent donor coordination meetings, monthly meetings with the Government of Nepal, and consultations with the other parties to the conflict (the Maoists, human rights activists, and civil society organizations) during the insurgency. Internationally, Denmark helped bringing attention to the issue through its membership of the UN Security Council in 2006 and through the active participation in the 61st session of the former Commission of Human Rights, including the support to the establishment of the OHCHR Field Office (*ibid:20*).

According to a former human rights officer at the Danish Embassy in Kathmandu, one of the main reasons why the country succeeded in overcoming the period of internal conflict was the collective pressure by international as well as national actors.⁶⁶ During the period of internal conflict in 2005, when the Government of Nepal did not demonstrate the political will to find a peaceful solution, other actors took a strong position and claimed that change had to happen, in the name of the international human rights framework. The Nepalese situation was discussed at the 61st session of the former Commission on Human Rights, where Denmark among others pressured for the installment of a human rights monitoring mechanism in Nepal. During the negotiations for a resolution in the Commission, NGOs sent a joint statement to the OHCHR about the urgency of the situation, which helped increase the pressure on the Government. At the same time, the political leaders in the country sent a letter of appeal, which called for support to the OHCHR mandate. This eventually resulted in the adoption of an item 19 resolution, where the Government of Nepal agreed to sign a Memorandum of Understanding with the UN High Commissioner for Human Rights leading to the establishment of the OHCHR Field Office in Nepal.

The fact that the claims did not only come from the international community, but were backed up by appeals from national civil society organizations and the political elite in the country, legitimized the international call for a solution and pressurized the Government to accept the terms of the international negotiation process. As such, the international forums functioned as a supporting mechanism to underline the position of Denmark and the international community, but it was in itself not enough to resolve the conflict – an aspect, which the NCG report neglects when describing what caused the success of this negotiation process.

6.2.3. EFFECTS ON THE HUMAN RIGHTS SITUATION

Although the NCG study does make a full-scale evaluation of the results of Denmark's intervention from 2002-2007 in support of human rights, good governance and the peace-building process, recent developments towards democracy and stability suggest that interventions have not worked counter to the intentions. The NCG report concludes

⁶⁶ In a conversation with Ivan Nielsen, Danish MFA, he shared his view on why Nepal had succeeded in bringing about human rights change from his own experience as an employee during and following the insurgency.

that some notable trends in the Danish interventions in 2002-2007 include increased contributions to UN institutions and civil society organizations, mainly through development and diplomatic instruments, in support of the development and peace process (NCG case study, 2008:15). The report identifies six specific factors which have contributed to successful Danish interventions as comparative advantages: 1) longstanding presence; 2) flexibility; 3) decentralization; 4) the combined foreign/diplomatic and development services; 5) impartiality; and 6) linkages between approaches, channels of delivery and modalities in Danish initiatives (*ibid*:16-17).

The flexibility, which Denmark demonstrated in 2005-2006 with the formulation of the Interim Strategy and adherence to the BOGs, allowed Denmark to make use of the windows of opportunities, which arose in such situations. Denmark also actively supporting the international advocacy work at UN level, while being engaged in development work at ground level, with the partners that were available and most reliable. This strategy can be identified as an international best practice: when the traditional government-to-government partnership did not function effectively, Denmark was able to work pragmatically with and around existing structures instead of aiming at creating new structures. Nevertheless, there is a risk that too much flexibility may work against sustainable and balanced interventions. Such risks and strategic choices will therefore have to be constantly measured against the evolving political situation in the country (Danida, 2005b:39).

An important result of the peace process has been the inclusion of marginalized groups, both the recognition of their rights at state level and their own active claims of such rights. The NCG report concludes that Danish assistance has lead to *“increased attention and commitment to ensure rights of the marginalized groups on the part of the government – e.g.: constitutional guarantee of the Madhesis, women and disabled in civil service, police, armed policy and military forces”* (NCG case study, 2008:14). The NCG report highlights that such groups have gained increased access to livelihood assets and resources as a result from Danish assistance. The inclusion of such groups became evident when they were successfully granted proportionate representation in the Constituent Assembly for the first time in Nepalese history. As an outcome of this process, specific provisions were proposed in the Interim Constitution to guarantee the political

participation of such groups based on the principle of “proportional inclusion”.⁶⁷ This may have wide-ranging effects on the political empowerment of such groups. It has been argued that with these provisions in the Interim Constitution, the infringements on fundamental rights such as equality and political inclusion are constitutionally enforceable (CHRGJ, 2008:22). However, although these are important steps towards the inclusion of marginalized groups, it does not automatically translate into substantive equality. Nor does it mean that the granted powers will be free from misrepresentation or misuse of powers amongst the strongest representatives in these groups.

Another outcome, although not attributable to Danish interventions only, was the adoption of the OHCHR mandate in Nepal in 2005 resulting from international and national pressure at UN level. This resembles the process described by Risse and Sikking (1999): that the concurrent pressure from “above” and “below” is crucial in bringing a country into the next phase towards a solution to the conflict. The Nepalese case shows that despite the pressure exercised by the international donor community, the conflict would not have been resolved if it was not for the pressure by civil society organizations and political leaders from “below”. In this process, human rights played an important and explicit role in this process, because the normative human rights framework provided a common ground supported by all actors.

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As this case illustrates, working in a fragile state environment demands a high degree of flexibility from donors. In light of the OECD/DAC call for making state-building the central objective for engagement in fragile states, an important observation is that most of the Danish support for the promotion and protection human rights has been channeled through civil society organizations – not through the state. This shows that the central objectives of the OECD/DAC Principles do not adequately correspond to the reality experienced in some states heavily affected by conflict, when the Government is considered illegitimate. It also shows how donors have to adjust to the specific situation and recognize that in times of political crisis, other actors will have to step in and take over the implementation of activities. Denmark’s success can be attributed to the fact that

⁶⁷ In the Interim Constitution, articles 21 on the Right to Social Justice, article 33(d1) on the Responsibilities of the State, and article 35(8) on State Policies take some important steps towards the inclusion of women, Dalits, indigenous ethnic groups, Maradesi communities, oppressed groups, and the poor farmers and labourers on the principles of proportional inclusion.

Danish interventions were based on a detailed and contextual analysis of the country situation, which enabled a high level of flexibility in responding to immediate needs and making use of the opportunities available. Unlike the OECD/DAC definition, this “non-state approach” proved to be the most efficient during the time when the Government of Nepal was deemed unfit as a partner due to the question of its legitimacy and accountability.

7. POLICY DILEMMAS OF PROTECTING HUMAN RIGHTS IN FRAGILE STATES

The starting point in the thesis was that the two agendas, fragile states and human rights, had until recently been considered as separate spheres on the policy arena. This was based on observations by the Danish MFA, which, together with the British research institute ODI, had analyzed the international debate and other donors' policy responses to state fragility. With the formulation of the Danish guiding principles for a coherent Danish approach to fragile states and politically difficult situations, the Danish MFA wanted to "fill in a gap" and act as an advocate in the international debate by proclaiming that human rights should be a basis for engagement in fragile states.

In the process leading up to the formulation of these guiding principles, the Danish Ministry invited experts, researchers and policy makers to contribute to a debate about the perceived links between these two agendas, both in normative and operational terms. Compared to other international donor agencies, the Danish decision to formulate guiding principles was a relatively late decision, as most other donors have already formulated comprehensive strategies in the field. Besides, the OECD/DAC Principles provide an overall policy framework for how member organizations should engage in fragile states. So what is really so new about this debate? In what ways can the formulation of the Danish guiding principles contribute to this field? And has it implied a reassessment of donors' role in promoting and protecting human rights in fragile states?

When looking back at the problem statement and research dilemmas from the Introduction, the analytical frameworks and case studies provide a useful insight into the policy dilemmas that Denmark as a donor government faces when supporting interventions to enhance human rights protecting in fragile states. In a final discussion, this chapter compares the findings from the case studies with overall policy frameworks for engagement in fragile states, such as the OECD/DAC Principles. Despite Denmark's consistent efforts to promote human rights in both countries, the conclusion is that there is a considerable gap between the way that results have been achieved in practice and the policy frameworks guiding interventions in fragile states.

7.1. DENMARK'S ENGAGEMENT IN AFGHANISTAN AND NEPAL – LESSONS LEARNT AND CRITICAL QUESTIONS

The OECD/DAC Principles represent the most commonly accepted guidelines for international engagement in fragile states. But to what extent do they provide an adequate policy framework for interventions in fragile states? When comparing Afghanistan and Nepal, the OECD/DAC definition of fragile states has captured some of the common features of fragility in the two countries, but not all. Both countries are examples of fragile states, where the prospects of social and economic development are heavily affected by the incapacity to provide basic services to their citizens because of years of conflict and political instability. To some degree, the governments in the two countries have also displayed a level of unwillingness, although this is much harder and more political to assess. However, the Principles have not captured all the key elements of how Denmark as a donor government has intervened in these two countries. Although the overall goal for Danish assistance has been to build strong and democratic states, the methods and approaches chosen to achieve this goal have not always been centered on the state. As the discussion following the review of the first research dilemma shows, this has to some degree led to a misconception of what makes human rights 'work' in fragile states.

Denmark's interventions in Afghanistan and Nepal show that the decision by the Danish MFA to make human rights the basis for Denmark's engagement in fragile states does not represent a strategic shift from the engagement in these two countries. During the latest five-year period, Denmark has attached high importance to promoting and protecting human rights as one of the main objectives in both countries. The overall goal in both countries has been the achievement of stable and democratic states, the establishment of strong and effective state institutions and a vibrant civil society. On this basis, the policy priorities in these two countries seem to be consistent with a rights-based approach to development in terms of the strategic objectives for engagement.

The policy analysis of Danida strategies and programmes also show, however, that the challenges of implementing the programmes in a fragile state environment were devoted less attention in the documents available. For example, it was difficult to tell how the issues of state fragility influenced the conditions for promoting and protecting human rights. Given the fact that the fragile states agenda is based on the recognition that such situations represent extraordinary challenges and require different approaches, this is a

bit striking. Is it really “business as usual” to support the promotion and protection of human rights in states, which are characterized by weak and sometimes illegitimate state structures? Does it not require different approaches to and understandings of “what is the state”? Are the risks not higher? It was also difficult to determine what areas Denmark has chosen not to support, and why. To what extent did Denmark choose the ‘quick wins’ instead of addressing the structural causes to human rights violations and conflict?

These questions, some of which this desk study could not find adequate answers to, should be weighed up against the current human rights situation and the effects of the conflicts on the two situations. Information from human rights organizations, UN monitoring bodies, and other independent sources, often present a disturbing picture of the human rights situation that contradicts what donors are saying. Although assuming the role as critics is what constitutes their work, such critical reports present an alternative view on what donor interventions have succeeded in not doing. Both case studies concluded that there are still many human rights concerns in present-day Afghanistan and Nepal that represent obstacles to the establishment of inclusive, equal, and free societies. Whether such factors can be attributed to Denmark’s engagement is difficult to tell, but the case studies demonstrated that there are both challenges ahead and dilemmas, which can be useful to observe when formulating the policy framework to guide Denmark’s engagement in other fragile states and situations.

7.2. CHALLENGING ASSUMPTIONS AND RESPONDING TO DILEMMAS

To conclude on the links between the analytical frameworks and the findings in the case studies, this section returns to the initial reflections to challenge the assumptions raised and respond to the four research dilemmas from the field of concern. While the assumptions that were raised reflected the underlying notions in the dominant discourse of state fragility, the research dilemmas were raised as attempts to critically review these assumptions. Hence, the research dilemmas built on the initial curiosity and motivation for exploring the issues in the thesis, both from a theoretical and practical perspective. In addition to challenging underlying assumptions, this section therefore also reassesses the validity of the dilemmas as a self-reflection of the underlying motives for raising these questions.

7.1.1. REASSESSING THE ROLE OF STATE AND NON-STATE ACTORS IN FRAGILE STATES

In the field of concern, the two first research dilemmas concerned the role of the state and the role of non-state actors respectively. The first dilemma (a) asked how fragile can states ensure adequate promotion and protection of human rights, if the formal state institutions are so weak that they cannot fulfill their basic functions. The second dilemma (b) concerned the role of non-state actors, when the Government does not live up to its duties, and how donor governments would target non-state actors, vis-à-vis state actors. As it has turned out, the two dilemmas were in fact two sides of the same coin, and they are therefore dealt with jointly under this section.

The first dilemma was raised to challenge the underlying assumption of the OECD/DAC definition of fragile states, namely that one of the primary functions of the state is to protect human rights, although the state is characterized by its inability of undertaking such duties. The motivation for raising this dilemma was to explore if there was an in-built contradiction in the overall policy framework. According to the policy analyses of some of the main international donors on the policy arena, the state was considered the main driver of fragility and change in the development process. In other words, none of the donors considered the contradiction large enough to identify alternative structures or actors outside the state to undertake the role of a service-provider and duty-bearer, even in the transition period. In fact, none of the policy responses made any reflections on this dilemma, and its potential consequences on the planning and implementation of interventions.

From the perspective of international human rights law (IHRL), the founding principle is that the state has the primary responsibility to respect, protect and fulfill human rights. Therefore, the tendency in the fragile states debate to “bring back the state” is actually conducive to an approach, where the state is considered the primary duty-bearer of human rights. From this perspective, the state needs to be given this responsibility in the long term, despite the challenges in the short term. In the short term, there is recognition in IHRL that the lack of resources can impede the implementation of progressive rights. However, states are still obliged to refrain from interfering with rights and preventing others from interfering citizens’ rights. The limitation does therefore not arise when states are incapacitated to undertake this duty, but when they misuse their

powers. The applicability of a human rights framework should therefore be evaluated against the level of willingness and misuse of powers that states exercise.

After a closer look at Denmark's interventions in Afghanistan and Nepal, it is evident that the ideal of the state as a primary duty-bearer is challenged in fragile states, especially when the government is unwilling to live up to its obligations. The case studies also showed that the strategies and effects of Denmark's interventions differentiated greatly between the two countries.

In Afghanistan, the state-building agenda is largely driven by priorities and visions set by international donors, although the donors insist that the Government is put in the driver's seat of the country's development. Despite the Afghan Government's commitments in international agreements, its ability and willingness to live up to these high expectations and undertake the necessary reforms has been subject to international concern and criticism. In brief, Afghanistan is an example of the phenomenon that the high normative standards imposed on the state, coming from the ideals in the fields of human rights, state-building and development, create a gap between what is expected and what can be achieved in a fragile state.

In addition to supporting civil society organizations, Denmark has sought to promote human rights in Afghanistan by providing assistance to national elections, to a civil service reform, and to the AIHRC. Although these interventions have shown good and concrete results, the structural cause to violence, political instability and discrimination remains a major impediment to development, security and the realization of human rights in Afghanistan. Given the limited assistance Denmark provides it is understandable that not all sectors can be supported, but the risk is that if the structural problems continue to reinforce each other in a "vicious circle", the future of effects of donor interventions may not lead to an improved human rights situation altogether. Strengthening of the justice sector is therefore a crucial element in creating the foundation for the upholding of the rule of law in Afghanistan, and the recommendation to ensure that this sector comes on the right track should therefore not be underestimated.

In Nepal, Denmark's ability to adapt its responses to the changing situation when the illegitimacy of the Government was questionable in 2005-2006 was one of the main reasons why the interventions were so effective. While the end goal continued to be the building of a strong and effective state, alternative strategies were identified in the

medium term to respond to the immediate challenges in the transition phase. With the preparation of the Interim Strategy 2005-2006, Denmark invoked the principle that assistance to the people of Nepal could either go through non-state or state actors, as long as they stayed loyal to the mandate of providing basic services on an apolitical basis. Between the two cases, the Nepal Interim Strategy 2005-2006 represents one of the best examples of a pragmatic approach to state fragility. It identifies an alternative strategy to ensure that the objectives are met and even dares to raise some critical questions to assess what is realistic to expect given the circumstances. Together with the fact that Denmark stayed engaged during the conflict, Denmark's ability to work around the structures of the state and not necessarily through the state was a key to success in Nepal. It is noteworthy that this strategy, which adopts a much broader approach to tackle state fragility than the "normal" strategies, has been one of the most effective policy response in the two cases.

In sum, this points to some critical observations related to the policy responses to fragile states. The inadequacy of the policy frameworks is that they reflect the visions of what the state ought to look like, and not how they function in practice. The strong focus on the state as a main driver of change in the OECD/DAC definition of fragile states risks neglecting and undermining some of the essential elements of how donors best can make human rights 'work' in fragile states. To allow for more adequate and effective policy responses to state fragility, it would require a more pragmatic approach than the existing ones. And this is where the debate gets to the core of the dilemma; that changing the policy responses demands a change of mindsets in the development discourse of how best to intervene in fragile states. Or as a commentator said during a Danish hearing on Denmark's engagement in fragile states: Are we ready to accept an alternative development model of the state, and can we accept new rules of the game? Are there alternative organization forms and models of democracy to be considered? Who provide security in fragile states, and who gets to do it?⁶⁸

Central to the debate is how donors perceive the role of the state vis-à-vis non-state actors in fragile states. The lesson learnt is that in order to meet the objectives of promoting and protecting human rights in a fragile states environment, the policy responses should allow for a more inclusive and flexible approach and recognize that the

⁶⁸ This argument was made by Nanna Hvidt, Director of DIIS, at the public Danish hearing on Denmark's engagement in fragile states on 25 March 2008, which was organized by the Danish MFA.

most efficient and relevant ways to intervene is not necessarily through the state, at least in the medium term. The two independent studies by NCG and DIIS, which have been commissioned by the Danish MFA to provide inputs to the process of formulating the Danish guiding principles, make different assessments of this dilemma. The NCG review, which is the basis for the Danish MFA's evaluation of Denmark's engagement in three fragile states and situations, does not go quite that far in its conclusions on the contributing factors to Denmark's interventions. The synthesis report highlights the flexibility and long-term engagement of Danish aid in the three countries as best practice examples, but the conclusion does not as such lead to the recognition that the focus on the state is not always relevant as a primary duty-bearer in fragile states, and that policy responses should reflect this accordingly.

The DIIS study, however, makes eleven recommendations, out of which two recommendations point to a broader and more inclusive understanding of engagement and the definition of fragile states and situations that "*does not exclude or ignore the role of non-state and informal actors*".⁶⁹ If the Danish MFA accepts this recommendation and opens up to a broader interpretation of how to engage in fragile states, while still aiming at the promotion and protection of human rights, this could set a first example of such an approach on the policy arena in the fragile states debate.

The next question is then if it is unproblematic to work outside the state instead of through the state. Critics have pointed out three concerns: first, that the support to non-state actors could risk undermining the state-building process; second, that non-state actors do not always work in conformity with human rights standards, and; third, that they can act as "spoilers" in the development process. The case studies show that it is not a policy choice without problems; it can both have positive and negative effects. The basic principle in the Interim Strategy 2005-2006 for Nepal was that support could be given to state and well as non-state actors. Although this is a good starting point, each assessment has to be based on a case-by-case evaluation and a comprehensive analysis of what and who can undermine the process.

In Nepal, the risk of supporting marginalized groups is that it may create bigger divides between some groups and individuals, especially now that such groups have been politically empowered to take seats in the Parliament. There are no definitive guarantees

⁶⁹ DIIS study on support to fragile states (2008), recommendation no. 2, p. 31

that such support leads to more inclusion, greater distribution, and less discrimination. In Afghanistan, the exclusion of *de facto* power holders from the process can also have a counterproductive effect on the initiatives to rebuild the Afghan state. This may present donors with the dilemma of compromising some of the principles to achieve the end goals. Some donors have had to cooperate with moderate rebel groups in rural areas, in order to bridge the gap between those who hold power and those who do not. Besides, in the process of establishing new state structures, former military commanders now hold high political positions in the central and local governing bodies. These are examples of attempts to overcome the gap between society, which is still governed by traditions and norms, and a “new state” based on international founding principles. However, those who have been complicit in past and present crimes should be put to justice, and this is where the diplomatic efforts of donor governments, both as single acts but most importantly as a unified international pressure, should complement the development interventions. It will be interesting how Denmark takes up its commitment to a more “active foreign policy” in the Afghanistan Strategy 2008-2012 to enhance the Government’s compliance with IHRL obligations.

7.1.2. PURSUING A RIGHTS-BASED APPROACH IN CONFLICT-AFFECTED STATES

The third dilemma (c) concerned whether a human rights-based approach (HRCA) can be operational and effective in fragile states affected by severe conflict. The reason for raising this dilemma was to explore if it was problematic to pursue a HRBA in a conflict-affected environment, where the basic conditions for promoting rights were maybe not present. A second reason was to explore if there was a conflict between promoting a justice and a peace agenda at the same time, and whether donors had to choose one over the other, as it is often depicted.

Based on the findings in the two cases it does not seem as if there has been a conflict between these objectives; on the contrary, the efforts were often seen as mutually reinforcing. Moreover, it seems as if working in fragile situations has compelled Denmark to integrate the different fields of development, conflict, human rights and state-building to comprehensively address the problems it was faced with in fragile situations. With this said, the limited scope of the studies did not allow for an in-depth assessment of possible trade-offs between objectives and interventions. Nor did it assess to what extent there was

a conflict between meeting different needs, and how Denmark was forced to prioritize and sequence its activities according to the strategic objectives.

Another aspect of the dilemma is linked to the applicability of existing tools and mechanisms to respond to issues of fragility. The fragile states agenda builds on the assumption that new mechanisms need to be taken into use. But do they? And to what extent does the fragile state agenda make use of pre-generated knowledge from other fields and existing tools? The lesson learnt from the peace-building tradition is that many tools and guidelines have already been developed, and they can be useful instruments for donors in fragile situations. However, according to some critics, the international debate about fragile states has overlooked that there are in fact tools available from the fields of conflict management and peace-building. Besides, a different set of tools is required depending on the different stages of conflict, and a proper conflict analyses is therefore needed to appropriately understand and address the structural causes to the conflict.

The case studies show that Denmark's methods and approaches differed considerably in the two countries. In Nepal, Denmark was able to shift strategies quite rapidly when the political situation changed in 2005. This Interim Strategy reassessed the country situation and adjusted the channels of engagement accordingly. In this situation, Denmark also focused on these underlying causes and patterns of discrimination based on a comprehensive analysis of the country situation and power interests between different groups, such as the Dalit Support programme component. The impartiality and long-term engagement gave Denmark a position as a credible and trustworthy partner in the transition process.

Acting in a post-conflict situation in Afghanistan has required another approach than acting in the middle of the Nepalese crisis in 2005. Since 2001, the ongoing conflict, affecting some areas more than others, has posed an extraordinary challenge to Danish interventions from the beginning. The complexity of the situation makes it even more important to undertake a comprehensive conflict analysis to achieve the intended objectives. Yet, it does not appear as if a conflict assessment was made prior to initial stage of engagement in 2001-2005. At least, such an analysis does not seem publicly available on the official websites, even though it is equally relevant today. Denmark's most recent policy response in Afghanistan, the 2008-2012 Strategy, considers Denmark's military and civil engagement as complimentary to the peace and development process. However, there is no conflict analysis in the strategy as such. Whether this strategy provides an adequate

framework for addressing the structural causes to bring more balance into the society is for the future to show.

The fact that Denmark has pursued different approaches in the two cases is not in itself a critique, because each response must be seen in its own context, and it depends on the specific situation. This explains why the Danish guiding principles are not intended as a practical guide for programming interventions. However, the case studies show that a conflict management assessment is not systematically undertaken prior to the engagement in each country, although such tools already exist and they can help point out the structural problems and power relations in the country.

7.1.3. THE ADEQUACY OF THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK IN FRAGILE STATES

The fourth research dilemma (d) concerned to what extent existing human rights mechanisms can help prevent and address state fragility. The motivation for exploring this dilemma was to examine how the international human rights framework can facilitate domestic processes of change in fragile states, and whether it is in fact relevant in this context. Despite the HRBA to development, the use of the actual mechanisms is often neglected in the debate, which minimizes the potential effect this framework may have on a fragile situation. Whether this is a result of the lack of awareness, lack of resources, or lack of trust in the system is difficult to say.

To many, the human rights monitoring bodies probably seem as mechanisms, which have no real effect on the ground. For some of those living in Afghanistan and Nepal, the talk of human rights might seem empty. While it is true that the effects of the international framework cannot be felt directly by people on the ground, it does not mean that it is irrelevant. The more commitment that governments and civil society show, the more effect it is likely to have. Opportunities present themselves both to affected governments that need expertise and resources, to civil society actors who need new openings and venues to make their claims heard, and to donor governments that want to hold the affected government and other states accountable to their responsibilities and obligations.

The monitoring mechanisms under the UN human rights bodies, such as the UN Treaty Bodies and the Human Rights Council, are often criticized for being ineffective and nonresponsive to national situations and human rights concerns. However, in both cases

the appropriation of human rights has served as a legitimate foundation for a democratic state, which is obliged to comply with fundamental rights and freedoms to improve the lives of its citizens. As such, it has acted as a normative basis for laying the state's foundation, and to supporting the claims of those who were oppressed or marginalized. The difference has been the degree of involvement of national actors and international actors to create the conditions for change.

In Nepal, the monitoring mechanisms have been successful in supporting the national claims for human rights change. National actors and marginalized groups have used the treaty bodies, the former Commission on Human Rights, and the OHCHR as channels to raise their concerns and attract international attention to the national problems of discrimination, repression and impunity. Besides, the constitutional process leading up in Nepal is also a result of the advocacy work undertaken by national activists, together with international pressure on the Government to adopt an inclusive approach.

In Afghanistan, international human rights standards were incorporated as a foundation for the Afghan state, together with Islamic principles. Nevertheless, there has been a negligence of human rights mechanisms as a result from the lack of resources, expertise and a collective voice in civil society and in the state. The many years of violent conflict and political instability has not allowed a culture of human rights to develop to the same degree as in Nepal. Initiatives like the Human Rights Treaty Reporting Project established by the UNDP may be a catalyst to promote such a culture in Afghanistan. The Universal Periodic Reviews of Afghanistan in 2009 and Nepal in 2011 will be a venue for national and international actors to try to come together in a constructive dialogue on how to overcome some of the pressing challenges in both countries.

With this said, the adequacy of the international human rights framework depends first and foremost on the willingness of the government to engage. Weighed against the OECD/DAC Principles, this is where the definition of fragile states as being either "incapable" or "unwilling" to provide basic functions is not very useful. The inadequacy of this policy framework is that it comprises a very broad category of states, including those that are authoritarian and repressive regimes. Although the capacity and resources play a vital role in determining whether basic needs are met and equal opportunities exist, the most important aspect is that the state is committed to promote change. Thus, states that do not accept the basic premise of international cooperation between states are not likely to be responsive to international pressure in forums like the

EU and the UN. Since this thesis has mainly focused on states that incapacitated but willing, this dilemma has not come to the forefront in this debate. Yet, this is an important aspect to bring in when evaluating the adequacy of applying a human rights framework as a basis for engagement in fragile states.

To successfully invoke human rights in fragile states, there needs to be local resonance and acceptance of this approach. Or, as argued at a Danish public debate about fragile states and state-building, human rights thinking should be imposed with varying kind of strengths according to the specific situation.⁷⁰ Hence, the condition for promoting human rights change is that such claims are supported nationally. This view is supported by Risse and Sikkink (1999) who introduce the “boomerang effect” to explain the causal mechanisms by which international norms affect domestic change. In the case of Nepal, it has been argued that the simultaneous pressure exercised by international and national actors from “above” and “below” was one of the key push factors for the progressive steps towards democracy. As a response to this pressure, the Government accepted the field presence of the OHCHR. In Afghanistan, the AIHRC has played a similar role in monitoring human rights and bringing visibility to human rights in the country. However, the effectiveness of both institutions is little worth, if the recommendations and proposals are not followed up and implemented by the two governments.

This is where the need for exercising diplomatic pressure and engaging the partners in a human rights dialogue comes into play. In Nepal, Denmark used the diplomatic channels to put pressure on the Government and cooperate with like-minded partners in achieving a peaceful resolution to the conflict. This practice has been institutionalized in the Afghanistan Strategy 2008-2012, which is an ambitious example of how Denmark intends to use political and diplomatic instruments to enhance human rights protection in a fragile environment. Despite Denmark’s relatively limited role as a small player on the international scene, this shows how the Danish Government is trying to stand out as an advocate for promoting human rights awareness in the fragile states debate and on the international policy arena.

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⁷⁰ This argument was made by Hans Otto Sano, the former head of the research department at DIHR, during a Danish public debate about state fragility organized by the Danish MFA and DIHR on 22 April 2008.

The policy responses and interventions in Afghanistan and Nepal provide a useful insight into how Denmark as a donor government has used various strategies and methods to achieve the objective of promoting stable and democratic societies in environments influenced by different levels of fragility. As such, the case studies do not give the impression that making human rights a basis for Denmark's engagement in fragile states and situation represent a new strategic shift in Danish aid. However, it shows that with this initiative, the Danish MFA is politicizing the debate by explicitly advocating for the standpoint that the normative standards imposed by human rights should provide the framework for development interventions in fragile states. Thus, while the debate about the perceived links about human rights and fragile states may not be groundbreaking on the policy arena, the declared politicization of the debate by Denmark as a "human rights activist" in the debate is.

CONCLUSION

Based on the research purpose to illustrate emerging trends and tendencies in the international debate about fragile states from a human rights perspective, the thesis set out to analyze how donors can help to improve the human rights situation in fragile states, with a point of departure in the following problem statement:

How can Denmark as a donor government best contribute to enhanced human rights protection in fragile states, if the state as a duty-bearer is either incapable or unwilling to fulfill its basic functions in this field?

The conclusion is that as a basic principle in international human rights law the promotion and protection of fragile states is the primary responsibility of the state, regardless of how fragile the state is. However, the degree of the state's capacity and willingness determines to what extent the state is able to live up to its role as a duty-bearer. As a donor government, which considers human rights to be a foundation for engagement in fragile states, the role of Denmark is therefore two-fold. Nationally, Denmark can support the conditions for enhanced protection by strengthening the state's capacity to provide basic services and safeguard human rights, and by supporting constructive non-state forces in establishing a strong state-society relationship building on mutual responsibilities and demands. Internationally, Denmark can contribute to holding affected governments accountable to their international obligations and responsibilities by making active use of diplomatic instruments in international forums. It can also encourage and capacitate governments to make use of the existing human rights mechanisms as a way to engage in a dialogue about how to tackle major human rights concerns. Nevertheless, the case studies have illustrated that if the state is unwilling to undertake such duties, alternative strategies have to be identified in order to effectively achieve the objectives of engagement. Moreover, for a human rights situation to change effectively, it requires pressure from "above" and "below" in order to create the right conditions for overcoming the challenges in the domestic sphere.

Two critical observations can be drawn from the findings in the thesis. The first observation is based on the comparison between the analytical frameworks in Part One and the links between policy and practice in Part Two, which suggests that the overall

policy frameworks differ considerably from the implementation of the policies. In line with many other international donors, Denmark assumes in its policies that the way to achieve the objectives of promoting and protecting human rights is mainly to work *through* the state. Nonetheless, it has turned out that in some cases the most effective way was to work *around* it, due to its fragility. Hence, the underlying assumption that the state should be seen as a main driver of change in fragile states, most explicitly recognized in the OECD/DAC Principles for International Engagement in Fragile States, risks undermining how human rights are protected and fulfilled *de facto* in fragile states. This observation points to need for adopting a more pragmatic definition of fragile states, and for promoting more inclusive policy responses to state fragility. This would allow for a flexible approach, which includes the option of working around or through the state depending on the evolving situation, at least in the medium term.

The second observation relates to the international call by the Danish Ministry of Foreign Affairs to link the fragile states agenda with a normative human rights framework. Weighed against Denmark's interventions in Afghanistan and Nepal, and given the fact that human rights is considered a cross-cutting issue in all Danish development interventions, this does not represent a strategic shift in Denmark's development assistance as such. However, Denmark's promotion of the merging of the fragile states agenda with human rights has made the international debate about fragile states more value-loaded and political. This is not to say that the fragile states agenda was not driven by values and ideals about what the state ought to look like before, especially as identified the state-building agenda. But compared to other international donors, which have not adopted the same "common-sense" approach to making human rights an indicator for state fragility in their policies, this stands out as an explicit attempt to readjust Denmark's position in the international debate as an advocate for human rights.

Thus, while this debate may not be entirely new on the policy arena in substance, it has called for an actualization of why human rights matter in the fragile states debate. This may potentially have a spin-off effect on the way that international donors perceive their own role in fragile states, and on the way that they choose to respond to human rights problems in fragile states. For the people living in fragile states, however, what matters is whether the high-level political attention is transformed into concerted efforts to tackle the human rights problems, which continue to influence the every-day lives of millions worldwide.

CONTEXTUALIZING REMARKS

The conclusions in this thesis point to issues and dilemmas relevant to those fragile states, which have shown a degree of willingness to undertake the necessary steps to improve the human rights situation for their citizens. But to what extent are the guiding principles and policy frameworks applicable to states that fall outside this category? Will Denmark's role as an advocate for human rights make a difference in Sudan and Zimbabwe? Or is the debate about linking state fragility with human rights a way of separating those states that agree to donors' demands for a shared responsibility to protect human rights, from those that don't?

While this thesis has not dealt with the issue of "unwilling states", there are different views on how to interpret the interventionist role of international donors in such situations. Despite the intentions in the fragile states debate of redirecting development assistance to "poor performers" and "aid orphans", there is still reluctance in the donor community to intervene in some of repressive and authoritarian states, which represent the worst human rights abusers in the world. The dilemma is that when donors intervene in such states, such as Denmark's engagement in Sudan and Zimbabwe, the applicability of existing frameworks – and the conclusions in this thesis – has limited value, if there is political opposition to securing freedom and enforcing the rule of law. Moreover, donors are forced compromise the principles of good governance and anti-corruption policies, which raises the question of the political correctness of engaging in such situations.

However, according to Diamond (2008) and Ignatieff (2002), international attention should be centered on weak and chaotic states, as opposed to repressive and tyrannical states. Diamond argues that the world is experiencing a democratic recession after the most recent democratic wave in the late 1990s, and that international donors should therefore focus on getting "predatory" states back on track to revert this tendency (Diamond, 2008:42). Ignatieff (2002) observes that international attention has shifted from the strong and oppressive states to the weak or collapsing states, where state power is not too much, but too little (*ibid*:118-199). He argues that the human rights agenda today is remarkably different from the Cold War era, where human rights were considered subordinate to state sovereignty and human rights performance was not seen as a precondition for state legitimacy (Ignatieff, 2002:116).

While Diamond and Ignatieff agree on the fact that international donors should support the weaker states, instead of letting the state “roll back”, they disagree on how this should best be done. Diamond speaks in favor of returning to the custom of attaching conditionality and aid selectivity to interventions in such states (Diamond, 2008:47). However, after years of trying to revert the image that donors impose demands and criteria on recipient countries, this approach is likely to be unpopular among donors and especially partner governments. Ignatieff argues that with the “responsibility to protect” doctrine, the international community not only has the responsibility to intervene, but also to prevent and follow through after their interventions. Nevertheless, as he points out, the international commitment to this doctrine is limited to those states that directly threaten the national interests and security of powerful states (*ibid*:119). Either way, they both argue that the commitment needs to come from the state itself by strengthening the social contract between citizens and rulers, otherwise there will be no change. As this thesis has demonstrated, this position is also held by donors engaging in fragile states.

Even so, there is still resistance to accept fully that the norm-setting agenda of human rights should be linked closely to the fragile states agenda. Without the political will, things are not likely to change in practice. If the international community is to succeed better in this field, it is a therefore precondition that there is commitment to a serious reform agenda both by international donors and affected states. Moreover, a deeper understanding of how to tackle the dilemmas of promoting and protecting human rights in fragile states is needed. This would require a more comprehensive study of how to operationalize the strategic objectives of promoting and protecting human rights, given the changing circumstances that challenge those working in fragile states and situations. It would also require more research and empirical data to support the claims that human rights matters as a cause and symptom of state fragility, and recognition in the research community of how the fields of human rights, development, peace-building and state-building can contribute to the development of a complimentary approach to state fragility.

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ANNEX 4: EMPHASIS ON HUMAN RIGHTS IN DONOR POLICIES ON FRAGILE STATES

Development agency	Assessment of definitions of fragile states and policies from a human rights perspective	
<p>OECD/DAC Principles for Good International Engagement (2007a)</p>	<p>Assessment:</p> <ul style="list-style-type: none"> • <i>The OECD/DAC Principles make explicit references to human rights in the OECD/DAC principles no. 2, 3 and 6.</i> • <i>The rationale for engaging in fragile states is reasoning with fragile states as concerns to international security and crime; building effective, legitimate and resilient state institutions; preventing conflict; enhancing aid effectiveness; and reducing poverty (MDGs).</i> • <i>State-building is identified as a central objective for engagement in fragile states.</i> 	
	<p>Definition of fragile states</p> <p><i>“States are fragile when state structures lack political will and/or capacity to provide the basic functions needed for poverty reduction, development and to safeguard the security and human rights of their populations.”</i></p> <p><i>Recognize the different constraints of capacity, political will and legitimacy, and the differences between: (i) post-conflict/crisis or political transition situations; (ii) deteriorating governance environments; (iii) gradual improvement, and; (iv) prolonged crisis or impasse.</i></p>	<p>Principles</p> <p>Principle 2: Do no harm</p> <p>International interventions can inadvertently create societal divisions and worsen corruption and abuse, if they are not based on strong conflict and governance analysis, and designed with appropriate safeguards. In each case, international decisions to suspend or continue aid-financed activities following serious human rights violations must be carefully judged for their impact on domestic reform, conflict, poverty and insecurity.</p> <p>Principle 3: State building</p> <p>International engagement should focus on supporting the legitimacy and accountability of states by addressing issues of democratic governance, human rights, civil society engagement and peace building.</p> <p>Principle 6: Non-discrimination</p> <p>International interventions should consistently promote gender equity, social inclusion and human rights (as a basis for inclusive and hstable societies)</p>
	<p>State-building is the central objective</p> <p>Two main areas should be in focus: first, to support the legitimacy and accountability of states by addressing issues of democratic governance, human rights, civil society engagement and peacebuilding and second, to strengthen the capability of states to fulfill their core functions in order to reduce poverty.</p> <p>Priority functions include ensuring security and justice; mobilizing revenue; establishing an enabling environment for basic service delivery; strong economic performance and employment generation.</p>	

<p>WORLD BANK</p> <p>Operational Approaches and Financing in Fragile States (IDA-15), World Bank (2007)</p>	<p><u>Assessment</u></p> <ul style="list-style-type: none"> • <i>The World Bank does not make explicit references to human rights in its policy documents related to fragile states, and does not have an exact definition but aligns itself with the OECD/DAC definition.</i> • <i>In the criteria against which the LICUS countries are grouped, the closest link to human rights is “policies for social inclusion and equity”.</i> • <i>The rationale for engaging in fragile states is improving aid effectiveness; reducing poverty (MDGs); and strengthening weak state institutions.</i> • <i>State-building is identified as the central objective for engagement in fragile states.</i> <p><u>Definition of fragile states</u></p> <p><i>Fragile states is the term used for countries facing particularly severe development challenges such as weak institutional capacity, poor governance, political instability, and frequently on-going violence or the legacy effects of past severe conflict.</i></p> <p><u>Indicators of fragility (index of LICUS countries)</u></p> <p>The Low Income Countries Under Stress (LICUS) are rated against a set of 16 criteria grouped in four clusters:</p> <ul style="list-style-type: none"> (a) economic management; (b) structural policies; (c) policies for social inclusion and equity; and (d) public sector management and institutions.
<p>DFID</p> <p>Why we need to work more effectively in fragile states (2005)</p>	<p><u>Assessment:</u></p> <ul style="list-style-type: none"> • <i>The main focus of DFID’s policy is on poverty reduction. There are no explicit references to human rights in the definition or the policy, but to supporting the poorest in sustaining themselves.</i> • <i>The rationale for engaging in fragile states is poverty reduction (MDGs), enhancing aid effectiveness and building effective political leadership and “inclusive” institutions.</i> • <i>Governance reforms, security sector reforms, public financial management and improving service delivery are identified as priorities for engagement in fragile states.</i> <p><u>Definition of fragile states</u></p> <p><i>DFID’s working definition of fragile states cover those where the government cannot or will not deliver core functions to the majority of its people, including the poor. The most important functions of the state for poverty reduction are territorial control, safety and security, capacity to manage public resources, delivery of basic services, and the ability to protect and support the ways in which the poorest people sustain themselves. DFID does not limit its definition of fragile states to those affected by conflict.</i></p> <p>DFID has developed a proxy list of fragile states building on the World Bank’s CPIA ratings with additional information from UNDP human development indicators, FAO and World Development Indicators.</p>

<p>USAID Fragile States Strategy, USAID, January 2005</p>	<p><u>Assessment:</u></p> <ul style="list-style-type: none"> • <i>USAID's definition includes both failing, failed and recovering states and between the states that are vulnerable and already in crisis.</i> • <i>There is a stronger focus on the regional and global reach of state fragility</i> • <i>The rationale for engaging in fragile states is to prevent them from posing threats to US national security; enhancing aid effectiveness; and eliminating human suffering.</i>
	<p><u>Definition of fragile states</u></p> <p>"USAID uses the term fragile to refer generally to a broad range of failing, failed, and recovering states. However, the distinction among them is not always clear in practice, as fragile states rarely travel a predictable path of failure and recovery, and the labels may mask substate and regional conditions (insurgencies, factors, etc.) that may be important factors in conflict and fragility. It is more important to understanding how far and quickly a country is moving from or toward stability than it is to categorize a state failed or not. Therefore , the strategy distinguishes between fragile states that are vulnerable from those that are already in crisis."</p> <p>The key factors for addressing state fragility are:</p> <ul style="list-style-type: none"> • Addressing state fragility is a US national security objective after 9/11 as a response to the global reach of state failure • Fragile states pose a special challenge because they are frequently unable to achieve any forward development momentum and can generate enormous human suffering • Foreign assistance needs to be more effectively tailored to the context and effectiveness should be maximized

