BUILDING INSTITUTIONS AFTER CONFLICT
THE INTERNATIONAL PEACE ACADEMY'S STATE-BUILDING PROJECT
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SECTION I: INTRODUCTION

Purpose
This paper describes some of the problems encountered in previous post-conflict institution-building efforts and attempts to lay out elements of a different approach. Section I introduces the centrality of state institutions to sustained post-conflict recovery. Section II lays out four particular problems encountered in previous reconstruction and recovery efforts. Section III discusses remedies for these problems; Section IV concludes by laying out practical steps to strengthen the focus on institution-building in post-conflict recovery.

The centrality of institutions
Although much of the current international aid architecture was created to deal with reconstruction needs in the aftermath of WWII, conflict and post-conflict reconstruction were largely peripheral issues to development discourse in the 1950s to 1980s. The 1990s saw a number of high profile post-conflict reconstruction cases - including the West Bank and Gaza, Bosnia and Herzegovina, Haiti, Kosovo, Sierra Leone and East Timor – where political imperatives led to a renewed high level of international support for post conflict reconstruction. Early thinking amongst development policymakers when faced with this demand for reconstruction assistance tended to focus on initiatives to consolidate peace and achieve physical reconstruction – just as the Marshall Plan in post-WW2 Europe had done.

Yet war not only demolishes schools and bridges: it destroys institutions of all kinds. It can fatally weaken central government institutions through insecurity, which keeps public services from operating, and through economic pressures that distort or stop payment of civil servants or the supply of basic goods. It can destroy social capital and local institutions through population displacement, widening ethnic divides, or communal conflicts. It can create a culture of impunity and breakdown in the rule of law. And it may spur large-scale migration of skilled personnel abroad, which is difficult to reverse when peace is finally won.

Furthermore, in the conflicts of the 1980s and 90s, this damage occurred to institutions which were relatively weak or new, in marked contrast to WWII Europe and Japan where a long tradition of public administration existed. In the examples given above, either peak-level institutions common to nation states had never existed, or had been distorted and weakened by decades of conflict and poor governance. Early reconstruction initiatives paid relatively little attention to this institutional vulnerability: “rebuilding institutional infrastructure shattered during conflict is as important, if not more important, as physical infrastructure… yet this is an areas which has largely been overlooked by the international community in the past”.

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1 Kumar, Krishna. (1997), Rebuilding Societies after Civil War: Critical Roles for International Assistance, Boulder, Colo.: Lynne Rienner.
Recent research has demonstrated that many post-conflict recovery efforts are not sustained – over 50% of “post-conflict” countries experience a return to conflict within ten years.\(^2\) This has led to renewed attention to the role of institution-building in preventing the renewal of conflict,\(^3\) reflecting the broader shift in the development community towards viewing governance and institutions as central to change in all developing societies. Effective institutions are now widely viewed as critical to address both the “capacity deficit” and “legitimacy deficit”\(^4\) faced by fragile states – since only strong national institutions can ensure that the state is associated with provision of positive services to the population, and can be held to account by its citizens.

Recognition of the problem, however, has not yet led to proven solutions. Institution-building in post-conflict societies has had at best a mixed record. A recent study of four internationally-supported post-conflict operations highlighted the persistence of key weaknesses in managing post-conflict state-building, in particular: lack of comprehensive planning of public administration initiatives; weak sequencing of institution building; failure to make rhetoric on capacity building a reality on the ground; and continued failure to plan and deliver effective rule of law.\(^5\) Within the World Bank’s Country Policy and Institutional Assessment rating system, of nine countries classified as post-conflict since 1999, none have yet attained a “satisfactory” rating.

**SECTION II: PROBLEMS ENCOUNTERED**

**Four particular problems**

Some overarching difficulties stand out in post-conflict reconstruction experiences. First, many reconstruction efforts have been insufficiently informed by what institutions already exist, and so have tended to reinvent the wheel (or worse, invent an extra wheel) rather than build on the pre-existing institutional architecture. Second, efforts to support institution-building have typically been quite diffuse, spread across all sectors and all areas of the state. Third, there has been little attention to the relation between transitional oversight and delivery mechanisms and long-term national institutions. Last, donors’ own good intentions to support rapid recovery after a conflict have all too often unintentionally undermined long-term institution-building, by sapping the skills base available to national institutions and bypassing national decision-making structures.

*The fallacy of “terra nullis”*

Newspaper reports on reconstruction operations often include comments from international representatives – and sometimes national leadership – to the effect that “we were left with nothing” or “we had to start from zero”. While it is certainly true that conflicts such as Rwanda, Afghanistan, or Timor-Leste produced near-total state collapse and immense physical and human destruction, this does not mean that these countries were an institutional blank slate. Community and traditional structures

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\(^3\) Kaufmann, D. (2004), “Governance, Security and Development: an initial exploration”, *Background paper for workshop at Rand Corporation*


are often resilient to conflict, and some institutions – such as resistance structures – may actually be brought into being and strengthened by conflict. Basic administrative practices continue in the minds of current or ex-civil servants even where structures have ceased to function and paper records have been lost.\(^6\)

Why has it often proven so difficult to identify and make use of this existing institutional capacity? Part of the problem may be the change of political and decision-making actors. The end of a conflict often brings to power a new political leadership who may be unaware of prior practice and the capacities of existing systems and personnel – in additional to viewing all previous institutions as tainted by the previous regime. Diplomatic and donor representation also frequently changes at the beginning of a post-conflict operation. Too few international staff and policy makers have knowledge of the strengths and weaknesses of the institutions which existed prior to their arrival. Hence the temptation to treat post-conflict countries as a “terra nullis” where no positive institutional practices existed before the onset of peace.

Prior practices may indeed be imperfect: corruption and bias in the public administration or abuse by political and security sector institutions may have been a cause of the original conflict. Yet many existing practices are likely to be sound and can be quickly restored to working order because they are familiar to national staff: it is much more difficult to introduce entirely new models. Existing practices are also likely to be well adapted to constraints in communications, logistics and staff skills. Even where prior institutional practice is deeply flawed, new institutional initiatives will need to take account of it because it can act as an implicit barrier to reform: reform efforts need to understand the previous models they are acting upon to identify which changes can be made relatively easily and which will face more resistance.

**Lack of prioritization**

Even before institution-building came to the fore in discussions of post-conflict recovery, there was little agreement as to what sequence should be followed in addressing the range of urgent needs present in post-conflict situations. Add the relatively new concern for state-building or institution building, and the set of priorities that donors and fledgling governments need to act upon in fragile post-conflict settings, becomes more complex, and more contested. The sphere of institution-building brings its own set of choices and trade-offs. Which institutions matter most for stability and recovery and where do we start when resource are scarce but we need everything at once: a reformed security architecture to prevent recurrent instability?; effective rule of law to arrest and punish criminal offenders?; anti-corruption initiatives to restore credibility in the eyes of the population and secure new investor confidence?; functional public services to deliver education, health and infrastructure?; decentralized systems when a history of centralized government has been at the root of conflict?

This lack of consensus over priorities has led to highly fragmented institution-building programs. A scatter-gun approach may not achieve the critical mass necessary: when faced with institution-building challenges as difficult as security sector reform in the Congo or restitution of accountable public financial management in Afghanistan: focusing policy dialogue and financial resources on a narrower set of priorities may be necessary to achieve a lasting impact. A fragmented approach may also have

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the unintended consequence of weakening government capacity, by requiring a small pool of skilled
government counterparts to devote a large amount of their time to the implementation and reporting of
many small institution-building efforts.

**Lack of a clear approach to the use of transitional institutions**

Nascent national institutions in the aftermath of a conflict often lack the capacity to deliver results and
ensure good governance in critical functions of the state such as the justice and security sectors, basic
services, or the management of public finances and natural resource revenues. Because of this
institutional deficit, one of the most important characteristics of post-conflict institutional
arrangements is that they tend to be transitional in nature: for a variety of reasons, state institutions are
not ready to take on the full range of functions and outputs which they will fulfill in the longer term, or
a specific transitional institutional configuration is necessary to address the political legacy of conflict.
Two types of transitional institutional arrangements are generally present in post-conflict situations:

- **De jure.** The post-conflict settlement itself may specify specific institutional arrangements to
  address the legacy of conflict, such as the formation of a transitional government prior to the
  conduct of elections; special agencies to address finite tasks such as demobilization or truth and
  reconciliation; or the presence of an external peace-keeping operation to monitor or enforce a
  ceasefire, or to prepare initial elections (in extreme cases such as Kosovo or Timor, to take on a
  transitional administrative role).

- **De facto.** Humanitarian needs and lack of capacity in state institutions may have already led to
  a situation where basic services (social protection, water, education, health) are being provided
  by international agencies, NGOs or faith-based organizations. The state may not have the
capacity to take on all of these functions immediately after the signing of a peace accord.

Transitional institutional arrangements can draw on both national and international capacity and can
substitute for some of the *core executive and delivery functions* of the state, or focus only on the
*oversight* of existing state systems. Some transitional arrangements directly affect the configuration of
a core government or state institution (for example, the establishment of a transitional government)
while others supplement state functions with non-state capacity for a transitional period (for example,
large scale NGO service provision). Table 1 overleaf provides some examples of transitional
institutional arrangements which have been used in the past in post-conflict countries.
Table 1: Transitional institutions

<table>
<thead>
<tr>
<th></th>
<th>Regular country systems</th>
<th>Transitional institutional arrangements using national capacity</th>
<th>Transitional institutional arrangements using international capacity</th>
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<tbody>
<tr>
<td><strong>Delivery</strong></td>
<td>• Elected executive</td>
<td>• National transitional government</td>
<td>• International transitional administration</td>
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<tr>
<td></td>
<td>• Core government fiduciary systems</td>
<td>• Special agencies for transitional tasks such as truth</td>
<td>• International agency or NGO provision of health or education</td>
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<tr>
<td></td>
<td>• Public health and education systems</td>
<td>and reconciliation or demobilization</td>
<td>services</td>
</tr>
<tr>
<td></td>
<td>• Local government provision of local services and infrastructure</td>
<td>• Autonomous agencies or project impl. units employing national</td>
<td>• International procurement or financial management agencies</td>
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<td></td>
<td></td>
<td>staff outside regular salary scales and treasury systems</td>
<td>• International staff in line management or advisory roles</td>
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<tr>
<td></td>
<td></td>
<td>• NGO or faith-based provision of education or health services</td>
<td>• Project implementation units using international capacity</td>
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<tr>
<td></td>
<td></td>
<td>• Community-driven provision of local services or infrastructure prior to the establishment of local government structures</td>
<td>• International management contracts for utilities or facilities management</td>
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<tr>
<td><strong>Oversight</strong></td>
<td>• Parliamentary oversight</td>
<td>• Civil society oversight committees</td>
<td>• Mixed international-national oversight committees</td>
</tr>
<tr>
<td></td>
<td>• Auditor-General, audit office or ombudsman</td>
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<td>• International audit</td>
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Post-conflict situations often do require transitional institutional arrangements – either to create rapid improvements in the perceived political neutrality and governance of the state, or because humanitarian and reconstruction needs are broad and immediate, and existing capacity within government structures is insufficient to take on all the core functions of government at once. Transitional institutions and capacity, however, have often arisen in an ad hoc manner and proven difficult to translate into longer term national institution-building.

At the highest level, the incentives and political dynamics surrounding transitional governments have at times mitigated against their ability to lead a strong institution-building agenda. At a sectoral level, difficulties have emerged in transferring responsibilities to national actors: NGOs run the bulk of post-conflict health and education services, for example, but national accountability is lacking and services collapse when international funding is withdrawn; international advisors generate all the documentation which is issued by their national “bosses”, but fail to put in place a long-term system managed with confidence by their national counterparts.

This has generally been perceived as a failure of “skills transfer”, and the incentives for skills transfer certainly play a part: it may also represent an inappropriate choice of where international models can be imported.\(^7\) International agencies and staff tend to bring with them institutional models from other

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\(^7\) Fukuyama, 2004, building on an earlier paper by Woolcock and Pritchett: “There are some high-specificity activities with low transaction volumes like central banking that do not permit a high degree of variance in institutional structure or approach. These are the areas of public administration most susceptible to technocratic reform, where “ten bright technocrats” can be air-dropped into a developing country and bring about massive changes for the better. By contrast, the hardest areas to reform are the low specificity activities with high transaction volumes like education. There is no
countries: while in some areas of public sector activity these models may be relatively easily transferable to a new setting, in others local social and cultural dynamics can create barriers to their effective implementation. Many post-conflict countries have seen a rush to establish parallel institutions, often characterized by high (and costly) reliance on international organizations and personnel: this poses the risk of failing to build, or even actively undermining, core national institutions.

Even where institutions are in principle “transferable”, transfer will not happen unless the incentives of national and international staff are aligned with this outcome. The role, influence and funding flows of international agencies and NGOs in a post-conflict country - as well as individual consultants - may depend on lack of national capacity, which justifies the continued substitution of their services. These agencies may at best have conflicting objectives, where the genuine desire to see increased national empowerment clashes with the need to protect their organizational role and turf.

**Collateral damage**

Donor efforts to help post-conflict countries meet basic needs may in some cases have actively undermined longer-term national institution-building goals. Massive amounts of donor aid largely provided off-budget, which dwarf Government budgetary resources, and the associated existence of a large and well-paid “second civil service” consisting of consultants, advisors, and employees of international agencies and NGOs, can actually comprise a major hindrance to national institution-building. High salaries paid by international agencies make it difficult to retain skilled individuals in the civil service: every time some success in establishing a new function or implementing institutional reform is achieved, this is put at risk when national managers succumb to the temptation of inflated salaries in donor agencies. Services provided entirely outside government institutions, unless very carefully managed, may actually decrease the credibility of the state in the eyes of the population: unpopular functions such as taxation are recognizably attributed to the state, while popular functions are perceived to stem solely from donors or NGOs. Huge waves of international staff and consultants, many of them unaware of local political dynamics, social and administrative practices, may result in reform proposals which are unworkable and, in the worst case, damaging to the underlying institutional capital which the country has retained.

**SECTION III: ELEMENTS OF A DIFFERENT APPROACH**

This section examines approaches to mitigate the four problems discussed in section II: building on the institutions which already exist; prioritization through focusing on critical functions; the judicious use of transitional institutional arrangements; and avoiding collateral damage by using international capacity to support rather than undermine longer-term local institution-building.

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education system in the world that can be “fixed” by ten technocrats, however bright. These are also the areas of public administration that are likely to be the most idiosyncratic and subject to variance according to local conditions.” Central banking, certain health and public finance functions, the administration of justice and prisons; the construction and maintenance of large scale infrastructure and the management of utilities tend to have relatively low local variance; political systems, policing, legal reform, education and social protection services tend to have high local variance.

See, for example, Organisation for Economic Co-operation and Development – Development Co-operations Directorate (2005), *Principles for international engagement in fragile states*, Available from: <http://www.oecd.org/document/46/0,2340,en_2649_33721_35233262_1_1_1_1,00.html>
Building on what exists

It is important to ensure that institutional models introduced take account of the local “hard-wiring” that comes from prior practices, socio-cultural norms, physical conditions and existing local skills and capacities. As noted above, there are few states, however weak, that provide an institutional blank slate. The coherence of fiscal and administrative systems, the common understanding of how they are intended to work, and any remaining entrenched discipline of staff, are valuable resources. The overarching principle that must underpin state-building is to work with these strengths, nurturing the discipline that has remained despite years of conflict in many settings. Reform proposals that cut across existing, well-entrenched and well-understood procedures present serious risks of confusion and parallel structures. In a setting where the overwhelming majority of administrative and fiscal procedures are not written, but are well known to most serving officials, the introduction of new arrangements must pay very careful attention to how these will overlay existing practices.

Incorporating awareness of existing institutional strengths and weaknesses begins with the selection of personnel involved in discussions on the institutional elements of peace agreements and early reconstruction planning. Notwithstanding the political difficulties of managing divisions between people who served the previous regime and those who were in opposition to it, national leadership would be well advised to involve in their early planning exercises a number of technical staff who are familiar with the legal framework, organizational structures and administrative practices which functioned under the previous regime. Pragmatically, this can avoid unintentionally “throwing the baby out with the bathwater”, whereby the understandable desire to move away from prior institutions which proved to be abusive results in a failure to recognize sound existing practices which could be the basis for rapid recovery.

On the side of donors, more effort should be made to field personnel who have a strong knowledge of the country context and institutional evolution over time. Donors can also help identify existing institutional practices by ensuring that post-conflict needs assessments carried out at the beginning of reconstruction programs include an analysis of prior or existing institutions: laws; organizational structures; systems and processes; and capacities and skills. Post-conflict needs assessments are typically good at documenting the number of physical facilities which still exist, but less successful at doing the same analysis for institutions. More emphasis on documenting existing institutions right at the beginning of a transitional process may help avoid the temptation to reinvent the wheel which has been characteristic of many post-conflict endeavors. A more systematic effort to provide orientation to new international staff would also assist in building awareness of existing institutional strengths and weaknesses.
Prioritization

Identifying functions and results critical to the survival of the state

<table>
<thead>
<tr>
<th>Box 1: Ten critical functions of the state</th>
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<tr>
<td><strong>Political functions</strong></td>
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<tr>
<td>• functioning representative process which delivers credible leadership at national and local level</td>
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<tr>
<td>• ability to take and implement collective decisions in the executive</td>
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<tr>
<td>• ability to hold the state to account for decisions made and actions taken.</td>
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<tr>
<td><strong>Security and rule of law functions</strong></td>
</tr>
<tr>
<td>• provision of safety and security to citizens in an impartial manner</td>
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<tr>
<td>• ability to arrest, prosecute and punish wrongdoers in a way which is perceived to be fair by the population.</td>
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<tr>
<td><strong>Public finance functions</strong></td>
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<tr>
<td>• ability to manage natural resource revenues and taxation</td>
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<tr>
<td>• ability to manage expenditures</td>
</tr>
<tr>
<td>• ability to employ and pay staff</td>
</tr>
<tr>
<td><strong>Service delivery and economic recovery functions</strong></td>
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<tr>
<td>• ability to restart services which were in place before the conflict, and to provide limited new services in rural areas</td>
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<tr>
<td>• economic management to stabilize consumer and producer prices, and enable domestic entrepreneurs to take advantage of economic recovery.</td>
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National leadership and donors face a difficult challenge in states that have suffered partial or total collapse: of the multitude of institutions that will be needed for development in the longer-term, where to focus efforts in the early period? In attempting to sequence or prioritize between the broad array of institution building needs in a post-conflict environment, it may be helpful to think in terms of the key functions and outcomes that are necessary for the survival of the state and sufficient to restore credibility to the state. This essentially implies that institutions that support political state-building objectives (in particular to avert the risk of renewed conflict) should have priority in the early post-conflict period – although political state-building objectives are also served by functions which address security concerns, which allow the management of public finances, and which provide basic service delivery and economic recovery. As discussed later, the capacity and the legitimacy deficits of a post-conflict state are inextricably bound up with each other. Thus the key functions can be summarized under the four headings below (also see Box 1):

**Basic political functions.** Political leadership and a functioning process to mediate between interests and peacefully resolve disputes is critical to stabilization after a conflict. If key political actors do not remain within an agreed process and take responsibility for the leadership of recovery, the post-conflict settlement is unlikely to survive. We suggest three priority functions and results in this area no matter what particular form of political institutions is adopted: a functioning representative process which delivers credible transitional leadership at national and local level; the ability to take and implement

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9 There is a large body of literature on the role and functions of the state. Zartman (1995) proposes security, representation, rule enactment, rule enforcement and distribution of resources as core functions, while Tilly (1985) suggests state-making, war-making, protection and extraction.
collective decisions in the executive; and the ability to hold the state to account for decisions made and actions taken. Institution-building in these core political functions involves technical systems (for example, establishing cabinet processes) but more importantly requires support to leadership inside and outside government to transform the mindset of opposition, resistance or armed struggle to a framework of consensual decision-making and the peaceful mediation of competing political interests.

**Basic security and rule of law functions.** Success in state-building will be measured by the degree to which Government can regain control over national policies and implementation across the country. Often, this is made more difficult by the financial and military strength of regional warlords and local commanders, widespread criminal activities, or the existence of a large and underpaid national army that may be viewed by the population as more of a predator than a beloved national institution. The restoration and/or reform of core rule of law functions are a crucial prerequisite for state-building. We suggest two core functions/results in this area: the provision of safety and security to citizens in an impartial manner and the capacity to arrest, prosecute and punish wrongdoers in a way which is perceived to be fair by the population. “Arrest-prosecute-punish” is described as one function here because many post-conflict programs have suffered from poor sequencing in balancing institutional development of the police, justice and corrections systems – resulting in one part of the criminal justice system causing a bottleneck in the functioning of the system as a whole.

**Basic public finance functions.** The ability to tax, spend and employ staff is a central function of the nation-state – not only because it makes possible the other functions, but also because an effective monopoly over taxation and core public services is critical to prevent the financing of parallel state structures or private armies by political competitors. Failure to pay salaries to civil servants may also be a key factor in causing social unrest or facilitating renewed conflict. In the early-post conflict period, much of the state’s revenues may come from aid: guarding against corruption in the taxation/expenditure function is also important to ensure continued aid flows and maintain a level of credibility in the eyes of the population. Budget, customs and taxation, treasury, recruitment and payroll are the core functions in this area.

**Basic service delivery and economic recovery functions.** The three areas described above could be described as the defining functions of a nation state: the areas in which there is little argument over the limits of state versus private or community action. On their own, however, they are not sufficient to restore the credibility of a post-conflict state: the state must also be perceived to be delivering more positive “peace dividend” benefits to the population in order to consolidate peace and avert social tensions. Spoliors to a peace agreement will take advantage of any failure to quickly restart services. In most post-conflict environments, it is important to rapidly restart state service delivery in two areas: (i) services which were in place before the conflict, and; (ii) limited new services in areas previously outside the reach of the state. It is important to keep in mind that the priority is for the state to be associated with the delivery of these key services - and not that the state necessarily must deliver them itself. In the economic area, policy measures to stabilize consumer and producer prices, and enable

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10 Services provided before the conflict may not have been provided equitably: restitution of services such as electricity and water to large urban settlements may therefore not be the most poverty-reducing intervention. However, the benefits in political stabilization terms to rapidly restoring a minimum level of service provision in urban areas may be of long-term poverty reduction benefits to the wider population, by preventing the conditions which facilitate a reversion to conflict and instability.

11 This may include areas previously under active conflict and/or isolated rural areas.
domestic entrepreneurs to take advantage of economic recovery are important to restore a sense of confidence in the state’s economic management.

**Focusing on functions and outcomes rather than inputs**

Within each of these priority areas, a focus on functions and outcomes (rather than the form of laws and organizational structures in place) forces further prioritization and helps avoid the pitfall of supporting “paper” institutions which fail to deliver any tangible benefits of peace on the ground. This represents a change in approach: not “we need institution-building of the Department of Budget” but rather “we need to build a functioning budget process which is transparent and enables government to avoid unexplained over or under-expenditure”. Equivalently, not “we need to build the capacity of the Ministry of Justice and the courts” but “we need to build a functioning impartial criminal justice system which is capable of following standard basic investigative and arrest procedures, processing the resulting caseload in the courts within a reasonable timeframe and housing prisoners in appropriate conditions.” Institutional outcomes in the early post-conflict period should be realistic given baseline capacity: in the example above on the public finance system, for instance, a second generation objective might be “a functioning budget process which is based on identified poverty reduction priorities and performance”, but this outcome may be attainable only at a later level of institutional strength.

A focus on functions and outcomes is also critical to make effective use of technical assistance. Technical assistance is most likely to be effective when the incentives of international consultants are to deliver a fully functioning system in the area of government in which they work, managed and operated by national personnel. Technical assistance focused solely on “paper” outputs – drafting a law or set of procedures – will often not be carried through into implementation.

**Managing the trade-off between capacity and legitimacy objectives**

In addition to prioritizing between sectors and functions, there is an inevitable trade-off between institution-building initiatives that directly address the “legitimacy deficit”, and initiatives that address the “capacity deficit”.

12 An institution which has high capacity but low legitimacy may undermine other governmental objectives, including peace and stability; an institution which has high legitimacy but does not deliver results may not survive long enough to demonstrate the benefit of the institutional framework which has been put in place. Is it, for example, more critical to eliminate corruption in procurement practices, thus demonstrating that the state can be held to account, or is it more critical to ensure that government can spend its budget rapidly, thus associating the state with the delivery of important services? Is it more important to ensure that education policy is strategic, coherent, based on local needs and supportive of national unity, or is it more important to rapidly rebuild schools and train teachers?

The response, of course, it that both are crucial, but they are not always mutually supportive: introducing a new procurement law and system, and training staff, may delay the delivery of goods and services to the population; policy workshops and the drafting of legislation takes time from government officials which is then not available to manage programs to meet urgent needs. The most important principle here is perhaps to ensure that they move in tandem: there is little point in rapidly establishing a function which is perceived to be illegitimate by the population because of corruption or

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12 Reference to the origin of these terms – see footnote 4
bias; but equally, it is not productive to devote such intense efforts to establishing institutional systems, procedures and controls that national institutions are unable to spend any money or deliver any services.

**Using transitional institutions and capacity**

**Identifying transitional institutional arrangements**

Identifying a set of state functions and results as critical does not mean that all will be delivered by the state institutions which will play this role in the longer-term. As discussed in section II, post-conflict countries may also use capacity from outside government on a temporary basis to fill an institutional gap while public sector systems are developed and staff trained.

Incorporating an institutional assessment and specific transition plans for institution-building in early post-conflict planning processes can help establish a shared understanding between government, the population and the country’s international partners on what it is realistic to expect government to provide in the short and medium term – and can focus the efforts of all partners on creating long term capacity and accountability in the state. The following questions are generally important to determine whether - and for which functions - the use of transitional institutional arrangements makes sense in a particular local context.

For any of the ten functions listed in Box 1:

- **Speed:** Is there a need for rapid service delivery or improvements in perceived neutrality and governance which can only be achieved through the use of transitional institutional arrangements?
  - If the core executive, legislative and judicial structures have the existing capacity to deliver desired results (or the potential to rapidly develop capacity) in any function, it will make more sense to strengthen this capacity than to create new transitional arrangements.
  - Where there is a need for rapid delivery of results or improvements in governance which cannot be provided through regular government institutions, it will however generally be necessary to put in place transitional institutional arrangements.

- **Institutional foundations.** Are existing capacity and accountability problems so deep-rooted that exceptional transitional management and delivery measures are needed or could transitional oversight mechanisms for core government systems provide sufficient reassurance to key domestic constituencies, the wider population and donors?
  - Where government services have entirely collapsed and skilled personnel are no longer available, a relatively longer period of service delivery through transitional arrangements may be needed while public sector institutions are established and trained.
  - Equally, where a national institution is viewed by the population as deeply corrupt or biased, more active transitional management may be needed in order to effect a large scale reform of the institution.
  - In many post-conflict situations, however, a reasonable level of existing capacity and reform-orientation may exist within several core state functions, alongside weaknesses of capacity, corruption or bias. Where this is the case, a better solution may be to augment core government systems with transitional oversight structures to provide an
additional level of external verification, and technical assistance to supplement capacity gaps.

- **Robust understanding.** Do the donors or other external actors have sufficient technical and local knowledge of the institutions, including an understanding of history and of current political pressures, to answer the previous questions?
  - What were the institutional arrangements in place prior to the conflict? What is the underlying model of the administrative, fiscal and oversight arrangements?
  - Do these still have significant local resonance? If so, it will be difficult, and certainly wasteful of time and effort, to seek to introduce systems or arrangements that are alien to the political-administrative culture.

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**Example of transitional oversight arrangements – the Cash Management Committee in Guinea Bissau**

Following the establishment of the 2003 transitional government in Guinea Bissau, authorities prepared an Emergency Economic Management Plan (EEMP), which was supported by the international community through the UNDP-administered Emergency Economic Management Fund (EEMF). The Cash Management Committee (CMC) was established as an oversight body for the donor-financed 2004 Emergency Economic Management Fund (EEMF) to promote transparency, fiscal responsibility and accountability and reinforce the government's capacity to manage the budget. The fund covered civil service salaries for health and education sectors, as well as services in key areas, such as public utilities; and supported technical assistance for public financial management, civil service reform and human resource management. Although the fund is now closed, the government has maintained its use of the CMC for continued transparency and financial oversight of budgetary planning and disbursements. As a result of the experience under the EEMF, the Treasury Committee authorities under the CMC have invited donors to sit on this committee along with government officials. The CMC drafts annual treasury plans and monthly cash flow plans in accordance to the budget law and provides both weekly and monthly reports to the Ministry of Finance, and to government as a whole, on receipts and disbursements.

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**Using international capacity in transitional institutional arrangements**

A strong state-building focus in post-conflict reconstruction would imply keeping transitional institutional arrangements as light as possible, and as reliant as possible on national capacity. Where core executive, legislative and judicial institutions are capable of carrying out core functions with additional technical assistance or special transitional oversight mechanisms, they should be left to do so. Where national capacity is available to provide transitional oversight or technical assistance, this should be the first response prior to recourse to international assistance.

While too heavy a reliance on international capacity should always be avoided, there are some situations where the use of international capacity for transitional delivery or oversight can be key to the success of a long-term state-building strategy. Table 2 looks at three rationales for the use of temporary international management or oversight capacity.
Table 2: Using international executive or oversight capacity for a transitional period

| Reform rationale: | internal resistance to reform may be so strong that post-conflict leadership will have difficulty in delivering the desired results without international executive or oversight assistance. The two areas in which this is most likely to be the case are public finance reform (in particular reforms which touch upon vested interests and individuals or groups who are profiting from large scale corruption in the state) and security sector reform, both with regard to the disarmament of non-government militia and reform of the state security sector. International executive or oversight involvement in reform is more likely to be successful in processes which are low in transaction-intensity and therefore do not overstretch the capacity of international institutions – monitoring large scale public finance contracts and concessions, for example, rather than aiming to eliminate petty corruption in the civil service.  

| Capacity rationale: | using international institutions or personnel may enable delivery at greater speed or quality levels than relying on national capacity. This is not a given: international agencies also suffer constraints in capacity and quality of personnel, and may be little better equipped to deliver rapid results than national institutions. Where there is a generalized skills deficit (both within and outside the state) in certain technical areas, such as health systems or utilities management, there may however be real potential for benefits through importing capacity from abroad on a transitional basis. The capacity rationale is likely only to operate in functions which have relatively low local variance: functions such as education are highly rooted in the local context and generally not susceptible to effective international management. On the negative side, international agencies, companies and personnel can cause substantial tensions with national stakeholders, in particular if they themselves are perceived to be biased or inefficient - it is important to make a realistic assessment of capacity in international agencies prior to committing to a transitional solution of this type.  

| Neutrality rationale: | international institutions may reassure the population or parties to a conflict on the neutrality of interventions. Empirically, many post-conflict political settlements have provided for partial international executive or oversight capacity for this reason within four of the critical functions described in Box 1 – provision of safety and security (through the deployment of a peace-keeping operation); the initial post-conflict representational process, through international management or monitoring of elections; international tribunals to prosecute war crimes; and international oversight of the use of pooled donor trust funds. In principle, this could also be applied to other key functions in public finance, rule of law or service delivery, provided that constraints in international capacity and political tensions caused by reliance on international agencies or firms are taken into account.  

The experience of international transitional administrations has left a justified caution in the minds of many decision-makers vis-à-vis the capacity of international institutions to take on wide-ranging administrative functions. Even in very small territories such as Kosovo or Timor, the UN and its international partners faced major challenges in deploying sufficient numbers of experienced staff to provide credible and efficient management services in every area from policing, justice and public finances to agricultural extension and vehicle registration. This caused tensions with local leadership and technical counterparts, who in many cases felt that they were able to perform functions more efficiently than the highly paid international personnel sent to their ministries.

Conversely, post-conflict operations which have lacked the mandated ability to provide any international management or oversight in key state functions (for example, public finances in Liberia, Afghanistan Reconstruction Trust Fund, International Reconstruction Fund Facility for Iraq which includes two trust funds - the World Bank Iraq Trust Fund and the UN Development Group Trust Fund and Sudan Multi-donor Trust Fund.

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13 International management or oversight is unlikely to be successful in eliminating petty corruption in the civil service, since even if one assumes that a large group of international administrators who are themselves clean and efficient could be recruited (which is questionable) the numbers required to monitor this level of small transaction would likely exceed the benefits in terms of protection of public finances. Effective international oversight aimed at preventing “grand corruption” is more feasible (although still difficult) – since this involves in general a limited number of concessions, monopoly agreements or the award of major contracts.

14 For example, Trust Fund for Bosnia and Herzegovina, Trust Fund for Gaza and West Bank, Trust Fund for East Timor, Afghanistan Reconstruction Trust Fund, International Reconstruction Fund Facility for Iraq which includes two trust funds - the World Bank Iraq Trust Fund and the UN Development Group Trust Fund and Sudan Multi-donor Trust Fund.
police in Haiti) have highlighted the substantial challenges which are faced when institutions with a track record of corruption and illegitimacy in the eyes of the population are entrusted with their own reform. The experience of weaknesses on both sides of the spectrum has led to a recent increase of interest in “partial” executive or oversight interventions on the part of the international community. The “shared sovereignty” model of the Office of the High Representative in Bosnia is one example: to a lesser extent, the use of international agencies for procurement and financial management in operations such as Afghanistan, the deployment of international line managers in regional stabilization operations such as the Solomon Islands or mixed national/international oversight committees such as the Cash Management Committee in Guinea Bissau also follow the same logic. The specific use of international capacity to bolster transitional institutions will always vary depending on country context, but it is worth ensuring that national leadership and their international interlocutors are aware of the options early in the process.

*Insisting on an exit strategy – moving from transitional arrangements to sustainable national institution-building*

Lack of clarity on the use of transitional institutional arrangements and their relation to longer-term state institution-building has often led to an absence of understanding between government, the population and international donors on the role of transitional institutional arrangements, and when and how the shift will be made to longer-term delivery through core government systems. It has also entrenched an inability to translate capacity and results generated through transitional arrangements into long-term institutional strength and development outcomes.

Clearer transition plans for national institution-building may assist in producing more effective outcomes. Explicit transition plans can also diminish suspicion that international actors intend to stay on beyond their initial welcome, dominating important areas of the economy, service provision or administrative decision-making.

A transition plan for institution-building (as part of an overall reconstruction plan) may include: the definition of clear state institution-building targets and timelines; identification of transitional institutional arrangements where necessary; supporting actions (by national authorities and donors); and funding requirements. It will also be important that this type of transition-planning pay attention to the incentives for national and international institutions and individuals - for example, making funding flows to international entities dependent on meeting institution-building and capacity-building targets. Insisting on this type of transition planning at the beginning of an institution-building exercise implicitly forces donors to subject their interventions to the test of whether there is an exit strategy from dependence on international capacity (or non-governmental capacity subsidized by international funding flows).

Clear transitional planning is more likely to take place where there is a clear international counterpart structure for sectoral institution-building. This does not imply that each sector much have only one donor partner, but it does mean that the development of a transition plan for national institution-building will be facilitated where donors coordinate their support to service delivery or technical assistance in each sector.
## Transitional institution-building strategy for the health sector: East Timor

The transition strategy in the health sector in post-conflict East Timor can be characterized in four phases, through which the health authorities gradually moved toward an integrated public health management system.

**Phase I:** During the initial emergency phase, NGOs reestablished essential services, saving lives and alleviating the suffering of a population traumatized by the recent violence. An Interim Health Authority (IHA) was established in February 2000 comprising 16 senior East Timorese health professionals in Dili and one in each district along with a small number of international experts. IHA staff made assessment visits to all districts in preparation of a first sectoral planning exercise.

**Phase II:** The health authority (now called the Department of Health Services) started work on the establishment of a policy framework, medium term planning for the sector and on national preventive programs, including immunization campaigns. During the second half of 2000, DHS signed Memoranda of Understanding with NGOs for each district; formalizing district health plans service standards, and initiated a basic system for distribution of essential pharmaceuticals.

**Phase III:** In April 2001, the Ministry of Health took over the financing of a majority of the NGOs in the districts. By the third quarter of 2001, the first round of recruitment of health staff had been completed. Most of these staff had previously worked with NGOs or on government stipends prior to finalization of the recruitment process. Several senior staff members in the department were also sent for public health management training.

**Phase IV:** At the request of the Government, NGOs gradually withdrew from the districts between September and December 2001, and the management of all health facilities was placed under the control of the Ministry of Health. International doctors were hired to replace departing NGO practitioners while Timorese doctors were being trained overseas, and public health specialists were deployed to serve as relay between the Ministry and district health centers. A few NGOs remained to provide specialized services on a countrywide basis.

## Avoiding collateral damage

In addition to taking positive action to foster long-term institution-building, donors need to avoid any unintended negative consequences of aid projects on national institutions. Respect for emerging national institutions for collective decision-making and the mediation of competing interests – such as cabinet and budget processes – are particularly important after a conflict. International organizations and staff should work within these nascent domestic decision-making institutions, not around them. This means ensuring that major aid-financed projects are discussed at a prioritization and policy level in cabinet (or other collective governmental decision-making body) and incorporated within the budget.

Maintaining sensible limits over the number of local staff employed by international agencies and their salaries is also important. Large numbers of local staff in service delivery or project functions (except where this is agreed as a short-term transitional strategy under overall government management) can constitute a parallel civil service that undermines the credibility of government. Where these are working in recurrent service delivery or development functions, they also pose a contingent liability for government, who would be under pressure to underwrite these services if international funding were withdrawn. Setting the salaries of local staff of international agencies substantially higher than the salaries of civil servants may have also have a long-term effect in undermining the civil service, through a brain drain of senior managers and technical personnel into the international sector. Lower salaries, of course, impact the efficiency of international organizations: but the efficacy of a strategy which produces capable international agencies at the expense of the national institutions whose strengthening they intend to support must be questionable.
Rethinking the provision of technical assistance is also long overdue. The donor habit of providing a large number of short-term technical advisers in many small, uncoordinated projects can actively undermine national institution-building: national reformers are forced to dedicate substantial time and effort to managing this unruly priesthood. Technical assistance projects are also frequently designed to be measured by the production of inputs (for example, the drafting of recommendations, laws and procedures) rather than concrete results in improved counterpart performance. Better matching of technical assistance with state-building priorities; design of programs to focus on outputs in improved performance by national institutions; and stronger coordination – ideally through the pooling of donor funds for technical assistance – is needed.

**SECTION IV: CONCLUSION AND SPECIFIC RECOMMENDATIONS**

The sections above have reviewed some common problems in post-conflict institution building and the elements of a different approach. A more central focus on institution-building in post-conflict countries would argue for the inclusion of a clear state-building strategy in the early stages of post-conflict reconstruction. A step by step approach to this could include:

1. Involve personnel (national and international) with knowledge of existing state institutions to provide input to peace talks; and in post-conflict needs assessments and recovery planning. Conducting a basic institutional assessment early in a peace process will help ensure that new agreements and plans build on strengths and take account of institutional constraints.

2. Consider the implications of political agreements for the functioning of state institutions. Peace agreements often contain provisions for the creation or composition of key transitional institutions, at times without sufficient consideration of later difficulties (both technical and political) which these commitments may cause. Early identification of the likely trade-offs between political agreements and institutional strengths and weaknesses may assist in making the right decisions between short-term political stabilization and the longer-term institutional strength, which is critical to avoid a renewal of conflict.

3. Identify priority institutional functions and results to be achieved. The list of ten functions outlined in this paper will not necessarily be the priority functions in each and every country: early dialogue between national leadership and international actors (either at peace talks, in parallel or in subsequent post-conflict needs assessments) will help establish clear priorities which are tailored to the country context. Early discussions should cover:

   - Priority areas where rapid improvements in perceived neutrality, good governance or delivery of services will be critical in the immediate post-conflict period
   - A realistic assessment of the timing necessary for the state to take on these functions, in full, at an acceptable level of performance;
   - An initial sense of acceptable transitional arrangements, including transitional oversight versus transitional management or delivery; and the role and capacity of national and international actors.

4. As part of the post-conflict recovery planning process, develop specific transition plans for sectors with major institutional shortcomings. Likely to be done during an initial post-conflict
needs assessments, transition plans may include the definition of clear state institution-building targets and timelines; identification of transitional institutional arrangements where necessary; supporting actions (by national authorities and donors); and funding requirements. The development of transitional plans should include a realistic assessment of the capacity of international actors and consideration of whether the institutional models they bring with them will be easily transferable to the specific country context.

5. Aim for early agreement between national authorities and donors on key donor policy issues which affect national institution-building, such as approval processes for aid projects; technical assistance coordination; and local staff salary scales.

6. Include provisions to measure institution and capacity-building results within agreements and contracts made for temporary service provision and technical assistance with international agencies and companies.

Institution-building in a post-conflict context is always likely to be a long and uphill struggle: in addition to the collapse of systems, loss of staff and destruction of physical facilities, many post-conflict countries face a legacy of distrust of the state and institutional malpractice which is difficult to turn around within a short time period. Greater emphasis on institution-building within peace agreements and early recovery planning processes will not be a magic bullet, but it does offer some potential to address one of the central constraints to successful peace-building.
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