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Arab Governance Report III Institutional Development in Post-conflict Settings

Towards peaceful, inclusive societies
and accountable institutions

Economic and Social Commission for Western Asia

Arab Governance Report III Institutional Development in Post-conflict Settings

Towards peaceful, inclusive societies
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United Nations
Beirut

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Executive Summary

This third edition of the Arab Governance Report introduces post-war best practices from international and regional experiences. It suggests strategies and policy recommendations for Libya and Yemen that focus on the immediate aftermath of the cessation of combat and a future political settlement. With the priority and sequencing of post-war policies dependent on distinctive historical trajectories, the road maps are tailored to the unique circumstances of each case. The goal is to help ensure inclusive transition and a consensus-based process of reforming governance structures and rehabilitating key institutions after a political settlement. Effective institutional building develops efficient mechanisms to preserve and consolidate the peace process, and enhance State legitimacy through developing sustainable capacity to take on the basic requirements of governance.

Policymakers, scholars and practitioners agree that there is no substitute for capable and legitimate States, and that building or rebuilding State institutions is a sine qua non for achieving sustainable peace after civil war. When conflict ends, societies have a window to consolidate peace and secure post-war transition. Getting the initial phase right is perhaps the most essential task, but also the hardest and most complex. Few, if any, road maps chart the initial post-war phases in Libya and Yemen. These two countries comprise deeply divided societies

with ongoing, intense, militarized conflicts, making future political transition and post-war recovery exceptionally challenging. Conversations with national stakeholders around the region indicated strong demand for a practical, policy-oriented, forward-looking publication such as this.

The 16th goal of the 2030 Agenda for Sustainable Development, adopted by the United Nations General Assembly in 2015, placed unprecedented emphasis on good governance and effective institutions, in and of themselves, understanding that State institutions can be drivers, or at least enablers, of sustainable peace and development. It calls for “the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable and inclusive institutions at all levels”. The 2030 Agenda considers functioning States in the Weberian sense – States with inclusive, accountable and effective institutions that can monopolize the means of violence to promote peaceful political orders – as intrinsic to the development process, and not just a technical precondition for achieving economic, social and environmental progress.

Set within the strategic framework of SDG 16, this report is intended for policymakers implementing post-conflict recovery strategies

and the technical experts advising them. It argues that political and governance considerations, in particular building effective and responsive State institutions, are of paramount concern for policymakers in post-war Arab countries. Carefully designed recovery strategies, based on international best practices but addressing local and historical context, offer the best hope for transitioning from protracted conflict to sustainable peace. The report is based on this theoretical framework and grounded within the three ideals put forward by SDG 16: the promotion of peaceful and inclusive societies for sustainable development; the provision of access to justice for all; and building effective, accountable and inclusive institutions at all levels. Emphasis is placed on the third ideal, which leads to the other two. This analysis of post-conflict institutional building cases will be informed

throughout by the need for institutions to be effective, accountable, transparent and inclusive.

Strategies and policy recommendations will also take account of the long-term aspect of the institutional development process. Policies implemented during the immediate post-settlement phase should be aimed at restoring citizen trust in the State through attending to reforming governance structures that affect their everyday lives. These practical responses include elements such as rebuilding legitimate State institutions based on the principles of rule of law, provision of basic services to citizens, establishing a new social contract, reconciliation, reintegration and development processes, which help prevent conflict relapse and launch recovery and State-building and reform processes.

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Acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CBY	Central Bank of Yemen
DDR	disarmament, demobilization and reintegration
ESCWA	United Nations Economic and Social Commission for Western Asia
FARC	Revolutionary Armed Forces of Colombia
GCC	Gulf Cooperation Council
GDP	gross domestic product
HCCP	High Commission for Coordination between Provinces (Iraq)
ISIL	Islamic State of Iraq and the Levant
IDPs	internally displaced people
LAOs	limited access orders
LGBTI	lesbian, gay, bisexual, transgender and intersex
MDGs	Millennium Development Goals
NAFS	National Agenda for the Future of Syria Programme
NGO	non-governmental organizations
OAOs	open access orders
R2P	Responsibility to Protect Principle
SDGs	Sustainable Development Goals
SMEs	small and medium-sized enterprises
SSR	security sector reform
WGI	Worldwide Governance Indicators
WPS	Women, Peace and Security (agenda)

Introduction

Introduction

Armed conflict within States is the most immediate threat to international peace and respect for human rights. From 1990 to 2016 there were 95 armed conflicts worldwide, 87 of which were internal. Only eight were inter-State. The 16 conflicts recorded for the period 2015 to 2016 were all intrastate.¹ Internal conflicts cause damages beyond human losses and material costs; they diminish the intangible capital of States to deal with the root causes that led to conflict in the first place.

The Arab region confronts a bewildering array of intense, complex and interlocked armed conflicts. Iraq, Libya, the Syrian Arab Republic and Yemen have fragmented due to civil wars that have been exacerbated by regional and international politics. Many other countries face brewing conflicts. The region is only beginning to comprehend the human cost of such conflict and instability, whose legacies can persist for several decades.

Forty per cent of Arab countries are immersed in or have lived through armed conflict in the past six years. In the Syrian Arab Republic, an estimated 2.3 million people, 10 per cent of the population, have been killed or wounded, with thousands more unaccounted for. By 2015, half the population, 12 million people, had fled as refugees or were internally displaced. Conflict triggered the largest wave of forced displacement since the second world war. In six years of fighting, the country's infrastructure,

including hospitals and schools, sustained heavy damage. Half of those who remain live in poverty, compared with 13 per cent before the conflict, and the rate of primary school enrolment has dropped from almost 100 per cent to 60 per cent. Gross domestic product (GDP) has contracted by 55 per cent. All indicators of human development have suffered a catastrophic regression.

In Yemen, conflict has made an already bad situation much worse. Multidimensional poverty is at 60 per cent, the number of children deprived of education doubled in a year and GDP per capita declined by 42 per cent. Fourteen million people need international humanitarian aid, there has been a cholera outbreak, two thirds of children suffer from malnutrition, and thousands have been recruited to fight alongside various militias. Comparable woes have befallen other Arab countries, some of which are oil rich, such as Libya and Iraq. Today, one in five Iraqi children is "at serious risk of death, injury, sexual violence, abduction or indoctrination into a violent extremist group".² Oil-rich Libya is war-torn and severe losses have been sustained by almost all segments of society. GDP per capita is half what it was before war, and around 20 per cent of the population suffer from food insecurity. Then there is the State of Palestine; 2017 marked 100 years since the Balfour Declaration and 50 since the Occupation of the West Bank, East Jerusalem, Gaza and the Syrian

Golan, while 2018 is 70 years since the Nakba. In the Arab region there are 31 million refugees and internally displaced people, and the risk of becoming a refugee is 30 times higher than for those born elsewhere.

Yet, civil wars eventually end, and it is imperative policymakers and stakeholders prepare for effective and sustainable post-war peacebuilding, recovery and transition. As actors in Iraq, Libya, Syrian Arab Republic, Yemen and beyond grapple with designing post-war strategies, it is important to understand what policy frameworks help prevent countries relapsing into civil war. Conflict-torn States have narrow windows to prevent relapse, and failure is common. Approximately half of all post-war countries lapse back into civil conflict between the same belligerents in the first decade after the end of fighting.

How should conflict-affected countries in the Arab region design their post-war strategies? Should they emphasize political reforms? Economic restructuring? Post-conflict justice mechanisms? Security and public order? Humanitarian relief and improving livelihoods? Though it may be tempting to say, “all of the above”, post-war governments typically face tight fiscal, capacity and time constraints. Policies may work at cross purposes or be mutually exclusive. Careful selection, prioritizing and sequencing the policy choices for recovery are essential.

In the 2009 report of the United Nations Secretary-General on peacebuilding in the immediate aftermath of conflict, recurring post-

building priorities were identified as basic safety and security, political processes, provision of basic services, restoring core government functions and economic revitalization. Within these action areas – all influenced by State institution-building – national policies must be devised according to a country’s specificities, needs and resources.

This third edition of the Arab Governance Report discusses key concepts, cross-cutting issues and best practices, tailored to practitioners in the Arab region. It introduces the concepts of institutions, good governance, rule of law, institutional reform and social capital, the historical experience of developed and developing societies, and the crisis of the Arab State and challenges of reform. For instance, it discusses security sector reform (SSR), often considered indispensable to post-conflict reconstruction as it helps bring stability to fragile environments and security to individuals who have suffered. It requires careful planning and consideration of existing power structures and relations, and, most importantly, national and local ownership, allowing for the inclusion of contextual specificities and strategies, as well as shared responsibility in the process and greater trust in security institutions. Ownership is facilitated through local community approaches to security sector reform, civilian oversight, civil society involvement and legal monitoring of financial aspects.

Further, national dialogue processes are crucial to allow people to envision a peaceful and inclusive future and to transform social interactions in divided societies. In the Arab

world in particular, such processes seem necessary in light of the failure so far to create strong, inclusive governance frameworks. Successful national dialogue processes should only be instigated when those involved are ready to face one another and willing to compromise. A minimum level of trust must be established, on national, regional and international levels, to prevent spoiling. The timing of a national dialogue is also decisive, as well as a clear set of rules and procedures, a neutral and credible convener, and a clear agenda. Finally, the dilemma of efficiency versus inclusivity must be addressed with pragmatism.

Lastly, this report shows that the fight against corruption needs to be an integral part of immediate post-conflict recovery, for two reasons. First, it helps the State recover assets and funds at a time when it needs them the most. Second, and most importantly, it helps avoid corruption practices becoming institutionalized. Post-conflict reconstruction represents an opportunity to move away from previous structures, not to perpetuate them. A considered strategy is required that involves social accountability mechanisms implemented at community level rather than centralized legal mechanisms. At central level, strengthened audit and control, increased financial management capacities and the involvement of the private sector can be considered effective measures. The mapping of illicit political economy is a promising tool to assess the risks linked to targeting specific corrupt individuals.

Interventions in the three areas discussed in this report all have the capacity to directly improve

the horizontal and vertical links within a nation State. While security sector reform and combating corruption can help to rebuild, or build, trust in State institutions, notably through making them effective and accountable, national dialogue processes can advance an inclusive relationship between citizens themselves. These three areas interact and interrelate, and progress made in one area can lead to successes in others. For example, reform of a security sector involved in conflict-related human rights violations can provide divided communities with a sense of closure, while community-based approaches to corruption can bring together divided societies. Meanwhile, national dialogue can restore citizens' trust in State institutions as it allows them to actively participate in the making or remaking of the State. Addressing these three areas in a holistic manner will successfully contribute to the fulfilment of SDG 16. It will help foster the creation of effective, accountable and inclusive institutions at all levels, which will serve as a starting point to promote peaceful and inclusive societies for sustainable development.

This report is divided into two sections. In the first section, chapter 1 discusses the conflict and governance nexus in the Arab region. Chapter 2 reviews the literature on negotiated settlements in civil conflict, and under what conditions such settlements are effective at establishing long-lasting peace. Chapter 3 discusses institutions in crisis and transition, and reviews the political science literature on institutionalism. Chapter 4 looks at building political legitimacy in post-conflict countries and the necessity of renewing the social contract, and chapter 5 explores the gender dimensions of post-conflict recovery,

including gender inclusivity in peace processes and post-conflict political participation.

In section II, chapter 6 reviews international best practices for building institutions in post-war settings, and chapter 7 discusses the experience of decentralization in Iraq, a State that has struggled to re-establish political order and political legitimacy since the United States-led invasion in 2003. The report applies insights from the first section to existing cases of conflict in the Arab region: Libya (chapter 8) and Yemen (chapter 9). These suggested strategies and policy recommendations focus on the immediate aftermath of the cessation of combat or the political settlement, depending on the context, while taking account of the long-term aspect of the institutional development process.

Policies implemented during the immediate post-settlement phase should aim to restore citizen trust in the State by urgently reforming

governance structures that affect daily life.

These practical responses include rebuilding legitimate State institutions based on the rule of law, provision of basic services, establishing a new social contract, reconciliation, reintegration, and development processes that help prevent conflict relapse and launch recovery. The conclusion draws out general lessons for post-war policymakers in the region, and reviews an ESCWA study that finds political institutions, military factors and long-term income growth have the greatest impact on the risk of civil war relapse. Since 1970, post-war States with more representative and competitive political systems, as well as larger armed forces per capita, have been better able to avoid war relapse. The study debunks prominent hypotheses on post-war stability that all measures for ethnicity and culture and most economic indicators and predetermined factors appear not to contribute to post-war risk, one way or another, at statistically significant levels.

Section I



1. The Conflict and Governance Nexus in the Arab Region

1. The Conflict and Governance Nexus in the Arab Region³

The global proliferation of conflict and crisis in 2018, while affecting all regions and reflecting a growing climate of uncertainty, centres in particular on persistent conflict and occupation in the Arab world. The multiple causes and impact of these conflicts involve geopolitical as well as interconnected national governance deficits and socioeconomic issues, the subject of analysis and debate since 2011. Some have deep historical roots, while others are based on recent events. Deaths, injuries, food insecurity, regression of human rights, the loss of jobs and access to education, weak governance structures and inefficient institutions, particularly the inability of State institutions to provide essential services for all, are just some of the most immediate and severe effects. It is important to note that the immediate effects of conflict at regional level are catastrophic in terms of scale and impact, further exacerbating conflict dynamics at national level, confining countries in crisis to a conflict trap and straining socioeconomic and political affairs in neighbouring countries.

A marked rise in displacement is among the most prevalent outcomes of conflict. The total number of people in the region forcibly displaced from their homes increased from 12.7 million in 2010 to 29 million in 2016, the number of international refugees originating from Arab countries from 8 to 13 million, and

the number of internally displaced people from 4.7 to 16 million. The number of refugees hosted by Arab countries rose from 7 million to almost 8.5 million; while the region has only 5.4 per cent of the world's population, it hosts 37.5 per cent of its refugees.⁴ The growth in the number of internally displaced Arab people has been steep, from 4.7 million in 2010 to almost 16 million in 2016. This resulted in an increased share of the total percentage of internally displaced people globally, from 31.7 to 43.5 per cent.

The number of people in need of humanitarian assistance in the seven crisis countries (Iraq, Libya, Somalia, State of Palestine, Sudan, Syrian Arab Republic and Yemen) has been increasing and represents a significant percentage within the countries in question. Some 56.4 million people required humanitarian operations in 2016, with 37.2 million food insecure, 44.5 million requiring water, sanitation and hygiene (WASH) assistance and 47.2 million health assistance.⁵ Of people in need, roughly half were women and nearly half children aged under 18.

Countries in the region affected by conflict lost \$613.8 billion cumulatively in GDP between 2010 and 2015, or six per cent of the regional GDP.⁶ Given falling oil prices and the structural weaknesses of Arab economies, these losses

will be hard to replace. This, despite military spending increasing between 2011 and 2014.⁷ And defence budgets are still rising even while financial resources for public expenditure are spread thin.

The drivers and impacts of conflict are inherently linked through a self-fulfilling cycle, with the impacts of conflict contributing to its persistence and leading to the spread of insecurity and rise of other new conflicts. The themes discussed here are weak States, third States and non-State actors, key characteristics of the Yemen and Libyan conflicts.

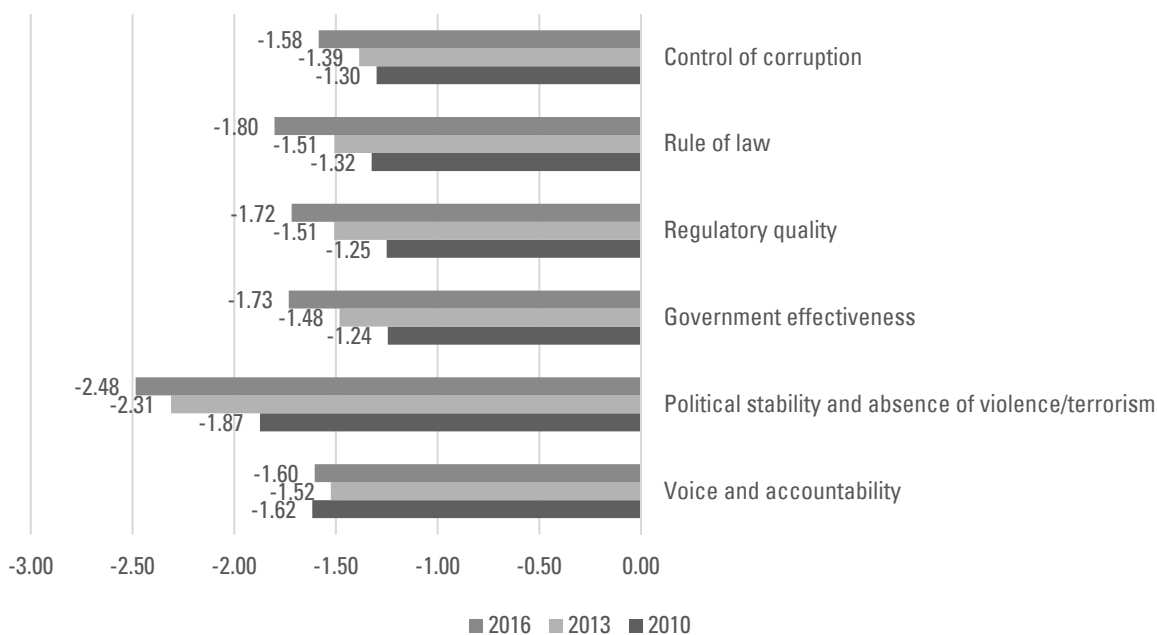
While fragile State institutions are often drivers of anger, unrest and eventually conflict, conflict further weakens them. In almost all States facing civil strife, security vacuums have emerged or expanded. Here, underground networks have developed into tribal, sectarian or ethnic-based non-State actor groups controlling large swaths of land and capable of challenging existing State structures.⁸ Some weak States rely on non-State actors to protect them, or the clients of their ruling elites, against real or perceived threats to their authority by other armed non-State actor groups or States. This trend is militarizing society, fragmenting it into smaller, communally based spheres that are suspicious of each other. The inability of most States to adequately introduce necessary reforms⁹

means these State structures lose legitimacy in the eyes of their citizens, further weakening them.¹⁰

As can be seen in figure 1, all but one of the six dimensions of governance monitored by the World Bank through the Worldwide Governance Indicators (WGI) have gradually worsened since the onset of the Arab uprisings in countries particularly affected. While the region as a whole witnessed a decrease in governance perception, it was more severe for crisis-affected States.

The presence of weak States in the Arab region, and the vacuum created and subsequently filled by other States and non-State actors, can be traced to a history of governance failure brought about by the inadequacies of the authoritarian model that was prevalent pre-2011.¹¹ These regimes relied heavily on a social bargain that rewarded supporters and punished opponents, combining authoritarianism and political and economic stability.¹² This stability was illusory, the regimes marked by weak State institutions, high levels of corruption, increased and increasing fiscal and external deficits and constrained private sector growth.¹³ It also created a system of dependency that in turn impeded the development of institutions to challenge it, while any attempt to introduce reform was effectively resisted.¹⁴

Figure 1. Worldwide Governance Indicators* in Arab countries in crisis (Iraq, Libya, Somalia, Sudan, Syrian Arab Republic and Yemen) in 2010, 2013 and 2016



Source: ESCWA calculations, based on World Bank data.

Note: * Simple averages; estimates range from approximately -2.50 (weak) to 2.50 (strong) performance.

This model of authoritarian governance was unable to resist the effects of economic globalization, the rise of new media that challenged the State monopoly of news and information, and the pressures placed on the system and services by rapid demographic growth and increasing social demands.¹⁵ Frequent oppression by the State security apparatus meant citizens could not turn to the State for security, and this, combined with a failure to provide effective economic performance, further eroded public support for the regime.¹⁶ The 2011 Arab uprisings brought these weaknesses to light, exposing external

and fiscal deficits, high levels of corruption and lack of growth in the private sector caused by the focus on rent-seeking exercises.¹⁷ Heavy-handed responses from security forces and other non-State armed groups exacerbated the problems.

The security and governance vacuum led to the involvement of other States and non-State actors from inside and outside the region. Third-party external actors have long involved themselves in internal conflicts in the Arab world. Direct involvement manifests itself through military intervention and active

participation in the conflict; for example, by providing ground troops or by carrying out airstrikes. Indirect involvement often means financial, technical or political support. Outside powers do not have to force their way in, but are often invited to intervene by State actors seeking to re-establish or reinforce authority, or by political or non-State actor groups who seek power for themselves.¹⁸ In these weak States, the breakdown of State authority that would normally protect citizens causes people to turn instead to subnational identities, such as sectarian or communal identities and affiliated groups, for protection, and to search for religious kinship in external allies.¹⁹ International alliances forged according to communal identities increase polarization, uphold and exacerbate existing tensions, and motivate continued fighting.

Conflicts in the region have been marked by the increased power and involvement of armed non-State actors, most based strongly on communal identity and backed by a foreign power. Three important features of these groups concern their relationships with the State in which they function, with external States, and with the populations in their vicinity. Some non-State actors challenge the concept of the nation State per se, while others contest the organization and institutional design of a specific State.²⁰ Some seek to replace existing States, such as the Islamic State of Iraq and the Levant (ISIL).²¹ Other groups share features with State actors by having a political branch or providing services to parts of the population usually provided by government institutions.²² The deterioration of State institutions, combined with the diminishing importance of the nation

State as a source of identity, undermines the relationship between citizen and State.²³ Instead, citizens turn to local, subnational or even transnational sources of identity, which hampers agreement on the design for a shared national State.²⁴ It is here that the organized non-State actor steps in, challenging the institutional design of the State.²⁵

The second feature concerns the material and financial support provided by foreign powers to these non-State actors.²⁶ This contributes to the increased influence and prominence of non-State actors, and the increasingly decisive role they play in the power contest, and makes them attractive partners for States engaged in proxy wars.²⁷ The interplay between regional and domestic actors, and States and non-State actors, causes a vicious circle of insecurity and instability, often feeding into communal tensions. The ensuing competition for influence further destabilizes the State and can cause it to descend into a spiral of insecurity, instability and conflict.²⁸

With the third feature, armed non-State actors often act in proximity to civilian populations to prevent attacks from adversaries, exert pressure on other parties by committing civilian abuses, consolidate control over territory and gain access to economic resources and human capital.²⁹ Some groups engage in widespread abuses against civilian populations, including indiscriminate attacks, targeted killings, summary executions, torture, obstructing humanitarian aid and large-scale displacement.³⁰ These groups, however, sometimes provide populations with basic services, protection and security, replacing the

State as the main provider when institutions are either non-existent or incapable of service provision.³¹ Yet armed groups that commit abuses against civilian populations often trigger conflict and contribute to it continuing, undermining peacebuilding processes.³²

Institutions and conflict

Institutions shape all areas of human behaviour. Whether formal legal rules or informal social norms, they are the “rules of the game” in a society. In perhaps their most well-known definition, by North,³³ institutions are defined as “the humanely devised constraints that structure political, economic and social interactions”. The understanding of what institutions are has not changed much since. In his 2012 report on peacebuilding in the aftermath of conflict, the then Secretary-General Ban Ki-moon stated “institutions – defined broadly as the rules of the game and the organizations that frame and enforce them – provide the incentives and constraints that shape political, economic and social interaction”. As constraints, institutions can, by definition, generate frustration and resentment as much as guarantee peace and protection from violence. In the way that economic issues may be both a cause and a consequence of conflict, institutions hold a two-way relationship with conflict. Walter for instance argues that civil wars are more likely to repeat themselves in weakly institutionalized settings.³⁴ Institutions can lead to conflict as much as they can prevent it.

Many scholars agree that the institutional capacity of the State is critical in ensuring that

grievances are contained and to prevent violence.³⁵ If institutions fail to address people’s grievances, or even create those grievances, there is ultimately a risk of people resorting to violence to make these grievances heard. The link between ineffective institutions and conflict can be explained through various factors, including the following:

- (a) Weak institutions are subject to capture by groups that can capitalize on differences to serve their own political interests, thereby creating or exacerbating tensions;
- (b) Institutions may aggravate ethnic or sectarian divides by systematically favouring some groups over others in terms of political and economic opportunities;
- (c) Weak political institutions can create a lack of political opportunity and result in a ruling elite with low standards of accountability and transparency;
- (d) Prevalent corruption in institutions can undermine social trust, harm State finances, affect public service delivery and create fertile ground for the emergence of non-State actors that can turn violent;
- (e) Overly centralized institutions can neglect the development of peripheral areas and create inequalities and imbalances.³⁶

By creating or not addressing grievances, dysfunctional institutions can be root causes of conflict because they undermine two fundamental attributes of a peaceful nation State: the vertical trust citizens have in the State and the horizontal trust citizens have between themselves. If institutions fail to uphold these two links, which represent the

basis of the social contract and in sustaining peace, conflict can ensue.

Societies that are governed by dysfunctional institutions were conceptualized by North and others as limited access orders (LAOs).³⁷ They are societies where only a small percentage of the population, at most 20 per cent, captures virtually all the political and economic resources. LAOs are characterized by the embedding of “powerful members of society in a coalition of military, political, religious, and economic elites” that are averse to change because it would undermine their dominant position in the system. They are shaped by institutions that Acemoglu and Robinson later termed extractive institutions.³⁸ Conversely, open access orders (OAOs) represent societies where the entire citizenry is entitled to political and economic resources. Considered equals, all citizens have the right to “form economic, political, religious, or social organizations” and compete for resources.³⁹ In turn, OAOs are shaped by inclusive institutions.

To a large extent, the popular uprisings that took place throughout the Arab region in 2011 were the result of weak and exclusive State institutions, and a call for them to be transformed into more effective and inclusive ones. The people were expressing grievances that stemmed from social injustice, political disenfranchisement, economic inequalities and large-scale corruption, problems that were the direct result of extractive security, administrative, judicial and political institutions. The people demonstrated an aspiration to transition from LAOs to OAOs. In several countries, these uprisings, through which

citizens ultimately sought the redefinition of the social contracts tying them to their States, turned into violent conflict due to the very nature of LAOs. The elites were reluctant to give up their dominant position within political and socioeconomic systems, which are intrinsically linked in LAOs, and refused to reform unsustainable power structures that had reached breaking point.

Given the link between institutions, peace and conflict, one of the key messages of the 2011 *World development report* was that “strengthening legitimate institutions and governance to provide citizens security, justice and jobs is crucial to break cycles of violence”. It stressed the importance of “legitimate, capable and accountable institutions for violence prevention”. In fact, at the turn of the century, a paradigm shift took place within the development community whereby good governance was recognized as essential as economic liberalization, if not more, in fostering peace and development. Instances of economic without political liberalization, such as the transformation of corrupt governance practices, only served to reinforce the plentiful extractive institutions in place in the second half of the twentieth century. While Collier famously equated civil war with “development in reverse”,⁴⁰ a country’s economic liberalization within a system of extractive institutions can be equated to a situation of non-development, as short-term developmental gains are likely to be lost in the long-term due to unsustainability of the system.

This shift and growing international awareness was reflected in 2015 when the Millennium

Development Goals were succeeded by the Sustainable Development Goals. SDG 16 places unprecedented emphasis on governance and institutions, understanding that State institutions can be drivers, or enablers, of sustainable peace and development. It calls for “the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable and inclusive institutions at all levels”. The 2030 Agenda considers functioning States in the Weberian sense – States with inclusive, accountable and effective institutions that can monopolize the means of violence to promote peaceful political orders – as intrinsic to the development process, and not just a technical precondition for achievement of economic, social and environmental progress.

Moreover, the 2030 Agenda places unprecedented emphasis on inclusiveness and its importance in the process of sustainable development. While addressed in the *World development report*, inclusiveness was put at the core of the SDGs. The 2030 Agenda argues that only through inclusiveness will sustainable development be achieved. Its preamble asserts: “We are determined to foster peaceful, just and inclusive societies which are free from fear and violence. There can be no sustainable development without peace and no peace without sustainable development.” In this way, SDG 16 is reflective of Acemoglu and Robinson’s thinking. They make a case for the necessity of inclusive institutions to transition from LAOs to OAOs as they “would tend to uproot economic institutions that expropriate the resources of the many, erect entry barriers,

and suppress the functioning of markets so that only a few benefits”.⁴¹

The state of affairs in conflict-ridden countries of the Arab region would not appear to provide promising prospects of achieving SDG 16. This is compounded by the fact that transitions from LAOs to OAOs have been rare throughout history and the process is lengthy and sinuous, as LAOs are locked within a power structure equilibrium that prevents them from embarking on these very transitions.⁴² However, the post-conflict phase that countries will enter eventually does represent an invaluable opportunity. The power structure equilibrium, the unsustainability of which led to conflict in the first place, will likely be weakened, if not shattered, by that conflict. The transition from extractive to inclusive institutions might then be engaged. Based on this notion, the *World development report* argues that institutional transformation was easier in the aftermath of genocide in Rwanda or in the making of the new nation of Timor-Leste than during the Government of National Unity in Kenya (2008–2013) following ethnic conflict. Conflict embodies the most authentic and far-reaching meaning of the Schumpeterian concept of creative destruction. There is a space in post-conflict settings that allows for change, in order to move away from unsustainable institutional frameworks and develop new ones, based on inclusive consultations that will enable sustainable peace and development.

Opportunities exist and decisive action needs to be taken quickly during this post-conflict reconstruction phase. Otherwise, countries are likely to undergo conflict relapse and protracted

conflict, as in the Afghan and Iraqi cases. The nexus between conflict relapse and governance has been demonstrated by ESCWA. In countries improving governance performance after the end of conflict, the risk of relapse decreases in a few years, while it takes much longer for countries that have not improved performance.⁴³ Governance indicators, which include corruption, bureaucratic quality, repression and exclusion, democracy, military in politics and the rule of law, are directly determined by the institutional framework of a State. It is of the utmost importance to lay the institutional foundations for sustainable development in the immediate aftermath of conflict, defined as the first two years after the main conflict has ended.

Post-conflict institutional building has had its successes and failures, and the early and

critical window for action has been missed many times. Again in 2012, the Secretary-General acknowledged successful and sustainable post-conflict reconstruction as a difficult undertaking, that the track record of international support is mixed, adding: "In many cases, uncoordinated and short-term action has undermined success." In this report, institutional building in several post-conflict settings will be reviewed to determine what can and cannot be done, and what should and should not be done under specific circumstances. While accounting for country's specificities is vital in reconstruction, post-conflict settings often exhibit similarities: Learning from the experiences of other countries that have gone through comparable transitions from conflict or crisis can help national authorities decide which approaches to institution-building best fit their needs.

2. Ending Conflict, Building Peace: Negotiated Peace Agreements

2. Ending Conflict, Building Peace: Negotiated Peace Agreements

In the literature, there is debate as to the most effective and durable way to end intrastate conflicts. Participants can usually be divided into two camps: those who believe the most sustainable peace is reached through a negotiated peace agreement, and those that the only way to effectively end civil war is through a one-sided military victory.⁴⁴ Authors favouring military victory often do so because of what they see as the inherent disadvantages and weaknesses of negotiated peace agreements. Those who prefer negotiated settlement instead point to the transformative powers agreements can exert. The two sides also disagree on the frequency and durability of peace agreements and military victories in past conflicts.⁴⁵ This review will look at the literature on both sides of the debate, examining the arguments in favour and against. It will propose a third option, a category in the literature whose authors argue there is inherent value in negotiated peace agreements, but who pose a set of conditions, requirements and circumstances that must be met before an agreement to achieve long-lasting peace. An overview of how authors have defined negotiated peace agreements follows.

A. What is a negotiated peace agreement

A negotiated peace agreement differs from a military victory in that there is no clear winning

side deciding how the country should be governed after conflict.⁴⁶ According to Wallensteen and Sollenberg, a negotiated peace agreement involves the multiple sides to the conflict, and contains arrangements for parties to “explicitly regulate or resolve their basic incompatibility”.⁴⁷ Bell defines them as “a moment of agreement in a conflict” featuring a number of agreed understandings between parties, formulated as tangible measures detailing how to resolve or manage the conflict.⁴⁸ Toft says all peace agreements contain at least two elements: an agreement between parties to cease the hostilities, and an understanding the parties will also participate in future governance.⁴⁹ Toft, more than Bell, argues that peace agreements are forward looking and always include an element of power-sharing.

Hartzell provides a simpler definition, following the characterization of civil war settlements by Werner and Yuen as bargains that “specify who gets what and when” after an intrastate conflict, agreed by negotiation if military victory cannot be achieved.⁵⁰ She specifies that the outcome of the negotiation process is a bargain that details those “institutions or rules of competition” that will govern the former warring parties.⁵¹ By agreeing these institutions will be responsible for the distribution and division of State authority, specifically by sharing State power,

Hartzell concurs with Toft that power-sharing institutions are central elements of negotiated peace agreements.⁵²

Westendorf takes a more philosophical approach, describing peace agreements as words on paper that require implementation.⁵³ She proposes a more in-depth description, defining negotiated peace agreements as “aspirational road maps for the path the peace process will continue along”.⁵⁴ According to Westendorf, an agreement is a step in the peace process, especially given the high risk of failure, and just a piece of paper until it is sufficiently supported by initiatives aimed at consolidated peace.⁵⁵

B. Strengths of negotiated peace agreements

As presented by their supporters, the advantages of negotiated peace agreements relate to the direct effects they have on the warring parties, and range from stabilized expectations to reduced casualties and destruction, and general uncertainty and insecurity.

Most authors agree that the first direct benefit is an immediate reduction in destruction, of human life and material property. For example, Hartzell and Hoddie argue that in terms of human lives lost, a negotiated peace agreement is a less costly means of ending a civil war than a military victory.⁵⁶ Modelski states that negotiated peace agreements reduce the level of violence,⁵⁷ while Toft argues the instant avoidance of

physical destruction is the chief strength.⁵⁸ Hartzell adds that conflicts resumed after a negotiated settlement breaks down tend to be less deadly than those restarted after military victory.⁵⁹

Hartzell and Hoddie state that negotiated peace agreements can stabilize expectations of the parties and reduce uncertainty about the country’s situation, therefore producing a longer lasting peace than military victories.⁶⁰ Toft, stating agreements lift “the cloud of anxiety” that is a constant companion to violent conflict, would appear to concur.⁶¹ For Martin, inclusive negotiated peace agreements provide for the participation of the warring parties, offering security guarantees that also reduce anxieties. Further, these securities reduce the need for international intervention.⁶² The conclusion of an agreement also signals the willingness of parties to commit to sustainable peace, as it imposes high costs on those participating. These costs not only include implementation expenses, but also those of convincing followers to accept an outcome that is not a military victory, rather an agreement to cooperate with the enemy.⁶³

Finally, Modelski argues that negotiated peace agreements establish an unequivocal turning point in the conflict, after which the resumption of hostilities becomes illegitimate.⁶⁴ They are not only a rational way to end a period of hostility and a clear and appropriate inauguration of peace, but unlike military victories they also include broader interests and are a more accurate reflection of society and its political forces.⁶⁵

C. Weaknesses of negotiated peace agreements

The arguments against negotiated peace agreements are threefold, and relate to the expectations and fears of the parties that threaten conclusion and implementation, the technocratic nature of most agreements and the effects of spoilers.

Licklider suggests the specific circumstances of civil war make successful adoption of a negotiated peace agreement less likely. He states that unlike interstate conflicts, the parties still need to share the same space and territory after the conflict, which could mean intrastate conflicts are more intense and challenging to end through negotiation.⁶⁶ Wagner elaborates on Licklider's reasoning. If one considers a peace agreement to be a compromise, it requires parties to consider the compromise, the terms of the agreement and its expected results, to be more beneficial than continued negotiations or fighting.⁶⁷ Achieving the required convergence of interests could take a long time, during which the fighting continues. Furthermore, Wagner argues that even when such a compromise is reached, this does not change the objectives of the warring parties. A negotiated peace agreement is concluded when adversaries expect alternatives to be more detrimental to their cause. However, when these expectations change, but not the objectives of the parties, then conflict can resume.⁶⁸ Wagner argues that with an agreement, the parties to the conflict that are also parties to the agreement continue to exist in some organizational form, which could accommodate the re-emergence of conflict.⁶⁹

Fortna has a similar argument but instead of focusing on acts inspired by expectations and a balance of probabilities, she looks at acts inspired by feelings of fear. The warring parties have strong incentives to default on the negotiated peace agreement to achieve their goals by resuming violence, considering agreements are compromises.⁷⁰ They also assume their opponents will likely act in a similar fashion. Such insecurity about the intentions of the opposing party, combined with a desire to protect their own security, can undermine cooperation and risk continuation of the conflict.⁷¹ Fortna adds that fears related to the uneven distribution of power, resources and territory could provide parties with an incentive to continue fighting to make up for such losses.⁷² Walter also argues that commitment to an agreement that requires parties to demobilize and disarm, while institutions that can enforce the terms of the negotiated peace agreement are absent, is too big an ask.⁷³ If the parties lay down their arms and integrate their assets into the newly formed State institutions, they will no longer be able to ensure further cooperation through force, or successfully counter an attack by the other party.⁷⁴ Both Downes and Martin follow this line, stating that the experience of warfare causes an overall sense of distrust that is difficult to overcome.⁷⁵ Even after a peace agreement is concluded, and provides for the distribution of power, fears over the intentions of the other side remain.⁷⁶

Another argument put forward by Westendorf against negotiated peace agreements, and the effectiveness of peace processes generally, is that these tend to be technocratic exercises.⁷⁷ The solutions and initiatives that are part of

settlements, such as security and governance building and transitional justice, are premised on the assumption that intrastate conflicts take place when State institutions collapse, and that peace will be established by simply reconstructing those institutions.⁷⁸ Westendorf says these settlements do not sufficiently consider the context, more specifically the particular relationship between the State and society, the organization and contestation of authority, and the existence of competing interests.⁷⁹ Instead, peace processes are often hijacked by elite interests, and help continue a situation of insecurity and competition.⁸⁰

Finally, according to Reiter and Stedman, negotiated peace agreements are also more vulnerable due to being specifically targeted by violence, causing collapse.⁸¹ While spoiling can delay the successful implementation of agreements by diverting resources from reconstruction to security, it has the capacity to reignite conflict. Reiter finds spoiling is most often carried out by excluded rebel groups. Other cases involve military and civilian actors.⁸² These actors target the agreement, either to modify its terms or bring about its termination. Attempts to modify an agreement are successful only when carried out by those with strong capabilities, but actors attempting to terminate one are often weak and incapable of doing so.⁸³ Reiter adds that spoilers can strengthen the peace process by raising issues, reminding parties of the cost of conflict, and the importance of peacebuilding, and giving excluded groups and actors a voice or a seat at the negotiation table.⁸⁴ This can lead to a more inclusive peace process, and a more sustainable peace.

D. Conditions for negotiated peace agreements

Agreements come in many different shapes and sizes, and can be as elaborate as desired. More authors, however, are proposing considerations they believe are essential for a negotiated peace agreement to establish lasting peace. Others examine situations in which agreements have been more or less successful, and establish preconditions that must be met by the environment in which they are concluded.

Hartzell argues that durable peace and stability are ensured by the extent to which the negotiated peace agreement addresses the security concerns of warring factions. After peace has been agreed, parties can no longer resort to violence to exert power, gain influence or promote their interests. They often fear the opposing party will gain exclusive political and economic power, and control over the State's coercive apparatus, and will use this to damage or eradicate the opposition.⁸⁵ According to Hartzell, if a negotiated peace agreement is able to stipulate institutional guarantees addressing these three concerns, feelings of vulnerability that threaten the willingness to commit can be limited, which provides for lasting peace.⁸⁶ Mattes and Savun make a similar argument, stating that negotiated peace agreements should include fear-reducing provisions to counter any insecurity by limiting the ability of the parties to default,⁸⁷ the key examples being power-sharing arrangements and third-party guarantees.⁸⁸

Hartzell also says a well-designed system of power-sharing institutions, enshrined in

negotiated agreements, can contribute to lasting peace in three different ways:⁸⁹ first, by reducing security concerns of the parties, which reflects the arguments put forward in Hartzell's previous article; second, creating and participating in power-sharing institutions can signal commitment to the agreement, and to peace in general; and third, power-sharing institutions have the capacity to dictate the ways in which social conflict is managed, as they reconstruct the social order post-conflict. Martin is more specific, arguing that military, territorial and legislative power-sharing, in particular, contributes to sustainable peace.⁹⁰ He interprets this as implying compromises that are high-cost, such as the restructuring of laws, the military or central State power, can be considered most effective.⁹¹

Toft instead focuses on the importance on including mechanisms that ensure consequences for those who violate the negotiated peace agreement by resuming hostilities.⁹² She argues this is the strength of military victories, which makes them last longer than negotiated peace agreements.⁹³ Reform of the security sector would play a crucial role in ensuring adherence to the agreement, even though this often receives least priority in any peace agreement.⁹⁴ Of further importance are specific economic, political and social reforms.⁹⁵ Similarly, in addition to fear-reducing provisions, Mattes and Savun argue that peace agreements should include cost-increasing provisions, which raise the costs of resumed fighting and therefore its risk.⁹⁶ Examples of such provisions include the withdrawal of foreign troops and the separation of forces.⁹⁷

Another requirement that would promote sustainable peace is the involvement of third parties. Lounsbery and DeRouen favour the involvement of third parties, especially the international community or outside States. They are able to provide weak non-State groups with legitimacy and can coerce government forces to join peace negotiations.⁹⁸ The participation of third parties in negotiations is more likely to lead to the inclusion of power-sharing arrangements, which could assist in establishing durable peace.⁹⁹ However, the authors add that while they can force the parties to join negotiations, this could undermine the legitimacy of any subsequent negotiated peace agreement, as the parties lack incentive to act in accordance with its terms.¹⁰⁰ Walter underscores the third-party argument, focusing on peacekeeping forces, but adds the caveat that they can only be of additional value if they are able to use force. Unarmed or able only to observe, they do not have a positive effect on either the negotiation or implementation of agreements.¹⁰¹ Further, these forces must remain present during the implementation phase.¹⁰²

Wanis-St. John and Kew look towards a specific type of third party actor, namely civil society groups. They argue that civil society, if included in negotiations, can provide wider public representation.¹⁰³ The authors find that a strong association exists between the participation of civil society actors and the sustainability of subsequent peace agreements, especially if the conflict situation involves undemocratic elites.¹⁰⁴

Bar-Tal and Bennink suggest that negotiated peace agreements are unable to establish genuine peace because the negotiations leading

to the agreement only include leaders to the conflict, or only a small section of society.¹⁰⁵ The population may not agree to the terms, or may continue to hold opinions that fueled the hostilities. Such exclusion contributes to the instability of agreements, and could cause them to disintegrate or result in a “cold peace”.¹⁰⁶ The authors argue for the inclusion of a reconciliation mechanism, as it is reconciliation of societies that builds sustainable peace.¹⁰⁷ Manning agrees, and states that both national reconciliation and the re-establishment of effective State authority will largely take place at local level.¹⁰⁸ She argues that reconstructing central State institutions and frameworks is insufficient, and that reconstruction must also include those structures that guarantee effective implementation of the agreement at local level. This is important to reintegrate rebel fighters and provide for their physical security, rebuild local infrastructure, and crucially to prevent attempts by local factions to renegotiate terms.¹⁰⁹

While not focusing on reconciliation, Aroussi and Vandeginste argue for the inclusion of human rights in agreements. Human rights provisions in negotiated peace agreements are constructed by “grievance-related root causes of conflict”, as accepted by the warring parties and the victim populations.¹¹⁰ The authors contend that human rights provisions are the most suitable way to address these root causes, and failure to include them could lead to marginalization, exclusion and inequality during reconstruction.¹¹¹

Another consideration is the capacity of the State to implement negotiated peace

agreements, with DeRouen and others concluding that stronger States are better able to carry this out successfully.¹¹² The authors also find a decline in State capacity increases the necessity of third-party intervention to ensure implementation, but that low levels of State capacity cannot be so remedied and will eventually lead to collapse of the agreement.¹¹³ Mason and Greig argue that State capacity to implement negotiated peace agreements and establish sustainable peace also depends on the regime type, finding that democracies and one-party regimes are better able to sustain peace compared with authoritarian regimes.¹¹⁴ While one-party regimes are more vulnerable to armed challengers due to their preference for co-optation, military and personalist regimes risk the eventual failure of the negotiated peace agreement because of their dependence on repression.¹¹⁵ Compared with all other regime types, democracies substantially reduce the risk of agreements breaking down.¹¹⁶

Hoffman and Bercovitch provide a final consideration, arguing that apart from the importance of creating a balanced agreement that carefully weighs the concerns of the parties, a negotiated peace agreement should be a flexible, living work.¹¹⁷ The document that forms the basis of peace should contain only the most basic description of the post-conflict relationships between the parties.¹¹⁸ The subsequent implementation phase would mean continuation of negotiations, requiring parties to renegotiate the terms of the agreement in more detail, “almost on a day-to-day basis”.¹¹⁹

While all authors criticize existing negotiated peace agreements and discuss cases in which

they have been unsuccessful in establishing long-lasting peace, most still focus on the agreement as the option of choice when resolving intrastate conflicts. They assume that if concerns are addressed and proposed requirements met, the agreement will lead to lasting and effective peace. On the other hand, those negotiated peace agreements that fail to meet the prescribed conditions will fail. The authors do not explain, however, why they are in general still the most effective tool. Instead, they respond to a trend that has seen increased use since the end of the cold war,¹²⁰ implying the acceptance of the negotiated peace agreement as the default option in intrastate conflict resolution came after a recent increase in such agreements. Explanations have been put

forward, related to changing war dynamics, including the rise of weak States, new insurgency strategies and increased access to small arms – which have decreased the likelihood of one-sided victories¹²¹ – and the increased importance of human rights norms and the Responsibility to Protect (R2P) principle.¹²² However, these neither explain why negotiated peace agreements should remain the first pick in conflict resolution, nor do the authors who present them as the default option. While the choice of a negotiated peace agreement to resolve intrastate conflicts might at first glance seem obvious, after considering the criticism it receives as a tool, inquiring why it is still considered so desirable would appear pertinent.

3. Institutions in Crisis and Transition: A Review of Political Science Scholarship

3. Institutions in Crisis and Transition: A Review of Political Science Scholarship

This chapter examines recent scholarship on institution building and good governance, and the origins and models of the State in transition after civil strife in developed and developing societies. It presents four main arguments. First, the study of institution building has seen a revival in reaction to the critiques of the empirical and behaviourist methods that dominated from the 1950s to the 1960s. Second, the most salient contribution is on the new institutionalism and social capital. Third, historical context of State formation and institutions vary in developed and developing societies. And fourth, unlike most developed societies, Arab States lack effective institutions and institutionalization of the decision-making process, paramount in ensuring good governance, public service provision and political stability. The chapter analyses the following concepts and cases: defining institutions, good governance, the rule of law, institutional reform, social capital, the historical experience of developed and developing societies, and the crisis of the Arab State and the challenge of reforming institutions.

A. Defining institutions and good governance

The scholar Peter Hall defines institutions as “the formal rules, compliance procedures and

customary practice that structure the relationship between individuals in the polity and economy”. This implies three levels of understanding: the nature and specific characteristics of government institutions; the structure of the State; and the level of the normative meaning of social order in a given historical context. The question for scholars is why institutions matter and why there is a need to study them.

Institutions matter because they are the foundation and prerequisite of good governance. Stable democratic participation is the focus of political science in the study of institutions. After all, one of the major focuses of political science is the study of institutions. But what does this mean? The answer can be found by first defining institutions, then by reviewing the literature. Two central concepts – good governance and rule of law – have to be contextualized.

B. What is good governance

In the past two decades there has been a proliferation of scholarship on good governance, linking it to the role of institutions as essential for economic growth and social development. Jon Theorell defines quality governance as “the impartiality of institutions

that exercise government authority". The focus on impartiality is a welcome contribution to the popular but general acceptance of good governance. It also builds on assessments by political theorists, multiculturalists, feminists, social capital and post-colonial critics.

To understand this new conceptualization, the overemphasis on empirical and quantitative analysis of good governance must be borne in mind, as in the World Bank empirical governance indicators. The Bank defines governance as "traditions and institutions by which authority in a country is exercised".¹²³ This is broken down into the following indicators: the process by which governments are selected and replaced; capacity of the government to formulate and implement effective policies; and the respect of citizens and State officials for institutions that govern economic and social interaction. This mode of analysis does not differentiate between access to power and the exercise of power, and the content of specific programmes. It ignores the quality, agency and normative sides of good governance. Some scholars argue that a theory of democratic participation and justice is needed to clarify the way public policies and institutions work.

The rule of law is another widely used concept, especially within the literature on transition from authoritarian regimes to pluralist democratic systems. Seeking strong institutions without ethical and social content is problematic, unless there is the rule of democratic and egalitarian law. Nazi and Fascist regimes, it must be remembered, had a strong record of law, and Mussolini "made the trains

run on time". South Africa's apartheid and colonial regimes placed strong emphasis on the rule of law. Thus, one has to add to the mix the rule of just, fair and impartial law and institutions applied to all citizens without class, status, racial or power bias.

The next question is how political scientists have examined the problem of institution building as an instrument for stability and good governance.

The study of institutions dominated the disciplines of political science from the late nineteenth century to the end of the second world war. The old institutionalism focused on detailed examination of institutions and legal and political subsystems in the field of comparative politics of western capitalist liberal democracies. The discipline originated in the United States, and is still an American-dominated social science. The focus on the legal and political rules and functions in a complex federal capitalist system required social and political analysis of the American historical experience. A settler colonial society, it was led by an innovative elite that created strong institutions and was able to adjust to limitations and changes in society. American political and institutional systems were based on the European theory of juridical right and the enlightenment philosophy, such as the separation of powers. In addition, the founding fathers' innovative constitutional arrangement was open to change, evidenced by the 27 constitutional amendments, and became more egalitarian by the mid-twentieth century. Hannah Arendt points out that Montesquieu and Locke loomed large in the American

constitution and the idea of separation of powers. This is true. Consider, despite conflict and civil war, and racial, class and gender inequalities, the American political system has endured for almost 250 years. In short, the survival of the federal republic rests on the creation and innovation of strong institutions, especially if compared with the violent and unstable history of liberal capitalist democracies, such as the French Republic. The old institutionalism in political science failed to develop clear concepts and theoretical methodology that facilitated policy implications and explanatory research, and faced a major critique from a new paradigm, behaviouralism.

The behavioural revolution in American social science affected the focus of political science in the early 1950s and 1960s. It focused on empirical analysis and informal power attitudes and behaviour, rejecting the old emphasis on formal institutions by arguing that laws and rules could not explain political behaviour and policy outcomes. Despite this shift, institutional analysis continued through the work of scholars such as Samuel Huntington and Reinhardt Bendix. Huntington theorized that the key to the survival and stability of any modern State is strong and independent institutions. Lisa Anderson applied his theory to the Arab State in her book on State and social transformation in Tunisia and Libya from 1930 to 1980. Following Huntington, Anderson argues that the existence of a strong State bureaucracy is a major factor affecting modernization, political stability and even the degree of popular participation allowed within these institutions.

C. The new institutionalism

The behavioural revolution ran its course and by the end of the 1970s faced its own critique. By the early 1980s, institutionalism returned to the field. This school, known as new institutionalism, was inspired by the scholarship of political and sociological theorists such as Karl Polanyi, Thorstein Veblen, Max Weber and Montesquieu, and the work of Hall, Bendix, Huntington, Charles Tilly, Theda Skocpol and Joel Migdal, and challenged the hegemony of the behavioural approach. It did not just revive the old institutionalism but presented a critique of the behavioural method and added two methodological contributions, bringing back State and State-society relations ignored by behaviourist research. It paid more attention to theory and intermediate institutions, with specific application to corporations, economic policy, interest groups, and, more recently, State collapse and transnational justice, and to the institutional innovation of truth and reconciliation commissions in post-conflict, war and genocide societies. A common feature is the contention that institutional factors have a significant role in shaping the distribution of power and stability in all societies. In other words, the study of institutions and relationships to these institutions determines the outcome of political interactions.

The creation of innovative and dynamic institutions shapes stability, participation and adaptation to conflict, challenges and civil strife in modern political systems in the age of globalization, and the information and communication revolutions of the twenty-first century. Cases presented by this new school range from the formation of the European Union,

which made the old European Court of Justice more important, to federal jobs for industrial workers taking on new meaning as unions began to emerge in 1930s America. The choice of creating or strengthening institutions determines the nature of constraints, conflict resolution and, above all, understanding politics. Inclusive political reforms and transnational justice have been instrumental in resolving conflict and divisions in post-colonial, civil war, genocide and revolutionary societies; for example, Nigeria, Rwanda, South Africa and Uganda.

The function of political institutions is often influenced by historical and social context. Not all institutional reforms can be exported or applicable to all time frames and societies. One has to understand societal and cultural experiences, and the need for a leadership committed to comparative modern knowledge and a respect for informal and indigenous cultural institutions and social capital. Post-colonial critiques and feminist scholarship in western and developing countries have corrected Eurocentric and modernist assumptions and categories of institutionalism. They have advocated a more egalitarian approach to include informal and non-colonial institutions and actors in understanding and creating a vision for transnational and distributive justice and institutions. The social capital scholarship has made a new contribution to reforming and empowering institutions and good governance.

D. Institutional reform and social capital

In addition to the new scholarship of historical institutionalism, an innovative trend has

complemented the study of institutions in American political science over the past two decades. This scholarship, on the concept of social capital, fell into the gap between how to reform and how to make political institutions work in reality. A distinction has to be made between authoritarian and democratic States when addressing stable institutions. Even dictatorships can have democratic and representative formal institutions, and well-designed constitutions. Historical and social context will determine the nature and work of institutions, whether they live up to their design or are dominated by power, and internal and external bases of dictatorship, which work against reform. The key questions are how to restore trust, respect and support for political institutions and in everyday participation. Enter the concept of social capital, which refers to “connections among individuals, social networks, and norms of reciprocity and trust that arise from them”.

The American political scientist Robert D. Putnam researched social capital in Italy and the United States and defined it as “generalized trust, norms of reciprocity, and networks”.¹²⁴ He distinguished two types: structural networks, and attitudes of trust and reciprocity. The literature on social capital points to two approaches to understanding its role in society: one is a bottom-up or society-centred approach emphasized in civic attitudes and social interactions, such as membership of voluntary associations, clubs and unions; the other, a State- and institution-centred or top-down approach, in which social capital is advocated by government, public policy, national institutions and education.

Putnam's research included a useful reading of the literature on institutionalism. He identified three schools that studied the dynamics of institutional performance, namely institutional design, social-economic and social-cultural factors. The first, the institutional design school, originated in the nineteenth century. John Stuart Mills, one of its early figures, advocated constitutionalism and representative government. This school continued to be influential until made vulnerable by the rise of fascism in Italy and Germany and the instability of the Third and Fourth Republics in France. The second he called the social-economic factors-centred school. This school, Putnam argued, was as old as Aristotle, who advocated for social and economic well-being as factors for stability. Contemporary American political scientists Robert Dahl and Seymour Martin Lipset stressed the role of education, modernization, the middle class and conditions for stable and effective polity. The third school focused on social-cultural factors to assess the performance of democratic institutions. Putnam traced the trend to French philosopher Alexis de Tocqueville's *Democracy in America*, which argued the salient feature of American democracy was the existence of civic associations that "enhance habits of the heart" and supported its political institutions. Putnam elaborated this old concept and called it social capital. Thanks to his scholarship, the debate on social capital has flourished in the United States and other countries, and in international institutions. Social capital has been advocated as a resource for enhancing democratic participation and empowering national institutions. The United States

Government, and those of the Belgium, Uganda and the United Kingdom, among others, incorporated it into teaching and media, while the World Bank made it a key instrument for enhancing international institutional efficiency and mobilization for reform.

E. Institutional building in developed and developing societies

There are three major differences when comparing the application of institution building and reform in developed and less developed societies. First, new contributions to the study of institutionalism are the schools of historical institutionalism and social capital. In developing societies, building and reforming institutions have to be analysed within the context of colonial-imposed institutions and alien states, which produced a legitimacy crisis after independence. The second difference is that economic dependence and external intervention distorted post-colonial reforms and democratic movements, especially during the cold war period 1945-1989. Third, the struggle against authoritarian regimes and a one-party State is not yet finished, particularly as several developing countries have experienced civil wars, genocide and regional conflict. Above all, there was no resolution of how to reconcile local and native institutions with legitimate, modern western-style institutions, where people can coexist and use their own social capital and institutions for services, opportunities and basic needs.

F. The Arab State in crisis: authoritarianism and the challenge of reforming institutions

Before the democratic uprisings of 2011 in the Arab world, the study of State, institutions and democratization in American political science and Middle Eastern studies was largely abandoned and replaced by a focus on Islam, modernity and the persistence of authoritarianism.¹²⁵ Lack of interest in institutional reform and democratization of Arab countries is often justified by empirical arguments, such as the lack of such in the wider region, despite the so-called third wave of democratization in Latin America, Asia and some African States. As Emma Murphy observed in 2008: "It is a rather sad indictment of the Arab politics today that the word democratization has virtually disappeared from research-based literature on the Middle East."

This orientalist view was accepted by many American political scientists. Only after the uprisings in Bahrain, Egypt, Libya, Syrian Arab Republic, Tunisia and Yemen did scholars return to the central question of democratic transition and query the assumption of the Arab and the Muslim world as exceptions to the third wave of democratization of the 1990s. Recently, some American scholars have studied new cases, such as the collapse of States, counter-revolutions, terrorism and civil wars in the region. After a short period of optimism at the start of the Arab uprisings, most returned to the old pessimism, resuming the debate about Islam, terrorism and anti-modern or pre-modern Arab/Muslim cultures. Despite this general lack of interest in democratization and institution building in Arab

countries, a small group of scholars has addressed the larger questions. Some specific cases, and the scholarship on authoritarianism, contributed useful studies on those actors obstructing democratic transition and institutional transformation in the Arab world.

American political scientists explain the lack of democratization and State reform with the persistence of authoritarianism thesis.¹²⁶ This presents arguments based on economic, cultural and regime formation. First, authoritarianism in the Arab world is explained by factors such as rent collected from the economic oil, gas and mineral wealth, or the rentier economy and rentier State formation.¹²⁷ The Arab rentier State does not tax its citizens and has relative autonomy, and hence, no incentive for democratization and institutional reform. If there is no taxation, there is no pressure to be accountable as long as the State provides major administrative wealth, education and security services. The rentier State theory brings valid evidence of the persistence of authoritarianism and monarchical absolutism in the Arab world. Yet authoritarianism persisted in non-oil or rentier States in Africa and Asia.

The 2011 uprisings took place in many Arab countries despite a rentier economy, institutions and external support. Another trend, focusing on socioeconomic factors, is more useful when examining democratic socialization and associated civic society life. Studies by Putnam, Norton, Ibrahim and Jamal provided a new focus on the bottom-up view of democratization.¹²⁸ Their flaw, however, is assuming modern civil associations are from outside, ignoring the long tradition of

Hubus/Awqaf or religious endowment institutions, and other internal ones, such as: Sufi orders, charity organizations, the social capital of ta'ish, coexistence, takafal networks, zakat, tribal and local guilds, and Arab-Muslim local civil society.

Second, American scholars have explained the lack of democratization with cultural and religious arguments, noting Islam as an anti- or pre-modern obstacle to moderation and democratic reforms. The popular reference for this is Huntington's book *The Clash of Civilizations and the Remaking of World Order* (1997) in which he argued that Islam was "inhospitable" to democracy. For him Islam, the majority religion of many Arab and Muslim countries, neither distinguishes nor separates the spiritual and the secular, and lacks recognition of the concept of political participation. Huntington based his analysis on secondary sources and accepts uncritically the assumptions of the anti-Muslim orientalist scholar Bernard Lewis. It is unfortunate that a large body of American literature on authoritarianism in the Arab world centres on this ahistorical view. By accepting this thesis that the majority of Arabs are Muslims, and that Islam and democracy are incompatible, it becomes a forgone conclusion that we should not expect democracy to exist in the Arab world; hence, it is an exceptional region, outside the third global wave of democratization. Accordingly, only if the influence of Islam is modernized by western secularism can the authoritarian Arab State enter the process of reform and democratization.

Critics of the literature on the persistence of authoritarianism point out that Islam and culture are not monolithic and that external support for authoritarian republics such as Egypt and Tunisia, and absolutist monarchies such the Gulf States, is overlooked. In addition, formation and support for the State of Israel has contributed to the militarization of the Arab States, while post-colonial scholars have raised the impact of the colonial State and institutions on limiting the process of democratization.¹²⁹ Yet even critics of orientalism and modernization theory have to consider that Islamist and secular movements in the Arab world have not resolved the question of governance, especially secularizing the State and opening society to all ideologies and social movements as long as it accepts the democratic process and the right to difference. The post-colonial one-party State – populist, military, absolutist and dynastic family rule – created a tradition of linear thinking about the State and its institutions. The United States has a secular Constitution, strong institutions and open capitalist conservative society. Promising research on mixed and dual institutional building in the Muslim world suggests innovative strategies and models; for example, the Iranian Constitution after the 1979 revolution. It borrowed elements from the French Fifth Republic Constitution, Twelver Shi'i jurisprudence and theology, and Iranian historical national traditions, including the Iranian Constitutional Revolution of 1906-1911, in an attempt to reconcile western and native Muslim institutions and traditions.

4. Legitimacy and Renewal of the Social Contract

4. Legitimacy and Renewal of the Social Contract

Legitimacy in post-conflict situations has increasingly captured the attention of international agencies and donors working in peacebuilding. Organizations such as the UN, World Bank and the Organisation for Economic Co-operation and Development (OECD) have included it as a principal element of their post-conflict and conflict-prevention strategies.¹³⁰ The work of ESCWA in the Arab region emphasizes legitimate institutions and good governance as a key factor in preventing conflict, and one of the main elements in post-conflict interventions.

In the National Agenda for the Future of Syria (NAFS) Programme (see table 1), which engages Syrian experts and stakeholders in developing policy alternatives in preparation for a post-agreement phase, legitimacy and good governance are present in two of the nine nexuses that articulate priorities for the peacebuilding and State-building phases. The previous editions of the Arab Governance Report acknowledge legitimacy as one of the governance challenges in countries undergoing transition,¹³¹ and conflict-affected countries.¹³²

Table 1. Sequencing of governance reform post-settlement in the Syrian Arab Republic

Measure	Description	Expected outcome	Time frame from date of political settlement
Constitutional declaration	The national legal and political framework during peacebuilding phase	Establishment of a constituent assembly and supreme judicial council; granting of civil and political rights	Immediate
National commission for implementation of reform framework	Body of three watchdog institutions: rights, reform and audit	Reinforce legitimacy for reform process and more public scrutiny	Immediate until end of peacebuilding phase
Judicial reform	Reform of judicial sector spearheaded by supreme judicial council	A judicial system provides for effective and just dispute settlement mechanisms and restoring legitimacy of judiciary	0-2 years
Security sector reform	Reform to achieve democratic and human rights-respectful security sector system	An effective security sector, publicly accountable and respectful of human rights with clear line of civilian-security sector authority	0-2 years
Media and independent press reform	Develop a legal and institutional framework for a free media, and establish a national media campaign for reconstruction	A fully functioning national media council and diverse national media landscape	0-1 year

Source: ESCWA, NAFS Programme.

Despite the knowledge accumulated by the international community, questions on legitimation strategies remain open. For instance, what is the best set of policies and timing for implementation in post-conflict countries? Which actors should be considered when assessing whether an institution is legitimate? And, how can international actors support State-building without undermining the population's perception of its legitimacy?

A. What is legitimacy

The concept of legitimacy is used in many sociopolitical situations, usually to capture both the capacity and the right of an actor or institution to act. Legitimacy is vital in the State-building phase as it determines the structure and procedures of agencies, governments and other institutions that constitute a State. The definition of a legitimate government, institution or rule is the general belief that those ruling have the right to do so. While legal perspectives on legitimacy stress the importance of formal and procedural aspects, philosophical ones focus on shared values and beliefs. In political science, the concept of legitimacy is the capacity to obtain obedience without resorting to the use of force or violence.

Legitimacy can be defined as “a generalized perception or assumption that the actions of an entity are desirable, proper, appropriate within some socially constructed system of norms, values, beliefs and definitions”.¹³³ Politically, legitimacy means the right to govern. In this sense, “legitimacy refers to the normative belief by an actor that a rule or institution ought to be

obeyed”.¹³⁴ The concept of legitimacy is interlinked with acknowledgment and perception of individuals in a way that generates “a pull to compliance which is powered by the quality of the rule or of the rule-making institution and not by coercive authority”. It exerts a claim to compliance in the voluntarist mode.¹³⁵

These definitions provide the characteristics a State and its institutions need to demonstrate to be considered legitimate: it is perceived as a desirable entity, its rules are considered as those that ought to be obeyed, and its pull to compliance is basically voluntary and not based on coercion. A legitimate State can be defined as a State that “is seen by its citizens as rightfully holding and exercising political power”.¹³⁶ An important consequence of legitimacy is the stability of institutions. It may not, however, always be paralleled with stability, as States may remain stable through repression and payoffs. “Rather, legitimacy should be seen as a ‘usually necessary’ condition for the long-run stability of any state.”¹³⁷ Legitimacy is vital in the post-conflict State-building process as it establishes the basis for rule by acceptance rather than coercion, moving the society from one in conflict to one in which peaceful governance and coexistence is possible. When citizens consider their rulers to be illegitimate, this is the origin of a governance crisis and unrest; when authorities “are not viewed as legitimate, social regulation is more difficult and costly”,¹³⁸ which may eventually lead to violent conflict.

Legitimacy is a normative connection between people and the political system they are part of

and cannot be obtained in a sustainable way by violence or coercion. In this regard, the distinction between the concepts of power and authority is important, as they explain how legitimacy is built. Weber defines power as the ability of individuals to achieve their own goals or aims when others are trying to stop them from realizing them, and having influence on others. Authority is the institutionalized exercise of power and leads to a separation between those who command and those who obey.¹³⁹

Any approach to building legitimate institutions, particularly in post-conflict settings, must acknowledge the relationship between these two concepts, as they are central to understanding why societies accept a particular form of government as the most satisfactory alternative to regulate their communities. While a modern State in Weberian terms requires the monopoly of violence, acceptance of the legitimate right to yield that power is also needed because it allows for establishing long-term relationships between the governing power and the governed where the recurrent use of force is not necessary. That is why power relationships are not only related with power of violence but also with ideas, beliefs and values that help obtain authority and legitimacy for those in command.

B. Sources of institutional legitimacy

Every political system has its own structure to articulate relations between society, government and the economic and political elites. These relationships are set by principles defined by the political culture and ideologies of

the system; understanding what makes people believe those who rule have the right to do so and that their laws should be obeyed has been a key element in the study of the creation of modern nation States. To understand how power is organized within a political system, a purely legal approach to its laws or philosophical approaches are not enough. States represent an authority imposed on a territory that at the same time enjoys some degree of consent. Hence, different factors affect the construction of the subjective elements that conform legitimacy. The literature in this field is vast and includes sources such as security, order, general welfare, freedom, justice, social capital, ethnic homogeneity and cultural values as explanatory factors of legitimacy.

An initial approach to the sources of legitimacy leads to Weber and his three bases for legitimate rule in society: rational-legal, charismatic and traditional. Rational-legal authority occurs when legitimacy stems from legally enacted rules and regulations by a State and its bureaucratic system. Charismatic authority represents power that is legitimized by the charisma of the leader, while in traditional authority legitimacy comes from tradition and custom. Later authors considered obedience to a common institution can stem from violence, coercion, persuasion or retribution.¹⁴⁰ Building on these general theories, other authors have explored and conceptualized certain elements to understand the fundamental bases of institutional legitimacy. As a result, different strands of the literature have focused on issues such as political stability, control of corruption and the rule of law as roots of legitimacy,¹⁴¹ while other scholars have put more weight on

democratic rights.¹⁴² Effective bureaucracy, the provision of public goods and the participation of civil society are also identified as elements for State legitimacy.¹⁴³ Similarly, Linz and Stepan¹⁴⁴ and Carothers¹⁴⁵ considered the presence of an effective State as a prerequisite for democratic consolidation.

Understanding the perceptions and expectations of the populace in terms of legitimacy may help to shape interventions in post-conflict countries to generate wider acceptance and stability. State legitimacy, however, is not only built at internal or domestic level but is also constructed within the international community. As mentioned above, legitimacy is a normative phenomenon and its conception may differ depending on the specific community or entity that qualifies the acts. This is applicable within States but also in the international system, which is formed by States and organizations that recognize governments in accordance with a combination of international law, and diplomatic and political reasons.

This external layer of legitimacy becomes especially relevant when the historically endogenous process of State-building is led by international intervention. In these cases, there can be potentially conflicting situations where there is a government that enjoys international recognition while its authority is challenged by competing internal factions and de facto governments, or conversely is not recognized by the international community but maintains effective control over certain parts of a territory.

To understand the different sources and tensions that affect the consolidation of legitimacy, the Input-Output framework (see table 2) developed by Scharpf provides clarity on how the different elements that configure the sources of legitimacy interact.¹⁴⁶ The model distinguishes two dimensions of legitimacy, input-output sources and internal-external dimensions.

Table 2. Sources of legitimacy of State institutions employing the Input-Output framework

	Input source	Output source
External dimension Actors: international and regional organizations, third countries, transnational groups of interests	Rules and procedures established by the international community	Fulfilment of its responsibilities as a member of conventions, international agreements, etc.
Internal dimension Actors: national citizens, national groups of interests	Rule-setting procedure: parliament, executive government, national councils, personal decision, functioning of the machinery of an institution	Perception of problem-solving capacity Efficiency Normative and cultural expectations

Source: ESCWA, based on Scharpf.

The input-output sources of legitimacy refer to the different bases on which a decision may be considered legitimate. Input source refers to the rule-setting procedures, and is linked with legal, procedural and accountability aspects; in other words, legitimacy is based on the process of decision-making. The output source is related to the effectiveness or results of governments, or legitimacy based on the outcomes of decisions rather than the processes. Thus, whether a decision is viewed as legitimate may differ due to the varying attitudes and interests of stakeholders. Internal legitimacy, among those who participate in the community, might also differ and clash with external legitimacy, for non-members of the community.

The model suggested by Scharpf helps understand the complex dynamics behind the construction of legitimacy. Limitations raised by critics point out that it “presents an overly simplified representation and portrays a linear progression towards a final product or end goal (i.e. output legitimacy), despite research emphasizing the ongoing construction of legitimacy and possibility for input legitimacy without output legitimacy, or vice versa”.¹⁴⁷ Moreover, as a normative concept, perceptions of legitimacy are neither static nor universal and vary from place to place and across groups in society.¹⁴⁸ When identifying sources of legitimacy, therefore, the critical question becomes legitimacy in the eyes of whom?¹⁴⁹

In sum, sources of legitimacy are not mutually exclusive. It is difficult to find governing authorities that accrue legitimacy from a single source. It is more likely they obtain legitimacy through different sources depending on the population groups, regions or social classes in

question. While different frameworks offer theoretical approaches to explain the relationships between legitimate institutions and the population, reality shows that hybrid models combining different potential sources of legitimacy may explain its accrual.

C. Particularities of post-conflict settings

The international experience in diverse settings such as Afghanistan, Iraq, Kosovo, Libya, the Syrian Arab Republic and Yemen shows that mandates for intervention are increasingly complex and have to address the outcomes of the conflict and the causes that generated it in the first place. Post-conflict interventions frequently deal with weak or fragile State capacity and institutions that struggle to produce integrated responses to avoid relapse of conflict.

Legitimacy of institutions is hugely damaged in war-torn States and the challenge of gaining or regaining it presents particularities that make international intervention highly complex. Post-conflict environments present contextual factors such as weakness or absence of the State, limited bureaucratic capacities, a multiplicity of armed actors in their political system, or crises in the security sector, to name a few, which configure relationships of power and legitimacy that might differ from the general legitimacy theory.

More specifically, first, weak State legitimacy and conflicts can create a vicious circle. When institutional legitimacy is weak to begin with, conflict is more likely. Conflict, in turn, hardly ever invests post-conflict institutions with sustainable legitimacy, a gap that can contribute

to the likelihood of violence being resumed. The case of Libya demonstrates this dynamic. The revolution in 2011 led to a civil war that ended the Gaddafi regime and resulted in a new government after the electoral process in 2012. The post-conflict arrangements and elections, however, produced a fragmented parliament and volatile political system contested by different factions, as the international community gave precedence to power-sharing over institutional building. In 2014, a second civil war resulted in the consolidation of two main rival governments, the Government of National Accord based in Tripoli and the so-called Government of Tobruk in the east of the country. In 2015, a United Nations-sponsored ceasefire was signed. Since then peace talks have been ongoing to find an agreement that unifies the country, and with the hope of holding national elections in 2018. A political agreement signed in Skhirat in Morocco under the auspices of the United Nations Support Mission in Libya, introduced a new entity, the Government of National Accord (GNA), adding yet another layer to the power-sharing mechanism, and none to the institutional building effort, a sine qua non condition for sustainable peace.

Second, State capacity is weakened and its capabilities diminished. At the same time, the challenges that States face in the post-conflict phase require effective short- and long-term planning to set the basis for sustainable development and peace, making the reconstruction itself an even more arduous process. The setting of the modern nation States in the West was an endogenous process that took a considerable time and several stages until

complete. In contrast, modern international interventions to restore or create State institutions in post-conflict countries operate under mandates with short-term duration, and more often than not from without rather than within. International interventions introduced a controversial shift in the process of State-building and legitimacy, moving it to an exogenous process, which severely limits local ownership and introduces tensions between the different sources and dimensions that conform legitimacy. The experiences of Iraq after the end of the Baath's regime in 2003, and nowadays of Libya or Yemen illustrate the point. State institutions collapsed and the process of restoring institutional capacity to provide basic services to the population has been a lengthy process. In some sectors, such as security, State capacity has still not recovered to pre-conflict levels.

Third, post-conflict interventions tend to occur in environments experiencing a crisis of security. Individuals and groups are unlikely to trust that the central authority is an impartial force capable of providing credible security guarantees. As long as this fear exists, people will seek security from alternative sources and demobilization will remain difficult,¹⁵⁰ an ongoing challenge to a central authority's legitimacy. Another challenge for demobilization is that institutions with weak legitimacy are more likely to negotiate with militias, with the possibility of political or other gains acting as a disincentive.¹⁵¹

Lastly, experience in post-conflict situations shows States emerging from violent conflict have a window of approximately 24 months to

establish the basis and principles of institutions for sustainable peace.¹⁵² This phase is crucial to build trust and the rules of the political process, yet peace can be compromised by competing groups that may contest the arrangements, increasing the chances of a conflict relapse. For instance, in 2011 the Yemeni revolution initiated a protest movement to overthrow the Government. The situation escalated, creating a violent, chaotic environment that ended with a regionally-sponsored peace agreement. A transfer of power was agreed, and Abdrabbuh Mansour Hadi was elected president in 2012. There have, however, been challenges, mainly by Ansarullah, a political movement that has waged several wars with the central government since 2004. Civil war broke out in 2015, following the ousting of the government of President Hadi. Currently, different areas of the country are under the control of one faction, and negotiations have not yet yielded a peaceful resolution. Yemen demonstrates that even if elections are held within the 24 months, it does not guarantee the government's legitimacy, or peace. In the case of Libya, the hastily organized elections in 2012, before the necessary State institutions were established, contributed to the deepening of the sociopolitical divide and eruption of a circle of conflict.

Since 2014, attempts to construct institutional frameworks and political systems in Libya and Yemen have failed. Other States are also experiencing debilitating legitimacy crises due to an inability to maintain the relationship between the structure of power and citizens. In the region, creating legitimate institutions to counterbalance the intensification of identity, sectarian or ethnic politics is a priority.

D. Strategies of legitimation, challenges and tensions

A process by which institutions claim legitimacy for a rule or ruler, legitimation is inherently a social and political process that should be nationally owned, not imposed from outside. Often it is carried out by justifying the existence of rulers, or their rules, in terms of the normative principles of the society. Strategies may also include payoffs and incentives to subordinates. Success depends on how the population reacts. It is difficult to establish general statements about the efficacy of generic legitimating strategies, particularly in volatile contexts such as in post-conflict countries. It is, however, possible to point out the main challenges relating to legitimation in post-conflict countries.

The relationship between use of coercive power in post-conflict countries and its results in accruing legitimacy is not always straightforward. The use of force in international interventions can reduce the legitimacy of the national State in the eyes of the population, but at the same time not using coercive power may limit the capacity to achieve legitimacy. The international interventions in Iraq and Afghanistan are examples of this dichotomy. United Nations peacekeeping operation guidelines acknowledge this tension, stating a peacekeeping operation "must have the political and analytical skills, the operational resources, and the will to manage situations where there is an absence or breakdown of local consent. In some cases, this may require, as a last resort, the use of force".¹⁵³

Ineffective peacekeeping and State-building interventions have also been highlighted as one of the challenges of legitimation strategies adopted by the international community. Multiple factors may contribute to ineffectiveness, including institutional constraints, flawed mandates and lack of political will,¹⁵⁴ dynamics between local factions and spoilers,¹⁵⁵ fragmented populations and elites, and a contradiction between how local and international groups perceive legitimacy and the need for interventions to satisfy both.¹⁵⁶

Finally, elections in post-conflict countries are a source of tension for the legitimation process, and require serious examination. Elections fulfil a fundamental role in ensuring democratic governance, yet in post-conflict settings this is contingent on the context, a country's political history and timing. The exposure of governing authorities to regular electoral competition enhances accountability and the expression of public opinion but, when the sociopolitical situation is not ripe and in the absence of the effective State institutions, it can deepen social schisms. Because of their fundamental role in legitimizing democratic governance, electoral events such as referendums and elections are regarded as essential to a post-conflict transition.¹⁵⁷ But a post-conflict society is by definition divided, and an election has the potential to worsen rifts and plunge a country back into conflict. Libya and Yemen demonstrate the limitations of elections as strategies for legitimation. Both countries underwent transitions that led to electoral processes, but elections did not galvanize legitimacy and contesting factions challenged the elected governments. In both cases, this

contributed to violent conflicts erupting. On the other hand, there are examples in the region where elections were significant in stabilizing societies emerging from conflict. For example, Tunisia's national dialogue process was able "to broaden political decision-making in order to avoid transforming into spoilers those who find themselves in the minority".¹⁵⁸

Strategies have to deal with the dilemmas and contradictions involved in seeking legitimacy, particularly when it is pursued by international actors in a post-conflict country. The following questions must be addressed:

- Are there effective State institutions?
- What is the right time to transfer power to new institutions?
- What is the right balance between institutional effectiveness and power-sharing?
- Should the electoral process be "a strategy" or "the strategy" to establish legitimacy?

To bridge the gap between academia and policy, and practitioner communities, this chapter presents critical questions to support the design of policy interventions in post-conflict settings that help build institutional legitimacy. It should be nationally owned, and bring together security, political, economic, social and human rights elements in a coherent way. The process must take account of context, and acknowledge that legitimacy is in many respects a matter of perception. Due to the various concepts of legitimacy, post-conflict interventions require an appreciation of the diversity and special challenges of such interventions.

Ineffective and illegitimate institutions foster informal institutional alternatives to resolve disputes or deliver basic services, which may come to challenge formal institutions, further undermining the legitimacy of those institutions. Focusing on the State's role as provider of public goods as a strategy to create legitimacy is not sufficient to combat this dynamic. It does not account for the sociological and normative aspects that provide social cohesion to common projects. While some core functions provided by central institutions are vital to creating the sense of legitimacy among the population, this is not a sufficient condition to establish institutional legitimacy. Effective State-building with a strong legitimacy requires national vision and agreement through a genuine social contract.

There are no quick fixes for establishing legitimacy. Enormous political, security and development challenges exist after conflict. But if the peacebuilding architecture of the United Nations system is ready to respond rapidly, coherently and effectively, it can, not replace, but help give national actors a greater chance of sustaining peace and development.

E. Towards a new social contract

The obligation of subjects to the sovereign is understood to last as long, and no longer, than the power lasteth by which he is able to protect them. For the right men have by nature to protect themselves, when none else can protect them, can by no covenant be relinquished. The sovereignty is the soul

of the Commonwealth; which, once departed from the body, the members do no more receive their motion from it. The end of obedience is protection; which, wheresoever a man seeth it, either in his own or in another's sword, nature applieth his obedience to it, and his endeavour to maintain it – Hobbes.¹⁵⁹

This quotation by the first of the modern philosophers of the social contract theory is important in understanding the situation in the Arab region. To the millions who took part in the 2011 uprisings, the social contract has been broken even in its most essential/Hobbesian version. Even by the criteria of the seventeenth century, which allow the State absolute power, any social contract in the region cannot hold due to the State's inability to protect its population from conflicts, from within or without. For many, it was an attempt to show the vulnerability of the status quo, and point towards an alternative, potentially new kind of social contract.

F. The old social contract

For observers and academics, the political order established between the nineteenth and twentieth centuries, from the 1840 Convention of London to the Sykes-Picot agreement in 1916, has left an enduring legacy. Most post-colonial theorists, in and outside the region, would argue that colonial domination had a lasting effect on the formation of the present political order. For these observers, this involved delineating borders, creating bureaucracies, building economies and armies, and holding

these all hostage to the balance of regional and global power. This situation imposed by the colonial past voids the “independence” of the post-independence political order. The State structures that came out of that age are thus economically dependent, militarily vulnerable, and born with a considerable legitimacy deficit.

To the critics of this governance model, the generic institutional framework in the region involved ever-expanding government bureaucracies that have become tools with which the ruling elites can secure an enduring power structure with minimal reforms, if any. Such bureaucracies marginalized large segments of the population, while making others dependent on the State for their livelihood, raising the relative cost of dissent and creating chronic deficiencies in State institutions. The burgeoning bureaucracies are in fact factories of security, where employees are not required to produce tangible value, but rather do what is needed not to maintain the socioeconomic status quo.

These non-productive activities are precious because the alternative is to rebel against the dualism of economic deprivation and political repression represented by the in-place power structure. Like all factories, these bureaucracies, factories of this ‘precious nothing’ (security), are subject to the law of diminishing returns.¹⁶⁰ The more stable a country (the more security it produces), the more a government attempts to reduce public expenditure. In other words, the government attempts to produce security at a lesser cost. It reduces the price of security it pays to the population because that population produces much of it. This, however, increases

the likelihood of the people ceasing to produce security. Segments of the population, who see their income from serving the State or accepting the status quo diminish, start producing insecurity, either through common crime and corruption, or through political dissent, civil disobedience, peaceful demonstrations or even armed rebellion. Over the years, this results in growing social discontent, and eventually political uprisings and ongoing conflicts, as was the situation in 2011.

G. Emerging forms of organization: potential for change

The 2011 uprisings, despite the setbacks, presented examples where narrative replaced structure, conviction replaced coercion, and networks replaced hierarchical entities. Hundreds of thousands of people in Egypt, Tunisia and Yemen were able to achieve remarkable degrees of behavioural coherence without having any organizational structure. New forms of web-like organizations, where converging improvisation from the periphery replaces central planning, have been a characteristic of recent uprisings in the Middle East. For a moment, such non-State, non-hierarchical forms of organization seemed to provide society with a viable alternative to the formal State structure and the system of centralized political parties, whether in power or opposition. Later, when they proved unsustainable, the fact they had existed temporarily and functioned served as a warning of the vulnerability of the formal State and the instability of the status quo.

For those who took part in the uprisings, government and formal opposition alike had failed their societies in achieving economic development, fair distribution of wealth, respect for human rights and national independence and dignity. In Tunisia, and in Egypt, for a few weeks the entire country was taken over by other forms of political organization. In countries where the political system breakdown was violent, cities and large swaths of land slipped out of State control. Alternative forms of political organization varied, from the peaceful, human rights-sensitive, consensual sit-ins in the streets of some countries, to brutal sectarian-armed militia rule in others. Yet in both it was clear the old social contract needed replaced, and that people were seeking alternatives, either in their cultural heritage, religion and tribe, or in post-modern, still undefined transborder networks of young men and women with liberal, socialist or anarchist tendencies.

For most of the three decades preceding the 2011 uprisings, such web-like formations – some violent and others not – were predominantly religion-based. Secular examples did exist, notably the first Palestinian Intifada of 1987 and the 2006 Egyptian workers uprising in Mahalla province, though these had limitations. With no State, Palestinians had little choice, and the only hierarchical semi-State organization claiming to represent them, the Palestine Liberation Organization (PLO), had less space to operate in the West Bank and Gaza than in the diaspora, while Mahalla was a series of protests that went on for a few days but did not amount to a pattern. During and after the uprisings, a change could be observed; religious and non-religious actors seemed to change places.

Secular liberal, socialist and even anarchist groups became more attuned to the formation of networks that were heavily dependent on the creation, promotion and dissemination of narratives as the centrepiece of political organization, while more religious movements seemed bound to rigid hierarchical centralized forms of organization.

As the soul of secular movements was freed from such structures, that of many Islamist movements was poured into the rigid mold of the State and centralized party. Such a swap, of course, is not yet complete. Many Islamist groups, in Egypt, Libya, the Syrian Arab Republic and Tunisia, and across the region, remain networks, and secular centralized parties still exist, with new ones being created. Nonetheless, the process shows that regardless of ideology, once a movement embraces the hierarchical State structure, it suffers considerable loss of legitimacy. When an opposition, narrative-based movement comes to power, as in the case of Egypt's Muslim Brotherhood, it is faced with the reality of that State's economic dependence, military vulnerability and legitimacy deficit. When that movement does not go for radical change, and keeps the State structure intact, it suffers the same loss of legitimacy as the regime it overthrew.

For radical intellectuals, in countries under foreign occupation or neo-colonial influence, the more compromised a national liberation movement becomes vis-à-vis external forces, the greater the loss of legitimacy in the eyes of its constituents. For them, compromise becomes a catalyst for radicalization. Such loss

is always greater among the youth. The ascent to power and loss thereof of the Muslim Brotherhood in Egypt, political and military formation in the Syrian and Libyan opposition with Islamic rhetoric, and the decision of Islamists in Tunisia and Egypt when they were in power not to disturb their strategic alliance abroad, plus difficult socioeconomic conditions, all, expectedly, lost them popularity among the young. Since the late 1960s, the failure of secular Arab nationalist governments and movements to achieve what is perceived as national sovereignty and social justice caused them to lose much of their younger constituents to political Islam. In recent years, reconciliatory tendencies among the larger Islamic groups in the Middle East seem to be causing young people to gravitate more towards radicalism, its secular and Islamic versions.

H. The new social contract

For millions of 2011 activists, any new social contract must guarantee equality of rights and obligations, with no discrimination. It should also avoid the discrimination that arrived with the establishment of traditional power structures. Arbitrary borders splitting groups of the same cultural identity among several nations should be addressed, not by redrawing them, but by institutionalizing transborder cooperation, freedom of movement and residence, and rights pertaining to language, customs and religion. Cultural identities, rather than being suppressed and oppressed, leading them to fuel civil war, should be allowed to flourish, enriching society.

Allowing organic forms of organization, as in more localized structures of governance, while maintaining absolute equality of rights among citizens nationally, might be safer and more desirable than attempting to eradicate them violently. While subnational identities can be catalysts of civil strife, they can also facilitate peace and coexistence, lending some of their organic legitimacy to the State. This requires a fair and just deal for social reconciliation through national dialogue processes.

Meaningful social reconciliation requires equal access to decision-making, and fair rules for democratic power-sharing and peaceful transfer of power from one leadership to another.

The new social contract should guarantee: fundamental and inalienable rights to human dignity, freedom, life, and physical and mental health; freedom of opinion, expression and political association, and public participation in decision-making; peaceful transfer of power; and public scrutiny of the authorities. This protection of human dignity should allow for all means of self-defence against foreign invasions, especially when the national armed forces are incapable of resisting such an incursion. This is especially important given the region's past and present.

To remember Hobbes' quote, the ability of any political system to protect its citizens/subjects is the essence of its ability to govern them. As such, real sovereignty, a fair solution to the Palestinian question, and a sense of invulnerability to invasion, are essential if the new social contract is to be effective.

In the region, the social contract needs to be revisited and redefined. Many States have faced

serious challenges protecting their citizens from conflict, from within or outside. New forms of political organization that are non-hierarchical, decentralized and narrative-based have emerged. Some of these networks rely on pre-modern narratives and identities of tribe and religion, others are secular with liberal, socialist and anarchist tendencies. While none have established a viable form of political organization that can fully replace the modern State, their existence shows the State's vulnerability and the necessity of establishing a new social contract.

Any contract will have to recognize a citizen-based identity and the principle of equality between all its citizens, while redefining the region's forms of political, economic and military organization in ways that guarantee independence and protection of the population. In a region with fluid borders, a flourishing illicit arms trade and civil war, legitimacy is a prerequisite of government – it is more difficult to coerce populations who are mobile and up in arms – and real independence is a prerequisite of legitimacy.

Box 1. NAFS and attempts at re-writing the social contract in the Syrian Arab Republic

In March 2011, the Syrian conflict began with demonstrations demanding deep political reform. It became clear in the first few months of the protest movement that the social contract in the Syrian Arab Republic and the Arab world was unravelling and that a new one was urgently needed. The formation of a new contract, however, was stunted by some forces clinging to the status quo and others that embraced change at all costs, which in turn marginalized and silenced large sectors of Syrian society, regardless of their opinion. This rapidly transformed the conflict into a civil and proxy war, and precipitated the rise of domestic and foreign militias and international interventions.

In response to the demonstrations, the constitution was amended, to remove reference to the Baath party and the National Progressive Front (NPF) as the leading parties in society, and allowed for multiple parties, lifting the emergency law, and permitting multiple candidates to run for the presidency. The emergency law was quickly replaced by a "terrorism court" that heard a large number of cases of dubious merit. On 15 October 2011 the president issued decree no. 33 and announced the formation of a national assembly, whose members were appointed by the president as well, for drafting a new constitution. The process and substance of the new constitution contained severe flaws, however. The entire process, including the national referendum, took place when violence in the country was widespread and many areas still active war zones.

The national constitutional committee was created – and its members appointed – through direct decree and selection by the presidency. The draft constitution put up at the referendum was not disseminated for widespread prior discussion and debate. There were also numerous critiques of the substantive elements of the 2012 constitution, starting with the preamble, which largely ignored the conflict taking place. The constitution itself was criticized as maintaining an overwhelmingly presidential system. Human rights and freedoms were introduced only in the second section, and though nominally protected, were effectively circumscribed due to other constraints on political parties, media and civil society.

The presidency was given substantial powers over both the legislative and judicial branches. With regard to the legislative branch, the presidency has unchecked power to appoint and dismiss the prime minister, his deputies, and ministers and their deputies (article 97), to dissolve parliament (article 111) with the only condition being "a justified decision he makes". The president can assume legislative authority when parliament is not in session or "during sessions if absolute necessity requires this, or in the period during which the assembly is dissolved (article 113)". The judicial powers given to the presidency are also significant. The president "insures" the

independence of the judiciary “assisted by the Supreme Judicial Council (article 132)”. The Supreme Council is headed by the president and the constitution does not specify its composition or manner of formation. Similarly, the constitution is silent on how the Supreme Constitutional Court’s members are appointed and article 141 can be interpreted as giving the presidency the right to name all members.

The 2012 constitution in the eyes of its critics cannot serve as the basis of a new Syrian social contract, regardless of the intentions behind its creation.

5. The Gender Dimensions of Post-conflict Institutional Development

5. The Gender Dimensions of Post-conflict Institutional Development

The Arab region is experiencing multiple forms of instability, deeply impacting the social fabric and gender dynamics in affected areas. Efforts to attain women's political empowerment are often tested by obstructive social stigmas, discriminatory legal and institutional environments, and patriarchal political traditions, all of which can be aggravated by conflict. There are, however, numerous examples of women challenging restrictive norms and breaking through social barriers to get their voices heard, and promoting peace in their communities and countries. In post-conflict contexts, there are opportunities to build on the progress made in the region and beyond. Reform processes open up possibilities for addressing obstacles, improving institutional structures and procedures, and enacting policies that transform the rhetoric of gender equality and empowerment into the attainment of rights and justice for women and girls.

Protection and participation are central goals of incorporating gender considerations in post-conflict institutional development: protection, in terms of managing the multidimensional impacts of conflict on women and girls; and participation, through leveraging the long-term benefits to peace and social cohesion of women having a part in rehabilitating governance. A vast body of evidence shows that women and men, girls and boys experience conflict

differently, and have different protection needs and priorities. Women's inclusion is proven to make humanitarian assistance more effective, strengthen peacekeeping, contribute to the conclusion of peace talks and achievement of sustainable peace, accelerate economic recovery and help counter violent extremism.

A. Protection: differentiated impacts of conflict

Conflict, particularly protracted armed conflict, has a broad spectrum of direct and indirect effects on civilian populations, ranging from death, injury, malnutrition and psychosocial deterioration, to property damage, loss of income and other socioeconomic effects that may impact multiple generations even after the end of a crisis. All segments of society are at risk during a conflict, and suffer from the negative effects of exposure to political upheaval and violence. Each social group experiences these impacts differently and has varied protection needs, but the effect is generally most severe for at risk groups such as children, adolescents, elderly people and those with disabilities, lesbian, gay, bisexual, transgender and intersex (LGBTI) people, refugees, internally displaced people (IDPs) and national minorities.

Women are sometimes considered a vulnerable population. This is problematic as it tends to be equated with the term victim. Vulnerability can stem from many factors, including physical characteristics, socioeconomic or political conditions. Women are not, by nature, vulnerable but may become so given the situation they are subjected to as a result of conflict, and arising from their physiological needs and sociopolitical status. Yet, women can be a significant source of strength, resilience and stability. While it is important to acknowledge the factors that contribute to increased vulnerability for women, it is also prudent to consider the varied and changing roles that women play during conflict, and what they mean for the post-conflict transition period.

Conflict accentuates patterns of discrimination against women and girls, disproportionately subjecting them to particular risks, such as increased gender-based violence and sexual exploitation, marginalization and hindered participation in social, political and economic life, decreased educational attainment, forced and early marriage, and lack of access to adequate reproductive and maternal health care. For example, 60 per cent of preventable maternal deaths take place in conflict, displacement and natural disaster settings. According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), in 2016, every day 507 women and adolescent girls died from pregnancy and childbirth complications in emergency settings. Such consequences have long-term implications that often aggravate inequalities of opportunity, such as access to education and employment. Adolescent girls in

conflict zones are 90 per cent more likely to be out of school compared with girls in conflict-free countries, perpetuating a downward spiral by limiting their future employment opportunities and economic potential.

Pre-existing social dynamics are significant determining factors for how a conflict affects exposed populations, and to what extent. Women and girls face elevated risk of suffering from poverty, exclusion and violence as a result of conflict when they are already subject to discrimination in times of peace. Take, for example, child marriage among the Syrian population. While legal, it was significantly lower before the outbreak of the current crisis. Estimates vary, but some show child marriage rates to be four times higher among Syrian refugees today than among Syrians before the crisis, indicating that displacement, instability and poverty are driving such marriages.

As men become embroiled in conflict, the role of women in the household and local economy changes, bringing consequences. Ongoing conflict can result in a significant increase in women's domestic workload, such as providing shelter, food and water, keeping children safe and caring for the sick, and they often become head of the household. In patriarchal societies where women do not have the necessary legal rights and protections, these increased tasks can become severe burdens and stress factors. Additionally, as the sectors where women are traditionally overrepresented, such as agriculture and the informal economy, are often severely impacted by crises, they are more likely to suffer economic losses, threatening their ability to sustain their families.

There can be benefits to the increase in female-headed households during conflict, such as when women find new and diverse employment opportunities and increase their participation in the labour force, in some cases contributing to their empowerment and overall household and community welfare. Further, just as gender roles within the household change during conflict, women's political participation can be impacted negatively and positively. Increased participation in economic activities outside the home may promote social relations that are conducive to women undertaking local leadership roles left vacant by men who have gone off to fight. Or they may become more active in social and political organizations.

While women are often seen as victims and men as perpetrators of violence, neither function is exclusive to one gender. Men and boys, who are often at the frontlines of the fighting, are largely the direct victims of armed conflict and at risk of its associated impacts, such as forced recruitment, abduction, detention and exposure to the resulting psychological harm. But the political and socioeconomic origins of conflict can drive women to support violence; for example, female members of Al-Qaida have not only carried out suicide attacks but also serve multifaceted roles in the organization, such as recruiting fighters, providing ideological support, raising their children in the ideology and facilitating terrorist operations. In Colombia, an estimated 30 to 40 per cent of the Revolutionary Armed Forces of Colombia (FARC, after the initials in Spanish) are female, representing a considerably influential segment of the movement.

B. Participation: women in governance

Women do not experience fragility, conflict and transition in the same way as men, and have distinct perspectives on the recovery, reconciliation and reconstruction of their States and societies. Given conflict has many implications on the status and roles of women in their society, it is essential to consider the range of opportunities and obstacles to women's political empowerment in post-conflict settings. They can play a powerful, active role in bringing about peace and restoring governance and have the potential to influence inclusive and holistic State-building, and ensure institutions and judicial frameworks are responsive and accountable to all society.

Studies show that peace negotiations with significant participation and influence by women are strongly correlated with agreements being reached and implemented, and the achievement of just and durable peace. The Secretary-General, however, reported in 2010 that only 16 per cent of 585 peace agreements and protocols concluded between 1990 and 2010 included references to women, and women made up less than 3 per cent of the signatories. Moving beyond the peace process, while women have achieved higher levels of representation in decision-making in recent years, as of June 2016 only 22.8 per cent of all national parliamentarians were women, a sluggish increase from 11.3 per cent in 1995. As of January 2017, 10 women were serving as head of State and nine as head of government. There is still some way to go towards achieving gender parity in all spheres of public governance.

While increasing women's participation in formal and informal decision-making structures – at all levels of governance and during stability and times of upheaval – is necessary to achieve peaceful and inclusive societies, ensuring they have equal and meaningful representation and leadership during the sensitive transition phase post-conflict brings specific advantages and challenges. Building anew presents opportunities to focus on pre-conflict inequalities, while advocating for purposeful investment in women's capabilities to contribute fully to the post-conflict institution building and development agenda. Countries recovering from conflict have a chance to improve institutional arrangements, and ensure equal participation for men and women in decision-making processes, especially political participation and leadership. To achieve inclusive, effective participation and prevent conflict relapse, women's grievances, and the governance weaknesses that contributed to the outbreak of conflict, need to be considered. Importantly, it should be up to women themselves to voice their concerns and offer solutions.

C. Establishing the global context

As evidenced by numerous international and regional resolutions, instruments and protocols over the past decades, there has been increasing international commitment to ensuring women's rights and their active and equal participation in decision-making in peacetime, as well as during and after conflict. Many of these commitments have yet to be successfully translated into action.

Equal rights for women and men has been an intrinsic goal of the United Nations since its foundation, with the preamble to the 1945 United Nations Charter reaffirming “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women”. Since then, a broad body of international human rights law has emerged to ensure equality and protect women from all forms of discrimination. Instruments seeking to end discrimination and protect women's rights universally include the International Bill of Human Rights. This consists of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights with its two Optional Protocols and the International Covenant on Economic, Social and Cultural Rights, and prohibits discrimination based on gender. The Rome Statute of the International Criminal Court that came into force in 2002 also defines gender and a comprehensive list of crimes against women.

The logical starting point for exploring the dimensions of women's participation in post-conflict governance should be a rights-based approach. The role of women fits within the broader topic of civil liberties and political participation, where the landmark international agreements are the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by the United Nations General Assembly in 1979 and which defined what constitutes discrimination and set up an agenda for national action, and the Beijing Declaration and Platform for Action of 1995, which identified 12 areas to ensure greater equality and opportunities for women and men, girls

and boys, including women and armed conflict, and in power and decision-making.

The Beijing Platform proposes national machineries as a means to institutionalize advocacy for gender equality and monitor progress, reinforces the human rights framework for achieving women's equality, advocates strengthening related human rights instruments in the service of women's human rights, and calls for improved national enforcement of such rights.

The CEDAW Committee's general recommendation no. 30, on women in conflict prevention, conflict and post-conflict situations, in particular, is a milestone, providing authoritative guidance to countries ratifying the CEDAW on measures to ensure women's human rights are protected before, during and after conflict. It makes clear the Convention applies in all forms of conflict and post-conflict settings and addresses crucial issues facing women, including violence and challenges in accessing justice, education, employment and health, and gives guidance on States parties' obligation of due diligence in respect of crimes against women by non-State actors. The recommendation affirms CEDAW's links with the United Nations Security Council's Women, Peace and Security (WPS) agenda.

The WPS agenda refers to the pioneering body of international instruments relating to issues of gender justice, and peace and security. It includes eight resolutions adopted by the Security Council, with resolution 1325 (2000) at its core, and six subsequent resolutions. Founded on the four pillars of participation,

protection, prevention and relief and recovery, resolution 1325 stresses the importance of women's equal and full participation as active agents in the prevention and resolution of conflicts, peacebuilding and peacekeeping. It calls on Member States to ensure such participation in all efforts to maintain and promote peace and security, and urges all actors to increase the participation of women and incorporate a gender perspective in all areas of peacemaking and peacebuilding. It requires women's representation in all institutions set up during a peace process.

Exemplifying the multidimensional nature of the WPS agenda, resolution 1325 focuses on both managing the effects of conflict and insecurity on women, and their particular challenges and needs, and establishing the necessity of increasing women's participation. The two go hand in hand as, according to the resolution, meeting the specific relief needs of women and girls during and after conflict is about reinforcing women's capacities to act as agents in the relief and recovery process. The agenda also deals with issues of conflict prevention, incorporating a gender perspective and the participation of women in preventing the emergence, spread and re-emergence of violent conflict as well as addressing its root causes. For example, it calls for women to take part in peace negotiations, integrating gender considerations in conflict early warning systems, and involving women and their needs in conflict prevention and disarmament activities. Thus, the four pillars of the WPS agenda are complementary.

The Secretary-General's 2010 report on women's participation in peacebuilding provided a comprehensive seven-point action plan that guides the United Nations system and its partners towards achieving a better balance. The plan covers women's full engagement, and commits the United Nations to allocating 15 per cent of post-conflict funds to projects aimed principally at addressing women's needs, empowering them or advancing gender equality.

The Millennium Development Goals (MDGs) adopted in 2000 also articulated global aspirations for promoting gender equality and women's empowerment, improving maternal health and achieving universal primary education. They represented a new chapter in international development policy cooperation, and, while falling short of achieving all goals, were successful in bringing about specific progress in specific regions, such as a 49 per cent decline in maternal mortality in sub-Saharan Africa.

The successors to the MDGs, the Sustainable Development Goals (SDGs) were launched in 2015 within the framework of the 2030 Agenda, the pledge to leave no one behind anchoring it in human rights, non-discrimination, and equality as principles guiding overall implementation at international, regional and national levels.

The new global commitments further refine a wide range of gender-related issues, setting both a stand-alone goal to achieve gender equality and end all forms of discrimination against women and girls everywhere, and mainstreaming gender issues throughout the other SDGs. In addition, the SDGs call for sex

disaggregation of data across many indicators. The process of negotiating the SDGs was an example of actively engaging women in central mechanisms of global governance, and reinforcing norms of gender equality. Compared with the limited, top-down process that led to the MDGs, the SDGs are a product of a more open and participatory process, which, while not perfect, at least has advanced inclusion and equality in global decision-making.

Another notable innovation is SDG 16 on peace, justice and inclusive institutions. Reaffirming the need for gender equality in good governance, it sets a target (16.7) related to ensuring responsive, inclusive, participatory and representative decision-making at all levels, and gender-desegregated indicators for its measurement.

While gender equality and the meaningful participation of women in public institution decision-making are directly addressed by SDG 16, there are two additional SDGs with relevance to the role of women in post-conflict governance, namely SDG 5 target 5.5 on ensuring women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life, and SDG 10, which addresses equality of opportunities and calls for empowering and promoting social, economic and political inclusion. Taken together, the SDGs and the wider 2030 Agenda provide a solid basis for development cooperation efforts to ensure women's participation in post-conflict governance mechanisms, including institutional development.

D. Regional starting point

In the past two decades, countries in the region have made significant progress in human development overall, including on some gender goals such as parity in access to education and health care, and a steep decline in maternal mortality rates that are now half the world average. These achievements are only slowly spilling into other areas such as political and economic empowerment, including employment, and are quickly being reversed in countries beset by conflict, such as Libya, the Syrian Arab Republic and Yemen.

While the Arab uprisings opened opportunities for new forms of women's participation in politics and civic life, many barriers to political representation and socioeconomic empowerment remain. Despite improvements in recent years, in general the region still reports the lowest levels of women's participation in elected legislative bodies and at all levels of decision-making in executive bodies. The average regional proportion of female members of parliament, 19 per cent, is well below the global average, and in many cases female ministers are still confined to portfolios associated with women's traditional roles in society, such health or education.

Women in the region face multiple intertwined obstacles to political representation, including sociocultural and institutional barriers. An ESCWA study on women's political representation identifies barriers in both of these broad categories. The first, linked to sociological and cultural factors, reflect the patriarchal norms and expectations that restrict

women's economic, social and political contributions, and assign differing expectations for women and men in public life. For example, in patriarchal societies, the perception that politics is a male-dominated space that is often unsafe for women is common, as is the stereotype that men make better political leaders than women. In these societies women are often relegated to traditional care roles, with great value attached to activities such as raising children and taking care of the household, leaving little time or opportunity for them to engage in public life. Conservative interpretations of religion, of Sharia law for example, have also been used to legitimize the exclusion of women from the political, economic and social spheres. However, as the ESCWA study points out, low political representation of women cannot be exclusively explained by the dominance of Islam as a religion, as there are many positive examples of Muslim women in positions of power (the current leaders of Bangladesh and Mauritius are women), and advances in raising the proportion of female public servants, in and outside the Arab region. Institutional barriers to women's participation stem from the overall institutional frameworks that are pervasive in the region, and include enduring legal discrimination, lower rates of political and economic participation, gender-blind institutional and political processes, the lack of an enabling environment for civil society, male dominance over political parties, and a sometimes hostile media.

For many of these reasons, as well as restrictions experienced in civic life, another significant challenge to women's equality is limited economic participation and

employment. Given that unemployment was one of the grievances that led to the Arab uprisings, improving women's access to employment would not only lead to economic growth but also increase social coherence. In addition, given the devastation that conflict has on domestic economies, the rapid rebuilding of national economic structures is often a priority, opening an opportunity for facilitating women's equal participation. As stated in a United Nations Peacebuilding Commission declaration in 2013, it has been shown that "women's economic empowerment plays a crucial role in the recovery of war-torn countries and is a key condition for sustained post-conflict recovery, community stability, peace, and nation-building".

Creating an enabling institutional and legal environment that makes possible the inclusion of women in governance could ensure responsive and effective post-conflict institutions that are able to overcome barriers, provide the necessary framework and support for women's political and economic participation, and facilitate the representation of women's rights and voices in decision-making. The starting point in the Arab region for social institutions is weak, especially for countries in conflict such as Libya and Yemen. This is indicated by OECD's Social Institutions and Gender Index, which scores the Middle East and north Africa region as the world's poorest performer. This composite index rates countries on 14 indicators grouped into five subindices measuring one dimension of social institutions related to gender inequality: discriminatory family code; restricted physical integrity; son bias;¹⁶¹ restricted resources and

assets; and restricted civil liberties. The majority of countries in the region are positioned in the highest discrimination level, with Yemen as the worst overall global performer. No country is in the very low level. To address these shortcomings, the report identifies three priority areas, namely to boost the female political voice, strengthen laws on violence against women and improve their legal status within the family.

E. Enabling women's participation and ensuring gender-responsive institutions post-conflict

In the region, women's protection and participation are areas of concern in countries experiencing or recovering from conflict. A major challenge is putting in place institutions, policies and processes that quickly and effectively respond to and provide appropriate solutions for protecting women's physical security, health, social circumstances, and economic potential. Regarding participation, the difficulty lies in moving from the pre-conflict barriers and structural challenges that are often reinforced by conflict, to enabling women's participation and garnering their valuable contribution to achieve stable and effective governance.

As conflicts and social structures vary greatly, mapping the protection needs and opportunities for the equal participation of women in peacemaking and post-conflict governance must be tailored to the specific circumstances of each country, in consultation with women representing the entire demographic landscape.

As a starting point for each specific country context, different mechanisms can be identified for women's participation, as well as policy and structural reform options that can be considered during conflict, transition and in the post-conflict State-building phase. The following list offers a few areas for consideration.

1. Women as agents of peace

Including women in conflict resolution and prevention, peace negotiations and reconciliation, formally and informally, can have a profound impact on the success and sustainability of peace and security outcomes. At global level, the WPS agenda establishes a comprehensive normative framework for the nexus of issues relating to gender, development and peace. If its commitments are translated into action, the agenda has the potential to end cycles of conflict and prevent relapse, create more inclusive and democratic peacemaking processes, and ensure gender justice. In 2015, a United Nations global study to review progress highlighted promising advances, such as the rise from 11 to 27 per cent (after the adoption of resolution 1325) in the number of peace agreements signed that included a reference to women. The study, however, also identified a gap between the "aspirations of the global commitments and the actual political and financial support in place for their realization", and noted several obstacles and challenges still limiting women's equal participation in peacemaking and peacekeeping.

Translating international commitments into national actions, and garnering the necessary

political will to implement them remain major challenges. One area for improvement identified in the study is to increase the number of national action plans (NAPs) and regional action plans (RAPs) for implementing resolution 1325, or related national strategies, and to ensure that they are put in place through inclusive processes. Despite a concerted international push encouraging Member States to adopt national action plans, only 74 countries and two regions have done so to date, and only three from the Arab region (Iraq, Jordan and the State of Palestine). However, in 2013 the League of Arab States adopted a regional strategy on WPS, followed in 2015 by a regional plan (not officially referred to as a regional action plan) that specifies four areas for action: strengthening women's political participation; addressing violence against women; protecting women from conflict-related and post-conflict violence; and providing relief and recovery support, which offers a promising start for addressing these issues at regional level.

The history of peacebuilding offers many good practices and lessons concerning modalities for women's participation. One prominent success story comes from Colombia, where in 2016 the Government signed a ceasefire agreement with the FARC insurgency group, ending 52 years of conflict. On the road to peace, Colombia experienced numerous processes. Initially, women were seldom part of negotiating teams for either side, yet with each new process they built on what came before, found ways to pressure for their interests and influence, and got closer to the peace table. Empowered by the passage of resolution 1325, strategies that worked for these women included formal, semi-

formal and informal channels, such as both sides insisting on prominent roles in the negotiations, lobbying for legislation, defending human rights, promoting public discourse for peace, mediating or mitigating conflicts in communities, mobilizing constituencies and repairing relations in communities broken by war. Colombian women worked persistently and strategically, independently and as members of groups and coalitions, and ultimately played a vital role in brokering peace.

2. Inclusive national dialogue

There are great benefits to involving a wide range of stakeholders, including women, equally from the beginning of the process of planning for post-conflict governance and institutional development, and giving them access to a public and political voice. This includes inclusive and representative national dialogues and constitutional processes.

Societies recovering from conflict need to be put back together. Often new government structures and frameworks are formed, and priorities are set for political, social and economic recovery and rebuilding, and for accelerating development. As exemplified by the experiences of Tunisia and Yemen, though yielding different outcomes, national dialogues are an increasingly popular tool for conflict resolution and political transformation. They are a mechanism for articulating a country's vision, and a plan to achieve it, through broad and inclusive debate that extends beyond the usual political elites. By nature, the more inclusive and representative national dialogue

processes are in terms of political affiliation, ethnic and religious identity, and representation by geography, gender and age, the more likely the process is to lead to outcomes that are seen as legitimate, having local ownership and representing broad interests. As such, national dialogues can also be a platform for advancing gender equality and women's empowerment. As observed in the case of Yemen, however, national dialogue is not enough for a successful social reconciliation and recovery process.

During the Arab uprisings, a push for constitutional reform became the foundation for seeking transformation towards a more democratic State. Constitutional reform movements, as in Tunisia, also became platforms for addressing the restrictions imposed on women by patriarchal systems and advocating for gender equality. A new constitution provides an opportunity for a country to address underlying social grievances, and the more open and inclusive the drafting process is, with more women included in drafting committees, the more legitimacy it will have in society. Arguably, as determined by a University of Pennsylvania 2017 study, women's participation in the Tunisian constitutional drafting process "consisted of a complex set of interactions influenced by stakeholders with varying and sometimes conflicting sociopolitical objectives". As a result, despite "long-standing roadblocks to implement and enforce constitutional guarantees, the greater involvement of Tunisian women in the constitution drafting process did make a difference in the final gender provisions of Tunisia's constitution".

3. Gender-sensitive national institutions

Conflict-affected States have an uphill battle to quickly establish or revitalize institutions and put in place policies that can facilitate social cohesion and rebuild human capital, provide essential services, restore judicial processes and rehabilitate the economy. Often supported by international organizations and other partners and donors, institutional development processes can provide an opportunity for revisiting ineffective pre-conflict structures and procedures, and setting up improved ones that are more transparent, accountable and responsive. These institutions must have the ability to accommodate all stakeholders equally, including women and girls, reach them at local level, and offer immediate and long-term support.

Countries emerging from conflict and instability have an opportunity to put institutional gender mainstreaming into practice and strengthen institutional culture to support gender equality and women's empowerment, but accomplishing this goal is challenging. As defined by the United Nations Economic and Social Council, the strategy of gender mainstreaming is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. "It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality."

Box 2. National action plan for United Nations Security Council Resolution 1325 in Iraq

Iraq was the first country in the Middle East to launch a national action plan to implement United Nations Security Council Resolution 1325, marking a positive step towards improving women's rights in the country. The drafting process involved a small group of local women's organizations, which, while a step in the right direction, would have benefited from broader inclusion. Focusing mainly on political participation and the rights of women in non-conflict contexts, the plan identifies actions for increasing women's leadership at the executive levels, enhancing gender equality in legal documents, and for preventing violence against women. It does not specifically address some key areas of resolution 1325, including women's participation in conflict resolution and reconciliation, preventing violence against women, protecting women's rights, and women's relief needs in conflict and post-conflict settings. Operationally, the plan suffers from a lack of defined timelines, comprehensive implementation and monitoring mechanisms and clearly allocated budgets. However, the plan has generated positive momentum and shows commitment to these issues on the part of the government. Set to be reviewed and revised in 2018, there is a valuable opportunity to build on its strengths and address its weaknesses to bring about critical gains for women's empowerment in Iraq (Kaya, 2016).

In the process of rehabilitating institutions post-conflict, it is not enough simply to include women or target women through some policies or activities. Rather there is often a need to implement broad processes of change that transform structures and practices that have perpetuated inequalities into ones that emphasize equality and inclusion throughout. The first step towards gender mainstreaming is taking stock of how and why gender differences and inequalities are relevant to the mandates of specific public institutions and departments in the given social context, and in terms of international instruments such as the Beijing Platform for Action and United Nations Security Council Resolution 1325. Seeking the views of women as well as men on decisions and policies that will affect them, and using sex-desegregated data to better understand how a particular issue, situation or proposed policy might affect women and men differently, are two important considerations when embarking on a gender mainstreaming strategy.

As outlined in the Platform for Action, national women's machineries (NWMs) serve as central State policy coordinating bodies on issues relating to gender equality and the empowerment of women. In the Arab region, they take various forms, with a mandate to advise on policies and legislative amendments, and encourage the mainstreaming of a gender perspective in policy and its implementation in all national and local institutions. Several countries have ministries of women's affairs, national institutes for the advancement of women, or national councils, such as the Egypt's National Council for Women. Another example is the Tunisian Ministry of Women, Family, Children and Elderly Affairs, which was integral

in recently passing Tunisia's first national law to combat violence against women. Often these machineries face several obstacles and challenges, such as limited funding, a lack of human resources and tools for mainstreaming gender concepts at the institutional level, and weak political will and monitoring and accountability mechanisms. To address these challenges, ESCWA is undertaking a project to support national women's machineries in achieving gender equality and empowering women, by formulating and launching an innovative accountability framework to measure efforts on gender equality and women's empowerment in the region.

4. Women's inclusion in elected bodies

Further mainstreaming gender considerations throughout government and ensuring women are included in decision-making, in addition to institutions specifically addressing women's rights, can significantly strengthen a government's legitimacy, sustainability and effectiveness towards reaching development goals. One popular option for improving participation and normalizing women's presence in the political sphere is legislative quotas in parliaments, government and local councils. In Jordan, for example, where the number of women elected to parliament on seats not reserved for women has been steadily increasing since quotas were introduced, suggesting they have succeeded in legitimizing women's presence.

Gender quotas, however, are not always enough, and can be misused. To develop and pass policies sensitive to the needs of women,

especially post-conflict, simply having more female members of government may not be sufficient. Shortcomings associated with quotas include assumptions that all women share a commitment to women's rights and empowerment, or the risk that to tick boxes and project an image of modernity, some States might use quotas in a tokenistic fashion, without tangible political will for incorporating women's needs and views in decision-making. In addition to quotas, allocating gender advisors or experts to senior positions in the government, civil services, military institutions and special forces can further boost accountability and improve understanding.

In cases of ethnic conflict, power-sharing principles and mechanisms have been increasingly promoted to manage the post-conflict transition, and have been applied in several countries. Power-sharing entails the participation and representation of all ethnic groups in conflict resolution and post-conflict institutions, integrating all viewpoints and accommodating differences. A study by Byrne and McCulloch cautions "when only emphasizing one kind of social division, such arrangements miss opportunities to build a more inclusive model of post-conflict governance". Gender-responsive strategies that "reconcile the challenge between the inclusion of women with the inclusion of ethno-nationalist groups, when working in concert with power-sharing approaches, add legitimacy and representation to peace processes and reinforce the norms of the WPS agenda".

5. Judicial reform

For a country in transition, building a just socioeconomic and political foundation that enables development requires a legal framework that ensures men, boys, women and girls enjoy the same quality of life and equal rights before the law and in their everyday existence. The concept of gender justice goes beyond gender equality, including the element of accountability to ensure effective mechanisms exist to eliminate discrimination. In 2016 the ESCWA Committee on Women issued the Muscat Declaration: Towards the Achievement of Gender Justice in the Arab Region, which stated that this requires "conciliation between the concepts of justice and gender in religious discourse, therefore encouraging the renewal of religious discourse through cooperation between Arab countries".

In post-conflict societies, judicial reforms are necessary to confront discrimination and empower women and girls. Modifying discriminatory laws or enacting new ones intended to foster gender equality and protect the rights of women are an important starting point, but ensuring their enforcement and putting in place mechanisms for facilitating access to justice for women and girls is key. Such mechanisms could include ensuring women are represented among judges, lawyers, court staff and law enforcement officials, offering gender training to women and men in these positions, public awareness-raising campaigns on women's rights and establishing legal and judicial assistance mechanisms.

6. Transitional justice

Transitional justice mechanisms and processes, such as criminal tribunals and truth commissions, have become a common tool for strengthening the rule of law post-conflict, and integral to peacebuilding. Transitional justice in the aftermath of massive human rights abuses is an attempt to re-establish the social fabric by ensuring victims have redress and perpetrators are held accountable. Given that women and men have different experiences of conflict, transitional justice mechanisms should be responsive to women's experiences during and after conflict, especially as it relates to sexual and gender-based violence. While many such frameworks have missed the mark on

including women's experiences, there have been some positive recent advances. In Tunisia, for example, in the aftermath of the 2011 uprisings there was demand for addressing human rights violations of the past. The Tunisian Truth and Dignity Commission – presided over by a woman, with four of its nine members women – was established. Within it a women's committee was set up to support victims and integrate in the truth-seeking process. As women were initially reluctant to discuss violations they had suffered, a network of women's organizations reached out to victims, collected and submitted 140 women's testimonies. Since 2015, the number of submissions by women to the commission has increased from 5 to 23 per cent.

Box 3. Two steps forward, one step back for Yemeni women

The women's movement in Yemen mirrors the complex and fluctuating political history of the country itself. Gender relations are shaped by religious, cultural, social and political traditions, and have varied between the north and the south, urban and rural areas, and between different tribes and generations. In general, Yemeni women have traditionally been limited in their ability to participate in the public sphere, due to a mix of barriers stemming from Yemen's conservative patriarchal society where stereotyped gender roles are the norm (Al Sakkaf, 2012), and reinforced by deepening legal discrimination and practices that limit their rights.

Despite this unsupportive environment, during the 2011 uprising Yemeni women from across the social spectrum joined the protests and demanded change, experiencing a surge of political empowerment. Several Yemeni human rights activists, such as Amal Basha and Tawakul Karman, gained international recognition, becoming leading female figures in the struggle for progress, and large and small women's organizations and networks began to proliferate in rural and urban areas. Gaining momentum throughout the ensuing peace talks, women activists continued to challenge a system that excluded them. Women's participation became more formalized when they successfully took part – representing more than a quarter of participants – in the National Dialogue Conference (NDC). Facing sometimes-severe backlash and threats, women's advocates achieved important agreements through the NDC; for example, securing a 30 per cent quota for women in government positions in the new constitution. While the quota attracted criticism for its tokenistic nature and inability to extend political opportunities to rural women, it confronts the stigma faced by women in politics, and opens the door to the possibility of equality.

This transformation in the role and influence of women in Yemeni civic life proved unsustainable, however, and commitments have not translated into progress. As violence re-escalated in 2015, the country fell back into its discriminatory approaches, once again sidelining women in political activities and regressing on any gains. Cultural and institutional changes will be necessary to support the long-term political empowerment of women in Yemen, and build on the progress made.

7. Security sector reform and disarmament, demobilization and reintegration post-conflict

Security sector reform (SSR) and disarmament, demobilization and reintegration (DDR) are processes by which post-conflict States stabilize the security situation to allow for recovery and development. Although the sector is traditionally heavily male dominated in the region, women and girls are also key stakeholders, as survivors of violence, members of armed groups, peace activists, human rights defenders and regular citizens. Over the past 15 years, increased awareness of the gender dynamics within the sector has resulted in more attention to the needs and capacities of women and girls as ex-combatants, members of host communities and users of security services.

Violence against women and girls tends to spike in the immediate aftermath of conflict, when the rule of law is weak and arms are abundantly available. This destructive phenomenon can be mitigated, for example, by putting in place an effective police force trained in recognizing and preventing violence against women, and that includes trained female officers. The Liberia National Police provides a valuable case study. Rebuilt after the war in 2005 with support from United Nations peacekeepers, reforms included a gender policy, female recruitment programme and a women and children protection unit. The United Nations has supported national police forces through, for example, training on preventing violence against women, and for female police officers in many other post-conflict countries, such as Darfur, South Sudan, and Haiti.

According to UN Women, “many of the early DDR processes of the 1990s were criticized for their gender-blindness and for failing to reflect the needs of women in their design and delivery, despite the roles of women in active combat and as supporters”. Unfortunately, there has been no significant improvement, with reintegration a marked weakness. There have been numerous studies and international guidelines developed to improve the process. These emphasize that reintegrating female fighters into post-conflict communities must address the conditions that led them to join these movements in the first place, and consider the changes to their status as a result of taking part in the conflict. To achieve meaningful and sustainable integration into communities, female ex-combatants should be active partners in the design of DDR processes, which should build on their leadership capacities and lead to viable options for making a living.

8. Service delivery

In the immediate aftermath of conflict, resuming and improving basic public service delivery is often high priority. Provision of security, water, sanitation and food, and access to health and medical services has crucial implications for women and girls, especially given the increase in female-headed households during conflict. Women, especially in rural areas, struggle with barriers to accessing public services, including the threat of sexual and gender-based violence in insecure environments, difficulties with transport, finances and childcare, and continued marginalization from decision-making processes. Incorporating accountability to local

women in the planning, design and delivery of services in fragile and post-conflict contexts can contribute to improved social, political and economic outcomes for women.

The crises in Libya, Syrian Arab Republic and Yemen have resulted in a staggering number of refugees and internally displaced people. The management of camps and the resettlement process is often another important concern when conflict ends. As the refugee and IDP population is usually predominantly female, highlighting their particular needs becomes essential, and involving women in camp management and resettlement planning is key to ensuring these needs are responded to.

In conclusion, involving a broad range of stakeholders in post-conflict governance and the reform of public institutions reinforces legitimacy, accountability and transparency during reconstruction and recovery. The goal of political inclusion is to design reforms and put in place structures and processes resulting in decisions that respond to the needs of all citizens. When considering the advancement of women in a post-conflict setting, protection and participation are equally pertinent.

Ensuring women's voices and issues are included to the same extent requires commitment and coordination between

stakeholders, including government decision-makers, women's rights movements, the media, men and boys, and the private sector. Coordination between government, international organizations and donor countries supporting these processes, and national and local civil society is crucial and requires assessment of active women's rights groups throughout a country to ensure the widest possible representation.

These structural changes require, among other needs, capacity-building, training and awareness-raising in order to achieve gender equality and non-discrimination, for civil servants, police and the military, the judiciary, and teachers and school administrators. Building capacity also comes with funding requirements that will need to be considered in gender-sensitive national budgets and by the donor community.

Women should be part and parcel of governance at all levels, in every sector, locally and nationally, in times of peace and of war. There is a strong starting point for achieving this in the wide-ranging international commitments made over the past decades. Putting the rhetoric into practice, however, continues to prove challenging, and will require robust political will and partnership at all levels, including between women and men in society.

Section II



6. Post-conflict Institutional Building: Lessons Learned

6. Post-conflict Institutional Building: Lessons Learned

To inform decision-making on post-conflict institutional building in Libya and Yemen, this chapter will review what has and has not worked in previous cases of reconstruction in the security sector, national dialogue processes and the fight against corruption. It will look at recent literature on security sector reform (SSR) on the understanding that **successful post-conflict reconstruction hinges on a secure environment**. Analysis of national dialogue processes and fighting corruption is motivated by the history of institutional development and State-society relations in both Libya and Yemen. Like several other Arab countries, they have been characterized by a failure to foster strong, inclusive governance structures, and by parallel informal institutions that undermine effective institutional and inclusive socioeconomic development. The aim of national dialogues – given increasing attention in development and post-conflict studies – is to reconcile divided societies and help create a common vision. In turn, the aim of the fight against corruption is to provide societies with the means to achieve this vision by disentangling the intersections between political, economic and security networks that lead to informal institutions. This will be reviewed in the light of studies on the crime-conflict nexus.

A. Security sector reform

In its most basic definition, the aim of security sector reform is to increase the effectiveness of security institutions and ensure they are governed with civilian oversight. A more comprehensive analysis, however, and one in line with SDG 16, states it is to support the development of “effective, inclusive, and accountable security institutions so as to contribute to international peace and security, sustainable development and the enjoyment of human rights by all”.¹⁶² Broadly, the sector is made up of police, justice and defence institutions (private and public), and civilian control and oversight.¹⁶³

The importance of rapid security sector reform in the aftermath of conflict became evident when the development community realized that peacebuilding processes could not take place effectively in situations where an individual evolves under the constant threat of violence.¹⁶⁴ Security is a prerequisite for transforming negative social interactions into positive ones. Although post-conflict reconstruction requires a holistic approach, nothing can be achieved in an unsafe context, and providing security to people who have experienced years of violence is a priority. It is often referred to as indispensable

to post-conflict reconstruction. If citizens are able to evolve in a safe environment, the reconstruction process and its actors are seen as legitimate, which allows more fundamental sociopolitical and economic reforms to be undertaken. Security sector reform allows for the re-establishment of the vertical link between a State and its citizens and lays the basis for a legitimate social contract.

The aim of security sector reform in post-conflict settings is thus the stabilization of a fragile environment to give space for sustainable peace, institutional building and socioeconomic development to take place. It also requires careful planning. Remodelling and modifying institutions that deal directly with the provision of security and stability can potentially upset power structures and relations, furthering the instability already present in fragile settings.¹⁶⁵ But not undertaking reform, or tackling institutions that likely played a role in the emergence of conflict in the first place, can just as easily lead to conflict relapse. Krieg, for example, attributes the rise of the Islamic State organization to a failed security sector reform effort in Iraq.¹⁶⁶

Beyond stabilizing fragile environments, reform of security institutions is important in that it can contribute to national reconciliation. Security institutions are often responsible for human rights violations and, more generally, persecutions during conflict. Reforming them, along with judiciary institutions, can help unite a divided society.¹⁶⁷ Stability makes possible the return home of internally displaced persons, a positive action in itself and one that re-establishes trust in security institutions.

Best practices and lessons learned

Study of security sector reform in post-conflict settings appears to indicate that success or failure relies on whether the processes are inclusively owned at the various levels of a country. The need for national ownership is universally accepted. There are too many cases where reform efforts have failed because of excessive external leadership that did not take account of national specificities; the United States-led disbanding of the Iraqi army in May 2003 under Coalition Provisional Authority Order Number 2, which some argue led to the rise of the Islamic State organization, is one such example.¹⁶⁸ Similarly, in Timor-Leste security sector reform failed in favourable conditions, and only became effective after external actors, principally the United Nations, undertook a Timorisation process, including local authorities and handing over responsibilities to Timorese leaders.¹⁶⁹ The country's most vital social units – the communities – were initially left out of the process, which resulted in the refusal by many to answer to the authority of the newly established security structures.¹⁷⁰

Reconciling national ownership and the often limited State capacity in the aftermath of conflict is a challenge for security sector reform. This can be overcome via programmes between international actors and host nations, such as the 2007–2008 Security Sector Reform and Small Arms Joint Programme developed by the Government of Burundi, the United Nations country mission, UNICEF and UNDP, and the 2009 Security Sector Development (SSD) Programme that was based on a bilateral

agreement between Burundi and the Netherlands. Initiatives such as the Afghanistan Compact are also an effective means to ensure international actors fill gaps in national capacity while respecting a reform strategy envisioned by the host nation. Compacts ensure that international actors follow common goals and coordinate their actions. In Timor-Leste, lack of coordination at international level undermined coordination at national level, which prevented the transformation of a divided security sector into a unitary, cohesive one.¹⁷¹

National coordination is a prerequisite for elaborating a nationally owned security strategy upon which international engagement, if necessary, will be based. For true ownership, devising a strategy must involve stakeholders at all levels of the host nation. The consequences of excluding communities from planning and implementing sector reform in Timor-Leste reflect how important this is. It allows a host nation to identify and agree on priorities, and sequence reform efforts, particularly necessary where there are limited capacities and resources. An inclusive strengths and weaknesses analysis must be conducted considering a country's internal and external threats. Liberia's 2014 national defence strategy, for example, established a strategic vision for the security sector, notably establishing the roles of its different security forces, through extensive consultations with stakeholders, including civil society groups and government ministries.

Civil society organizations such as the National Civil Society Council of Liberia, which groups 1450 organizations, the Liberia National Law

Enforcement Association and the Women's NGO Secretariat of Liberia took part in security sector reform processes through planning, implementing and monitoring activities.¹⁷² Similarly, Burundi's Security Sector Development Programme relies on a Memorandum of Understanding guaranteeing inclusive consultations that include civil society and ministry representatives from the legislative, executive and judiciary powers. By establishing inclusive consultations, stakeholders share in reform failure or success; if it fails, no single party can be blamed, which could create new rifts and result in renewed violence.

Today, the importance of local ownership is universally recognized, with Albrecht and Jackson arguing "it is impossible to overestimate the importance of local ownership" in security sector reform.¹⁷³ This culminated in a call by Keane and Downes to enter a "second generation" of post-conflict security sector reform that resembles the next-generation disarmament, demobilization and reintegration processes, and emphasizes community solutions rather than focusing on the central State.¹⁷⁴ Increasing attention to community policing helps build trust in security institutions; it brings security and justice services closer to the people, facilitating reform processes at central level. Adapting to community challenges can be done through local security-perception surveys such as that conducted in Bangladesh in 2009,¹⁷⁵ or more directly through decentralizing security sector institutional building, as is the case in Liberia. Its Peacebuilding Priority Plan established five regional justice and security hubs outside the

capital to increase citizen access to justice and security and foster trust in the building processes. Regional hubs were accompanied by public outreach initiatives to link the public and the security sector.¹⁷⁶ For example, confidence patrols are conducted three times a month to create forums during which security forces discuss problems with citizens.¹⁷⁷ This approach prevents justice and security vacuums forming at local level, which some argue have led to the rise of, for example, the Taliban in rural Afghanistan where reconstruction efforts were concentrated on building central State institutions.¹⁷⁸ Such subnational hubs can help link local justice and security delivery mechanisms and formal State institutions at a time when working with traditional systems in post-conflict settings at the possible expense of State-building processes remains a contentious issue.

Most importantly, truly inclusive ownership of security sector reform can only be achieved through the establishment of civilian oversight bodies. Processes that cannot be monitored by civilians risk losing legitimacy for at least part of the population, and, consequently, may not be sustainable. The lack of reform legitimacy and its subsequent failure in Timor-Leste can be partly attributed to the fact that most security sector legislation was passed by decree, bypassing parliament.¹⁷⁹ A national security strategy needs to be accompanied by a comprehensive national security legal framework that enshrines civilian oversight of security sector reform processes. In turn, a legal framework would ensure that the legislature could monitor the implementation of the agreed national security strategy. The failure to

establish parliamentary oversight in Timor-Leste rendered impossible the fight against the widespread impunity and politicization of security forces, and the endemic corruption that pervaded vetting processes.¹⁸⁰ Inevitably, this further undermined citizen trust in security institutions, and security sector reform processes. Recruitment and vetting processes are considered perhaps the critical factors in creating a professional security sector.¹⁸¹

Legislatures are also an important means of monitoring the financial aspects of national security strategy through regular public expenditure reviews and audit reports, and by making documents publicly available. If parliaments provide a link between civil society and security sector reform, however, direct civilian society involvement is necessary for strong oversight.¹⁸² As Liberia's confidence patrols demonstrate, civil society can be involved in oversight processes through decentralizing security sector reform; these patrols allowed citizens to oversee the activities of security forces. Similarly, research in Indonesia has shown that civil society oversight of security sector reform processes was strengthened when it involved civil society actors from across the country, not just the capital.¹⁸³ The role of traditional structures at local level can also be paramount to civilian oversight in post-conflict settings where central State institutions are not fully developed. They represent links between citizens and the national levels of government. In Burundi, for example, government security policies were debated in customary law courts and the results transferred to higher levels of government by local chiefs.¹⁸⁴

In numerous countries since the beginning of the century, this crucial element of security sector reform has been set aside in the name of the war on terror. But the absence of oversight can lead to the re-establishment of extractive and repressive institutions, as was the case in post-socialist Ethiopia, where security institutions have continued to violate human rights and suppress opposition.¹⁸⁵ In the extreme, a reform process that strengthens security forces and institutions without oversight can lead to conflict relapse through a coup d'état.¹⁸⁶ At the opposite end of the spectrum, however, security sector reform efforts in post-apartheid South Africa overemphasized oversight and accountability at the expense of operational capabilities, resulting in a security vacuum that was rapidly filled by violent non-State actors.¹⁸⁷ Security sector effectiveness and accountability must be strengthened in a mutually reinforcing manner. As post-conflict institutional building offers a short window for the sustainable development of effective and accountable institutions, failing to establish civilian oversight of security sector reform in the immediate aftermath of conflict might undermine that goal long term.

B. National dialogue processes

Due to the nature of intra-State conflict, which polarizes and fragments already divided societies, post-conflict reconstruction needs to create or build on existing institutions that allow for processes of reconciliation. Damaged relationships need to be repaired – damages made before and during conflict – to recreate the horizontal link within a citizenry and put

forward an inclusive and peaceful vision of what the future should hold for the nation. Post-conflict reconstruction should aim to transform negative and destructive social interactions (conflict) into positive and constructive ones (peace) by opening “the social space that permits and encourages individuals and societies as collective to acknowledge the past, mourn the losses, validate the pain experienced, confess the wrongs, and reached toward the next steps of restoring the broken relationship”.¹⁸⁸ Only an inclusive and unitary society can drive sustainable development.

The need to establish inclusive platforms and institutions that bring together the various stakeholders of post-conflict reconstruction (political, military, economic, civil society) to discuss their country's future is increasingly recognized as a means to reconcile divided societies. While the emphasis has long been on the capacity of transitional justice to achieve reconciliation once conflict has ended, such processes have also been shown to exacerbate social divides and bring further instability, even conflict relapse, if conducted too early.¹⁸⁹ In a similar way, rapidly holding an election in a post-conflict society with the intention of “democratizing” the transition can further polarize this society and lead to renewed conflict; the 2012 Libyan elections are a case in point. Sometimes, these processes, long understood as guarantors of a legitimate transition, need to be delayed in favour of national cohesion and State-building.

This is especially relevant for Arab countries. Still relatively young nation States, some lacking strong national identities, social

fragmentation has been exacerbated by lingering primordial identities (sectarian, ethnic, tribal). That these subnational identities are often transnational in nature has allowed for foreign meddling in complex national settings, playing identities against one another and further eroding the social fabric of heterogeneous societies. As the pre-conflict institutional framework of these countries did not succeed in creating an inclusive governance framework, post-conflict reconstruction should strive to build institutions that achieve this. As Sharqieh said, “monopoly and exclusion are likely the most serious threats to a successful reconstruction process”.¹⁹⁰

Over the past decade, national dialogue has increasingly been put forward as such a reconciliation tool with the potential to foster a peaceful transition from conflict. The Tunisian National Dialogue Quartet, a coalition of civil society groups,¹⁹¹ received the 2015 Nobel Peace Prize for efforts that “established an alternative, peaceful political process at a time when the country was on the brink of civil war”. Houcine Abassi, secretary-general of the Tunisian General Labour Union, said receiving the prize sent a message that “dialogue can lead on the right path” and that throughout the region, people should “put down arms and sit at the negotiation table”. Despite the widespread enthusiasm, careful attention must be devoted to the conditions that cause success or failure.

Best practices and lessons learned

With this interest in national dialogue have come many attempts to understand why some

have succeeded and others not. The first takeaway is that dialogues cannot take place anywhere, at any time. There are prerequisites. Stakeholders must be ready to engage with one another in a constructive manner. The Geneva Graduate Institute found that the attitude and behaviour of national elites was “the single most important factor influencing the chances of national dialogues”.¹⁹² Conflicting parties can enter national dialogues for an array of reasons unrelated to conflict transformation, such as gaining legitimacy in the eyes of the international community, avoiding international sanctions, and consolidating their position within a status quo favourable to them.¹⁹³ Stakeholders must also understand that a national dialogue is likely to produce winners and losers, and be ready to face both outcomes. During the *Conférence Nationale Souveraine* in Togo from 1990–1992, the president and the army forcefully suspended the process as they felt they were losing power.¹⁹⁴

In post-conflict settings, low levels of trust between stakeholders can be overcome through confidence-building measures¹⁹⁵ such as ceasing hostilities, releasing prisoners or setting up inclusive preparatory processes.¹⁹⁶ During the 1993 Multi-Party Negotiation Process in Africa, the adoption of such measures helped engage conflicting parties; conversely, failure by government in Yemeni to effectively address the “20 points” of grievances from the south and the Saada throughout the 2013-2014 National Dialogue Conference undermined the process. Confidence-building measures should also be implemented with regard to the physical safety of participants, who need to feel they can freely take part. In Bahrain and Sudan, senior

opposition figures were arrested during dialogue processes, which limited buy-in, resulting in a lack of legitimacy. Finally, national dialogues will benefit from strong internal cohesion between stakeholders.¹⁹⁷ Internal divisions in Bahrain, within the ruling family, the government and the opposition, were a challenge to national reconciliation.

Favourable conditions must also be promulgated at regional and international levels, as external actors can, equally, capture dialogue processes. There must be minimal consensus among such actors, who have the means to support or spoil national dialogues. This can be achieved through ad hoc consultations, contact groups or groups of friends, or United Nations Security Council resolutions with explicit reference to national dialogue.¹⁹⁸ How to guarantee external unity in the long term is, however, unclear. If the successful launch of the Yemeni national dialogue owed much to external unity and coordination (between 10 ambassadors from the five permanent members of the Security Council, the European Union and the Gulf Cooperation Council), it broke up along national interests as it went on, which largely contributed to its failure.¹⁹⁹ Capturing the right moment is crucial. Failure of a dialogue risks generating a loss of trust in such processes and subsequent dialogue fatigue.

Once the timing is right, successful dialogues need a clear agenda and strong mandate that reflect the political, military and economic realities of the context they seek to transform. Dialogues based on unrealistic goals that are not realized will also lead to dialogue fatigue.

The often big, complex topic of security sector reform, for instance, might need to be discussed in a separate forum to avoid overwhelming a national process.²⁰⁰ A dialogue's agenda must address the main grievances of all stakeholders, but it should leave specific considerations for working groups or technical committees.²⁰¹ The 1989 Polish Round Talks, deemed a success for compartmentalizing the discussion topics, were composed of three working groups and 11 subworking groups that focused on specific issues such as legal and judicial reform, media policy, education and local government. National dialogues also require solid mandates to substitute their lack of legal status; they often take place outside existing institutional frameworks. Clear and context-grounded sets of procedures, decision-making rules and deadlock-breaking mechanisms – especially important for polarized post-conflict contexts – must be established.²⁰²

The success of national dialogue also depends on the convener, who must be neutral, credible and capable, and in ensuring that any outcomes are effectively implemented. The Geneva Graduate Institute found that only half of agreements reached through national dialogues were implemented.²⁰³ For example, in the Central African Republic the mandate of the 2015 Bangui National Forum was elusive on disarmament, demobilization and reintegration, compromising its implementation capacity.²⁰⁴ The dialogue consequently took place under constant threat from non-State armed groups and in the ensuing political instability. Similarly, in Afghanistan, many outcomes of the 2003-2004 Constitutional Loya Jirga could not be implemented because warlords interfered in the

process. The capacity and independence of a national dialogue's implementation mechanisms are of the utmost importance. The lack of a solid plan can waste time and resources that post-conflict countries often do not have.

An appropriate national dialogue convener, meanwhile, helps engage the dialogue dynamic and ensure it remains in place via strong leadership. The convener, who can be a single person, or a group, organization or several organizations, must be respected and trusted by the majority of stakeholders. This was true, as many stakeholders and observers confirmed, of the United Nations in the National Dialogue Conference in Yemen until the 2015 conflict relapse. Trust for the convener and impartiality secure the participation of a maximum of actors, helping guarantee no one will feel excluded and potentially seek to spoil the dialogue. The success of processes in Senegal and Tunisia owes much to their conveners. In Tunisia, four prominent civil society organizations held "moral authority and broad-constituent bases", while in Senegal, former UNESCO Director-General Amadou-Mahtar M'Bow had "earned his compatriots' respect as a civil servant" and gave legitimacy to the 2008-2009 Assises Nationales.²⁰⁵ The excessive role played by President Omar al-Bashir in preparations for the Sudanese national dialogue had the opposite effect, tainting its legitimacy from the start.

There are no easy answers on the extent to which national dialogues should be inclusive, and how this best take place. While the inclusion of maximum stakeholders is often praised as a factor for success, the exclusive

Tunisian dialogue, which involved only politicians and elites, was largely successful. The Yemeni national dialogue was praised for its inclusivity (565 participants) and the engagement of non-traditional elites (women, civil society, youth). Yet, inclusivity is not enough on its own, and public buy-in might be irrelevant if there is no elite consensus on critical issues. One might argue that inclusiveness in post-conflict settings must first be sought with stakeholders with "hard power" on the ground, and the means to facilitate or spoil dialogue processes (the political, military and economic elites). This is relevant to the Libya case, where repeated attempts at a dialogue failed because it focused on selected political elites with no genuine power or popular legitimacy, and ignored militias and other relevant stakeholders. Similarly, the 2001 Arusha Peace and Reconciliation Agreement did not end the Burundian civil war partly due the Hutu rebel group CNDD-FDD being excluded from negotiations.²⁰⁶

Nevertheless, if non-traditional elites do not possess the hard power to make or break a national dialogue, they can, if perceived as legitimate, have the soft power to ensure its sustainability. As national dialogues in post-conflict settings seek to negotiate or renegotiate State-society relations, stakeholders must look beyond the elite. Efficiency and inclusivity, from which legitimacy and sustainability are derived, are not irreconcilable. In its 2017 *National dialogue handbook*, the Berghof Foundation explains there are two types of dialogue, though the distinction is fluid: national dialogues as mechanisms for crisis prevention and management (Tunisia), and as mechanisms for

fundamental change (Yemen). The pragmatic way to bridge efficiency and inclusivity in post-conflict settings might be to begin with dialogues in the form of elite settlements on a few critical issues, then open the process to wider public engagement to define or redefine social contracts and subsequent institutional frameworks.

These two distinct but potentially reinforcing processes can be linked via the introduction of civil society dialogues at local level, which would feed into elite arrangements conducted at national level. While this helps build or rebuild relationships between the different social strata, local dialogues are also an opportunity to consolidate narratives and increase their chances of influencing processes at national level. This in turn will increase the chances of overall success. Indeed, chances of national dialogue success increase when all stakeholders are able to influence discussions and outcomes qualitatively.²⁰⁷ The contrasting examples of women in the Yemeni national dialogue and in the 2008 African Union-led negotiations in Kenya are revealing. In Yemen, women represented 30 per cent of dialogue participants but were marginalized because they lacked cohesion as a group, which was also linked to the question of their independence from political interests of traditional elites.²⁰⁸ In Kenya, women overcame their differences, partly pushed by African Union team member Graca Machel, and presented a united front, and weighed in to national-level processes.²⁰⁹ This is of particular relevance as involving women in public buy-ins has significantly increased the latter's positive impact.²¹⁰

C. Corruption and informal institutions

Post-conflict settings are often characterized by the omnipresence of corruption networks, a consequence of the social fragmentation resulting from conflict and a pre-existing cause that determined initial conflict eruption. Because of this lack of social cohesion, and the multitude of subnational sets of rules, norms and strategies that follows, Philp argues that corruption occurs where “a public official (A), acting in ways that violate the rules and norms of office, and that involves personal, partisan or sectional gain, harms the interests of the public (B) (or some subsection thereof) who is the designated beneficiary of that office, to benefit themselves and/or a third party (C) who rewards or otherwise incentivizes A to gain access to goods or services they would not otherwise obtain”.²¹¹ Corruption diverts resources from the State and its institutions at a time when it needs them the most.

The challenge of fighting corruption post-conflict is summarized by Zaum and Cheng: “Corruption undermines the long-term goals of peacebuilding, but at the same time it has the potential to help stabilise post-conflict situations in the short- to medium-term.”²¹² Corruption is thus often accepted, encouraged even, to facilitate stability during peace processes but has detrimental effects long-term for economic development and the sustainability of institutions. It undermines economic growth and can entrench economic inequalities, which can lead to renewed grievances and potential conflict relapse, and by allowing war-time power structures to be perpetuated, it also

undermines the effectiveness and legitimacy of State institutions.

Corruption lies at the heart of the crime-conflict nexus,²¹³ which characterizes situations where competition for criminal and political rents during conflict intersect, as possession of one type of rent facilitates possession of the other.²¹⁴ Organized crime actors seek to capture political capital from formal actors to gain legitimacy, allowing them to continue their criminal activities. In Afghanistan, for example, as the Taliban substituted for the State in some local areas, they garnered support and legitimacy that enabled them to continue their trafficking activities, which allowed them to provide goods and services to local populations, and so on.²¹⁵

As a result of this crime-conflict nexus, post-conflict settings are characterized by large corruption systems that developed through the de facto alignment of criminal and political interests during conflict. Informal networks and institutions that form as a result of corruption inevitably persist post-conflict because the actors of this crime-conflict nexus are reluctant to relinquish their interests, which are deeply rooted within those networks and institutions. During the reconstruction phase, parallel illicit informal institutions coexist with formal institutions in the making/remaking, and become interwoven. This is made possible by corruption in State institutions, which prevents the transformation of informal criminalized institutions into formal State ones. Cockayne refers to this as “criminalized peace”.²¹⁶ If not tackled in the immediate aftermath of conflict, it can lead to mafia-like States emerging, as was the case in several post-Soviet and Latin

American countries. For example, in 2002, Amnesty International described Guatemala as a “corporate mafia state run by an unholy alliance of corrupt military and police officers, members of the traditional oligopoly, and new entrepreneurs”.²¹⁷

Best practices and lessons learned

While fighting corruption in post-conflict settings is of the utmost importance, the literature holds few analyses of best practices. The optimal approach, however, is to tackle corruption as early as possible. The institutionalization of corrupt practices during the State-building phase will have long-term detrimental effects on peace and development. At best, it will result in a negative rather than a positive peace; at worst it will lead to conflict relapse. The choice, for example, by both the Afghan Government and the international community to rely on warlords and their corruption networks in the post-2001 transitional phase undermined the ability of all successive governments to put an end to informal institutions.²¹⁸

Further, early successes need to be visible in fragile post-conflict settings where the State often has to compete with organized crime groups for popular support.²¹⁹ These can include the prosecution of high-level officials, whose corrupt practices are publicly known. President Paul Kagame argued that showing no one was untouchable in the aftermath of the Rwandan genocide was “critical” to fighting corruption in the long-term, even if meant the resignation or dismissal of some members of government.²²⁰

For successes that are not as visible, a communications strategy to gain popular support for sensitive undertakings must be put in place.

Popular support is essential to successful and sustainable anti-corruption efforts, especially where some may lack the will to take on the fight. While political will is often presented as a prerequisite to anti-corruption efforts in post-conflict countries,²²¹ civil society can help where it is lacking. Civil society has been found to be one of the most effective advocates in post-conflict settings,²²² its engagement pressuring the actors of different sectors to work together on national anti-corruption agendas.²²³ Civil society organizations in Liberia and Sierra Leone, for instance, played an active role in developing the Liberian Anti-corruption Act and the National Anti-Corruption Strategy, respectively.²²⁴

In addition to public successes, support can be secured by eradicating corruption in service delivery institutions where people interact, and where it is less likely to meet resistance, such as the health and education sectors.²²⁵ By establishing social accountability mechanisms at community level, efforts can also be brought closer to the people.²²⁶ Such mechanisms include participatory monitoring of expenditures, scorecards and a strong and independent media, which has in particular proved key in anti-corruption efforts, weakening the ability of individuals to engage in corrupt networks and activities with impunity.²²⁷ In Papua New Guinea, for example, the media was strengthened by the Media Council and the National Broadcasting Corporation, and became

the primary source of information on corruption cases, raising awareness and reducing the opportunity cost of engaging in corrupt activities.

Empowering civil society in the fight against corruption can help rebuild the vertical link between State and citizen, and the horizontal link between citizens in divided post-conflict societies. If the State actively works to empower civil society, its credibility is improved in the eyes of the people, boosting legitimacy.²²⁸ Anti-corruption efforts at local level unite the population around a common goal that will benefit everyone. An anti-corruption communications strategy must make clear, while managing expectations, that the deficiencies of State institutions are a direct result of corruption.

If, however, petty corruption is brought under control at local service delivery level and produces results that mobilize support for the State to the detriment of organized crime groups, it does not address the corruption that plagues States institutions.²²⁹ Experience suggests that legal enforcement approaches should be avoided in the initial post-conflict phase. If corruption is criminalized under the laudable goal of making it a high-risk, low-reward activity, this can have opposite effect in fragile settings where there is little capacity to enforce legislation. When post-Taliban Afghan authorities issued a ban on poppy cultivation without the capacity to implement it, poppy prices rose, increasing the incentive to join the post-war illicit economy.²³⁰ Moreover, law and order approaches can easily be politicized, destabilizing post-conflict reconstruction

efforts.²³¹ Authorities in the Liberian National Transitional Government, for instance, used anti-corruption measures to weaken the criminal economic networks of Charles Taylor's political party and strengthen their own networks.²³²

According to a study by the United States Agency for International Development (USAID) assessing anti-corruption in six post-conflict countries,²³³ technical measures that are less subject to political capture are preferable. Such measures aim to increase the opportunity cost of corruption practices by making public finance systems – such as fiscal and regulatory institutions – more transparent and accountable. The most effective were found to be strengthening audit and control capacities and financial management systems. A World Bank study based on eight post-conflict countries²³⁴ further confirmed the positive impacts of strengthening public financial management on State resilience and corruption control. Once public trust is established or re-established through such measures, fundamental political and institutional reforms can be carried out.²³⁵ Successful financial management initiatives include the Liberia Governance and Economic Management Assistance Program that allowed a 37 per cent increase of government revenue receipts, and the Integrated Financial Management Project in Guatemala, which reduced corruption at all levels of the public sector, increasing effectiveness and efficiency.

Joining international initiatives that oversee the good governance of natural resources industries, such as the Kimberley Process or the Extractive Industry Transparency Initiative, can help reduce corruption and recover State funds.

The Kimberley Process for instance, which ensures the non-corrupt origin of diamonds, has significantly contributed to reducing the share of conflict diamonds in international diamond trade, from 15 per cent in the 1990s to less than 1 per cent.²³⁶

Finally, in addition to reducing incentives by exerting more control on illicit financial flows, post-conflict corruption can be fought by targeting individuals in the crime-conflict nexus. Such an enterprise must be carried out with caution as peace agreements often result in such individuals becoming central to post-conflict stability.²³⁷ Mapping illicit political economies can assist in a cost-benefit analysis of the violence that targeting these figures could trigger. Increasingly recognized as a tool in the fight against organized criminal networks, it allows mapping not only of illicit financial flows but also the political power and informal networks deriving from them.²³⁸ The possibility of driving a wedge between these actors, often warlords, and their power base can then be assessed, for instance, by persuading middle- and low-ranking individuals in the corruption line to cooperate with the State. Le Billon argues this can be done through amnesty or reintegration packages.²³⁹ The most evolved mapping tool is perhaps Europol's Serious and Organised Crime Threat Assessments,²⁴⁰ but other organizations like the African Union, the United Nations Office on Drugs and Crime (UNODC) and USAID have been developing something similar.²⁴¹

The previous sections have elaborated on the importance, the substantive elements, the pitfalls and the essential requirements of the

areas considered priorities for the institutional development processes that will take place in Libya and Yemen in the immediate aftermath of conflict: security sector reform, national dialogues and the fight against corruption. If approached in a cognisant, balanced and

inclusive manner, they can help establish/re-establish or strengthen/re-strengthen the vertical link between State and the citizen, and the horizontal link between citizens themselves, which ultimately represent the foundation for sustainable peace and development.

7. Post-conflict Decentralized Governance: Iraq as a Case Study

7. Post-conflict Decentralized Governance: Iraq as a Case Study

Decentralization reforms have gained currency in countries emerging from prolonged conflict. According to the *World development report 2017: governance and the law*, enshrining power-sharing arrangements, such as decentralized governance at the subnational level in peace agreements, removes motives to continue fighting, and may prevent the renewal of conflict.²⁴² While less well documented, there is emerging evidence that decentralization, when accompanied with fiscal reforms that enable more equitable redistribution of resources across subnational territorial units, may also enhance security and reduce incentives to use violence. This is the case as fiscal decentralization increases the legitimacy of the local government, which translates into greater social cohesion and cooperative behaviour.²⁴³

As a process involving the restructuring of relations among State and society, decentralized forms of governance carry important implications for both the role of local and national actors and the exercise of State power. Conceptualizations of decentralization have evolved over time as development agencies have increasingly shifted their focus from reforming local public administration systems to enabling participation by community-based and other local actors in policy formulation and implementation. For instance, World Bank

documents refer to decentralization as the “transfer of authority and responsibility for public functions from the central government to intermediate and local governments or quasi-independent government organizations and/or the private sector”.²⁴⁴ United Nations agencies, however, in their efforts to promote decentralization, stress accountability, responsiveness and local empowerment as vital aspects of reforms. UNDP advocates the broad concept of “local governance” to highlight linkages among democratic governance practices, civic values and human development. The concept encompasses “the combined set of institutions, systems and processes, at the subnational level, through which local authorities interact with and provide services to citizens, groups and local communities and through which the latter articulate their interests and needs, mediate their differences and exercise their rights and obligations”.²⁴⁵ UN DESA’s studies refer to decentralization as involving two axes of vertical devolution of power and resources from the central State to local government structures, as well as horizontal reforms aimed at empowering grassroots communities to enable them to determine, plan and implement their socioeconomic development.²⁴⁶

For the purposes of this report, decentralization is used to refer to “the assignment of powers to

governing bodies located at different jurisdictional tiers in governmental systems".²⁴⁷ Aside from formal legislative and constitutional clauses outlining the structure of the State, analysts empirically assess the actual degree of decentralization of power and resources, as well as temporal and cross-country variations, using six indicators. First is the number of vertical tiers within the State apparatus that are funded from the public budget. Second is the breadth of decision-making powers wielded by office holders at subnational State tiers. Third is the ratio of subnational office-holders that are appointed and whether the actors entrusted to appoint local officials are at a higher or similar tier of the State's apparatus. Fourth is the ratio of subnational office-holders who are popularly elected in pluralistic competitive elections. Fifth is fiscal decentralization or the assignment of expenditure and revenue-raising powers to the various tiers. Sixth is personnel decentralization or the distribution of civil servants across the various tiers of the State, represented as a ratio to population size per jurisdiction.²⁴⁸

Drawing on Daniel Treisman's seminal work, important distinctions within the decentralization category should be highlighted: administrative decentralization, where the implementation of centrally determined policy is undertaken by local agents; political decentralization, which involves a degree of policy-making authority at lower levels and may or may not include appointment decentralization (local elections) and constitutional decentralization, where local bodies are given a say in central policy-making; and fiscal decentralization, where subnational tiers of government have some responsibility

for tax and expenditure decisions and/or constitute a significant proportion of total government revenues and spending.²⁴⁹

Decentralizing the central State apparatus may follow different modalities that entail varying degrees of power transfer to lower tiers of the State and creating or strengthening pre-existing local institutions. At one end of the spectrum is de-concentration of policy implementation, while policy formulation continues to be made at the central level. These reforms have been adopted in the case of "services where scale or externalities are involved (for example, non-local roads and water resources), or where redistribution of wealth and national standards are important".²⁵⁰ Since de-concentration entails reassigning administrative responsibilities to field offices of national ministries and improving the national government's presence in remote territories, it has been widely adopted in post-conflict States. Similarly, this limited scope of decentralization reforms has been popular in contexts where policymakers are hesitant to surrender power due to geostrategic instability or fears of nation State breakdown. At mid-point is delegation, whereby some decision-making authority is transferred, although the central State still reserves control over key aspects of policy. At this level, power transfer can be used as a means of building the capacity of semi-autonomous local-level structures, which are accountable to the central government, in preparation for further decentralization in the longer term.

Finally, devolution transfers maximum decision-making to legally constituted and popularly elected subnational governments.

Decentralization at this level requires “subnational governments to hold defined spheres of autonomous action, which typically means the use of subnational elections”.²⁵¹

Generally, it is rare for countries to adopt a single modality of decentralization. “All countries, centralized or decentralized, always seek to find an appropriate mix of these types, the central question always concerning how much decision-making power to transfer to local governments.”²⁵² The precise mix of decentralization modalities is a function of the country’s political system, or more precisely, its degree of political decentralization.

A. Debating decentralization post-conflict

There are mixed opinions about the degree to which decentralization can maintain national integrity in fragile post-conflict polities or contexts where State institutions have collapsed. Indeed, there is rich debate among practitioners and analysts over the potential benefits as well as risks posed by the transfer of power, authority and resources to subnational government institutions during transitions from war to peace.

The literature advances four major arguments in support of decentralized governance. First, shifting the balance of power from the central to subnational levels during the reconstruction phase enables the reconstitution of State legitimacy. Post-conflict elites, who develop broad networks distributing power and patronage at the local level, are less likely to

face challenges to their rule during stabilization missions and can proceed to build broad-based political coalitions.²⁵³ This is particularly so when these networks are embedded in a democratic decentralized political regime that brings decision-making closer to the citizenry. Some, like Derick W. Brinkerhoff, view reforms of local government structures as a vehicle for gradually “expanding participation and inclusiveness, reducing inequalities, creating accountability, combating corruption and introducing contestability (elections).”²⁵⁴ Governance reconstruction centered on rebuilding legitimacy at the local level is particularly important because it is the cornerstone for national reform efforts focused on re-establishing security as well as rebuilding State effectiveness.

Second, decentralization creates space for “policy differentiation” according to “heterogeneous tastes” across different local communities in multi-ethnic societies, thereby reducing the risk of conflict relapse.²⁵⁵ It allows governments to draw on local knowledge and bring citizen preferences closer to the government, and also, when accompanied by significant local participation and political decentralization, creates stronger incentives for accountability among policymakers. By providing routes for people to engage in monitoring, evaluation and planning from below, decentralization is sometimes credited with planting the seeds for greater responsiveness to diverse needs on the ground. As a result, decentralization is associated with delivering more effective public services, and correspondingly greater government effectiveness overall.

Third, decentralization can promote bottom-up governance initiatives and cement national ownership of reconstruction processes by stakeholders. Charles T. Call and Susan E. Cook argue that identifying local voices and carefully integrating them into decision-making through effective local institutions are vital steps for the reconstruction process.²⁵⁶ Similarly, others argue that decentralizing powers and functions to locally embedded sociopolitical institutions, including traditional structures, can promote hybrid modes of State-building that are more effective in the long term.²⁵⁷

Fourth, fiscal decentralization can mitigate conflict, though its effects tend to be mediated by contextual factors, such as the prevailing level of State capacity and the quality of institutions. Murshed and Tadojoeddin, in their cross-district study in Java, Indonesia, argue that fiscal decentralization can “alleviate pent up frustrations” with the central State through localization and accountability mechanisms.²⁵⁸ Yet, they find that the impact is particularly strong in relatively wealthier districts. Similarly, Jean-Pierre Tranchant, in his quantitative analysis of ethnic conflict and rebellion in a cross section of countries from 1985 to 2000, finds that fiscal decentralization is more effective in richer contexts in mitigating conflict, yet paradoxically he finds also that it does not have conflict-reducing impact where bureaucratic quality is higher.²⁵⁹

On these bases, some go as far as to suggest that decentralized governance is most urgent in post-conflict settings. The rationale is that the process may both diffuse conflict and moderate prior polarizing dynamics by redistributing

power relations and restructuring State-society relations.²⁶⁰ Indeed, proponents of decentralization contend that carefully designed reforms can potentially serve to promote a sense of autonomy among citizens, deepen State legitimacy and limit pressures for separatism by diverse regions or ethnic groups.²⁶¹ Vigorous local government structures have the potential to: broaden direct participation by the citizenry in elections; diffuse new civic norms and citizenship practices; create opportunities to develop new local elites with political skills allowing them to participate in and monitor national politics; broaden the range of policies and alternative strategies of development; and prevent overload of national-level authorities at the centre.²⁶²

While the pursuit of decentralization in post-conflict fragile countries may pacify warring groups, sceptics stress that it can come at the cost of undermining national cohesion in the longer term, especially in countries that suffer from a frail national identity or where the central government is weak. Because citizens may lack a sense of unity and ideological commitment to decentralized governance, the process can be politically destabilizing.²⁶³ Further, granting greater autonomy and voice for ethnic minorities can “harden” subnational identities rather than plant the seeds of inclusive citizenship, and the diffusion power at the local level may even lead to “the intensification of forces for secession”.²⁶⁴ Others emphasize that decentralization’s tendency to allow groups to produce subnational legislations that discriminate against regional minorities is another potential shortcoming.²⁶⁵ In such situations, where there are mixed populations in

decentralized territories, decentralization risks excluding minorities. Local-level discrimination can trigger a conflict cycle.

Critics argue that “entire groups and constituencies are often at risk in decentralization schemes”.²⁶⁶ This pertains, for instance, to rights agendas for women, migrants and refugees that are often advocated at the national-level. From the perspective of advancing the rights of vulnerable groups, local authorities are often viewed as easily captured by interest groups, or indifferent.

Notwithstanding the importance of the debate outlined above, and the viable arguments on both sides, the literature does not address the question of why decentralization reduces ethnic conflict and secession in some countries and less so in others. Under what conditions can decentralization mediate communal differences, and encourage elite compromise, thereby leading to a virtuous cycle of peace and development? The following sections of the study discuss the Iraq case. The analysis illustrates the tension between the perceived benefits and potential risks of decentralization in Iraq’s post-conflict context, which has constrained the evolution of the country’s federal system to date.

B. Lessons from the region: a look at Iraq’s decentralization experiment

With a federal constitution and a long-running experiment in reforming local governance, Iraq has gone the furthest in taking bold, innovative steps towards decentralized governance, by

regional standards. Its experiment sheds light on key best practices in overhauling a unitary State’s structure to create a federal system in post-conflict countries with strong cultural and institutional legacies of centralization. The following summarizes Iraq’s local governance model and the trajectory of its decentralization reforms.

Asymmetrical federalism describes “a situation whereby some federated entities have gained greater self-governing powers than others”.²⁶⁷ Under Iraq’s federal system, power is unevenly divided among constituent governorates. Thus, there are two tiers of decentralization in State power. The first tier entails granting full autonomy to governorates that are organized into regions. The second tier delegates administrative powers to governorates organized outside the regions. Currently, the country has a total of 18 governorates (sometimes referred to as provinces in the literature), three of which have special status²⁶⁸ because they constitute the Kurdish federal region. “Article 117 of the Constitution recognizes the Kurdistan Regional Government, as autonomous and therefore entitled to have all the hallmarks of a government: its own constitution, its own parliament and its own ministries”.²⁶⁹ Governorates have locally elected councils, which in turn select the local executive authority (that is, the governor) based on majority formula or a deliberated consensus. Unlike the case of the regions, the central government has the constitutional authority to legislate the governorates’ authority and the latter’s sources of revenue.

Iraq has progressed towards a more decentralized governance framework, but the process has been uneven. The first generation of reforms in the post-invasion period 2005-2012 were marked by enthusiasm and leadership from the governorate level stimulated by the political legitimacy achieved by the election of governorate councils. Yet, these reforms were often watered down by the central government at the drafting stage, or faced bottlenecks in implementation. Since 2013, driven by reform impulses from the centre, Iraqi officials have proclaimed a second generation of decentralization reforms. Parliament and reform-minded executive authorities seeking to reverse some of the earlier centralization and resistance to federalism, moved towards deepening decentralization.

The initial major step towards decentralization under the Iraqi authority was the election of the governorate councils (for all 18 governorates) in January 2005. The election overcame some stigma attached to occupation-period advisory councils. According to the World Bank, "In this one step of citizens choosing their own representatives, Iraq achieved a degree of political decentralization much more quickly than many other countries whose decentralization process is considered highly successful, such as Indonesia" (2016: p. 3). The elected governorate councils took two significant initiatives to fill in vague and somewhat contradictory references in the constitution to a decentralized State: namely, the lobbying for passage of the Law on Governorates not Incorporated into a Region (Law 21), and preparing strategic plans for developing the governorates. Law 21, which

was passed in 2008, provided the statutory basis for governorate authority.²⁷⁰ According to UN-Habitat, the legislation "provided for a major conceptual shift for Iraq with the character of governorate councils changing from a body composed of department heads presided over by the governor, to an elected body, which itself chooses the governor".²⁷¹

Governorates also took the initiative to address demands from citizens for basic service improvement. As early as 2005, Basra governorate started a strategic planning process that in 2006 expanded to all 18 governorates. Development plans were drafted at the district or *qadaa* level,²⁷² approved by the governorate council and finally transferred the executive authorities for implementation. This framework allowed governorates a margin for formulating policies, setting plans and identifying priorities according to their development needs, separately from ministry plans, which are formulated at the federal level.²⁷³ Over time, the governorates expanded this mandate into a strategic planning process that produced multi-year development and action plans consisting of capital projects to rehabilitate, replace or create new capacity for service delivery.²⁷⁴ It is estimated that a total of 8,093 provincial development projects were implemented between 2006 and 2011 across Iraq's governorates, with Baghdad, Basra and Kirkuk benefiting from the highest number of projects.²⁷⁵

The governorates' attempts to empower subnational authorities by issuing a decentralization law never fully materialized, however. Law 21 proved politically controversial

and centralist forces succeeded in limiting the scope of decentralization envisioned in the legislation and curtailing the powers of councils and governors. Most notably, the law required consistency with federal laws, ministerial regulations, prime ministerial decrees and Supreme Court decisions, despite article 115 of the constitution giving governorates priority on disputed issues between federal and governorate legislation. While the governorate councils were granted powers within their respective territorial jurisdictions, the law specified that such powers could not encroach on the local branches of the central government.

Selection of appointees for senior positions at governorate level was preserved in the hands of the minister, while the power of the councils was restricted to the selection of three out of five proposed by the governor for senior positions. The law did not stipulate clear fiscal decentralization measures, nor identify local revenue sources for local governments. Further, their oversight functions were severely restricted to monitoring local schools.

One could argue that the first generation of decentralized governance attempts in the post-invasion period amounted to de-concentration of policy implementation, rather than a full-fledged devolution of powers. Governorates continued to be legally enshrined only “as administrative units of central government, working alongside the local ministerial department of the federal government”.²⁷⁶ While reforms created the space for a degree of political decentralization, represented by the creation of elected councils and indirectly elected governors, both the decision-making

powers of elected officials and the ratio of subnational office-holders who are popularly elected remained limited. Also, the law did not assign revenue-raising and expenditure powers to the governorates and lowers tiers of government. In the absence of local tax revenues, the governorates remained heavily dependent on transfers from the centre, which represented about 5 per cent of the total budget in the case of governorates and 17 per cent in the case of the Kurdish Regional Government.²⁷⁷ This has, in turn, undermined downward accountability of local authorities to the citizenry, and raised serious questions about equalization transfers between provinces. As a result, the World Bank refers to a period of retrenchment in decentralization reforms following the enactment of this central piece of legislation.²⁷⁸

Decentralization has developed more quickly with the enactment of a second generation of reforms since 2013. This time the momentum for reform initially came from the parliament in the centre, not the governorates. Contrary to the earlier emphasis on de-concentration, reforms were now geared towards delegation, meaning the transfer of decision-making powers from the centre to the periphery, while the former continues to retain control over key aspects of policy. There are signs that the initiation of these reforms marked a shift in the dominant assumptions among Iraqi decision-makers towards viewing decentralization as essential for keeping the country together.

Looking at the six indicators for reforms outlined above, it is clear that Iraq officially made some, albeit uneven, progress in pursuing

vertical devolution of powers and resources.²⁷⁹ The central piece of legislation was Law 19 (2013), which overhauled Law 21. It granted local governments broader powers to administer subnational units, by endowing them with legal status and linking their legislative powers to constitutional clauses. Governorate councils were empowered to draw up public policies in all spheres, with priority going to the councils' perspective in case of disagreements with ministries in Baghdad. The councils were also given the power to appoint senior officials in the governorate by selecting one of three nominees put forward by the governor. While this fell short of increasing the ratio of popularly elected local office-holders, it improved local accountability. The councils' powers were also formally broadened to cover designating land use and approving housing projects on lands owned by ministries. District-level councils had their oversight powers widened to include agricultural, health and social sectors.

The 2013 legal amendments also consolidated the financial position of local governments in Iraq by granting them revenue-raising powers. The law specifically outlined eight sources of revenue for the governorates, aside from federal allocations, which were now explicitly based on population size and degree of deprivation. Among the revenue sources designated for local governments is a fixed ratio of local oil and gas production, together with local taxes, grants and income generated through rent and property sales.

In addition, the law sought to activate the roles of local councils, while strengthening the subdistrict level of governance. For instance, it

required the (s)election of presidents and vice-presidents of the elected councils by local members of parliament within two weeks, upon initial invitation by the governor. To guard against the monopolization of power by the executive branch, the law stipulated an automatic requirement for the councils to hold their opening sessions, even if not formally invited by the governor. Under 2008 legislation, *naheya* (subdistrict) councils can perform their oversight functions only by forwarding their recommendations to the *qadaa's* council. With the 2013 amendments, however, they were granted autonomous powers to monitor and oversee the work of directorates at local level. This is particularly important because it increases these bodies' accountability to the citizenry, as opposed to higher tiers of governance.

The amendments constituted a qualitative shift towards decentralized governance in Iraq.²⁸⁰ More specifically, as a result of this legal act, eight sector ministries were officially expected to transfer core implementation functions and responsibilities to the governorates, while preserving overall policy planning roles at the federal level. Further, according to article 45 of the law, a High Commission for Coordination between Provinces (HCCP) was entrusted with implementing decentralization of public services delivery, under the auspices of the eight ministries. The Commission, which operates as a parallel autonomous structure, is directly headed by the prime minister, holds regular meetings with representatives of ministries and governorates. It was tasked with pushing through devolution, resolving bottlenecks and coordinating implementation of the 2013

legislation within a two-year period at the end of which all mandates were automatically to become the responsibilities of the governorates.

The Government of Prime Minister Haider Al-Abadi, who took office in 2014, has lent its support to these reforms. The Prime Minister identified decentralization as a core policy priority. Although Iraq's fiscal crisis has slowed his reform agenda, Al-Abadi's Government has attempted to entrench the decentralized governance vision stipulated in Law 19 (2013) within an extended time framework. He has proposed additional amendments to Law 21 to fine-tune the decentralization process. These pending amendments stipulate in more detail the process of devolving certain ministry functions to local units in the short term, while explicitly designating certain functions to be more gradually transferred, or to be retained at the federal level. The proposed legal changes will strengthen the governorates' budgetary authority by allocating to them 5 per cent of the market price for each barrel of oil produced in the governorate.²⁸¹

C. Lessons learned

Effective institutional reform is vital for successful decentralization. The latter typically involves bargaining among multiple stakeholders, with strong resistance likely from the central bureaucracy, which often views decentralization as a zero-sum game. As characterized by the World Bank, decentralization is a non-linear process in many cases, subjected to reversals. "Even after a political system decides to decentralize, the

central-local relationship constantly develops; it is not linear".²⁸² Hence, establishing a strong specialized entity clearly mandated to promote decentralization is essential for maintaining pressure to reform in the long term.²⁸³

In the case of Iraq, the High Commission for Coordination between Provinces (HCCP) has been established to streamline the devolution process, based on article 45 of Law 21. The Commission quickly emerged as the lead agency for decentralization reforms and spearheaded public service delivery reforms through the delegation of greater powers and responsibilities to the governorates across eight ministries. As an autonomous body under the direct leadership of the Prime Minister, the HCCP acquired a high policy profile, which enabled it to side-step resistance from line ministries. A ruling by Iraq's Supreme Federal Court further solidified its powers as far as demarcating the responsibilities of the ministries and the local units at the governorates level, and settling disputed shared powers.

Internally, the Commission's specialized secretariat has capitalized on a technocratic team of lawyers and public administration specialists to maintain Iraq's decentralization reform momentum. The background of the Commission's secretary, who had previously served as Minister of Provincial Affairs was conducive to the success of the HCCP. He had developed strong relationships with donor agencies funding decentralization projects across Iraq, and with governors and subnational stakeholders he had previously worked alongside. As a result, the HCCP emerged as an

autonomous yet strongly embedded government entity with links to local and donor networks, a duality that facilitated the pursuit of reforms. As the national custodian of the decentralization portfolio, the HCCP could also play a significant role in coordinating donor assistance in the fields of local governance and decentralization in the country. In fact, due to falling oil prices and the State's fiscal crisis, the Commission has relied on partnerships with international organizations and donors to meet capacity-building needs following the deepening of decentralization in 2013.²⁸⁴ In the longer term, however, according to the secretary of the Commission, a sustainable capacity-building framework is needed to provide coherent, systematic technical and operational advisory support to bureaucrats at federal and governorate levels.

A closer look at the trajectory of Iraq's decentralization reforms reveals that the restructuring of its governance system since the fall of the Baath regime has been multi-faced and unfolded along the administrative, fiscal and political fronts. As per the discussion in the previous section, driven by attempts to create inclusive political buy-ins, political decentralization was established in the country. This laid the groundwork for bigger roles for directly elected governorate councils, the indirect election of governors and the eventual administrative and fiscal devolution of powers. Although constitutional decentralization continues to lag, Iraq's multifaceted process of decentralization is unique to the Arab region, where decentralization has been traditionally relegated to limited forms of administrative decentralization, with tentative steps towards

forms of fiscal decentralization. It demonstrates that the deepening of decentralization, from de-concentration to delegation or full-fledged devolution, requires significant progress on the various facets of decentralization. Further, it suggests that sequencing of reforms also matters; when countries move towards political decentralization first, significant administrative and fiscal decentralization are likely to follow. Empowering elected subnational bodies creates political incentives for further reforms, and is the hardest form of decentralization to reverse.

In line with the literature on decentralization in developing and post-conflict countries, Iraq's decentralization experiment points to the critical importance of political will to this process. The country's first generation of decentralization attempts in the period 2005–2012 were marked by enthusiasm and leadership at the governorate level, stimulated by the political legitimacy achieved by the election of governorate councils. Yet, these reforms were often watered down by the central government at the drafting stage, or faced bottlenecks during implementation. Since 2013, driven by reform impulses from the centre, Iraqi officials have proclaimed a second generation of decentralization reforms. Parliament and reform-minded executive authorities seeking to reverse some of the earlier centralization and resistance to federalism, moved towards deepening decentralization. Contrary to the earlier emphasis on de-concentration, reforms were now geared towards delegation, meaning the transfer of decision-making powers from the centre to the periphery, while the former continues to retain control over key aspects of policy. There are signs the initiation of these

reforms marked a shift in the dominant assumptions of Iraqi decision-makers, towards viewing decentralization as essential for stabilizing the country. Political will among the upper echelons of power was instrumental for the success of recent decentralization efforts.

Last, the country's asymmetric model of decentralized governance is another unique feature of its decentralization reform experiment. By allowing decentralization to unfold at different paces across sectors and territories, Iraqi policymakers accommodated

the realities of differential technical capacities at the local level, distinct organizational structures of line ministries and pockets of instability. By adopting asymmetric forms of decentralization, decision-makers could adapt decentralization to context-specific needs and to prevailing sectoral structures. While this made the progress of reform uneven, it also afforded space for policymakers to more flexibly innovate institutional mechanisms for the purposes of enabling local actors to gradually assume greater powers and mandates in designing and implementing policies.

Box 4. Syrian Arab Republic experiment at local governance: local administrative councils and new forms of governance and juridical structures

The severity of the conflict forced the retrenchment of the central Syrian State, and many areas started falling outside government control, starting in 2012. The end of government presence resulted in the citizens of those areas confronted with the reality of being outside government control for the first time since independence. The responses to this new reality varied across the country, but overall it has given rise to multiple governance structures throughout the Syrian Arab Republic.

Examples of these have been the formation of local administrative councils, Sharia-based institutions, Jihadist groups and Kurdish political parties, alongside traditional institutions such as kinship (family, clan) and religious, ethnic and tribal networks. These groups have tried to develop governance structures to fill the gap. They have sought, with varying success, to provide public services, resolve conflicts, mediate disputes and perform other legal duties, establish order and enforce their own policies and goals.

The local councils are perhaps the most well-known examples of citizens attempting to organize their own affairs in areas outside, and on occasion within, the control of the Government. The first local councils started in 2011 in Zabadani, with the aim to coordinate the civilian response with armed groups in the area. In many ways this became the "idealized" type of local council: the main authority in the area with armed and other groups performing security functions, and courts established to carry out the law.

The local councils are testimony to the resilience and creativity of Syrian society. Granted, many are characterized by an exclusionary nature, most significantly towards women and those they deem political opponents, but there is substantial evidence that they have all worked hard to meet the needs of citizens. Some have found themselves in charge of towns whose members number in the tens of thousands, including a significantly large number of internally displaced persons. Even under the best of conditions, such experiments

run the risk of failure, let alone in a major armed conflict. The initiative and leadership shown by many local councils spoke of the ability of Syrians to seek and implement solutions to their own problems.

Many, if not most local councils take the lead in project design, implementation and monitoring and evaluation. In some cases, these efforts have led to major repairs to damaged infrastructure. In the town of Tsil (population about 23,000) in Dar'aa governorate, the local council coordinated activity with other local councils and civil society to repair electricity and water infrastructure, sanitation, insect control, and hospital and medical machinery. This experiment is particularly notable for its care in implementing good governance procedures, including transparency (public notices, detailed and relevant information, photos and news on Facebook), wide consultations and close monitoring and evaluation. In the north of the Syrian Arab Republic, before it was taken over by the Islamic State of Iraq and the Levant (ISIL/Da'esh), the town of Manbij enjoyed a governance structure composed of 53 popular neighbourhood committees, and three courts (Revolutionary penal court, Islamic court, and customary law court) shared responsibility for conflict mediation and judicial rulings, which were enforced by a 60-member police force.

The characterization of local councils as civilian leadership with armed representation is, however, misleading. They are often one group, and often the weakest, among multiple actors in the area. Their function in the best of cases is to coordinate service provision, including humanitarian aid, food, electricity, health care, garbage collection and local economic development. They depend on aid and external donors as they have no internal source of revenue. Many lack the technical and managerial expertise to carry out the projects. In many instances, they and other groups rely heavily on government employees (many of whom still receive salaries from the central government) to carry out projects, even though they have excluded these from decision-making.

Given the technical and infrastructural limitations, the fickle nature of external aid and inevitable time lag between request, processing and receipt, many local council projects have resulted in abysmal outcomes. Surveys have shown that only 5 per cent of these projects supported by international donors have been completed with successful or acceptable outcomes, 28 per cent are in progress and 20 per cent have had poor results. The remainder were terminated prior to completion.

A major challenge in the peacebuilding phase will be to reincorporate the local governance structures into the Syrian State in a way that respects their priorities while also making them more inclusive. Ideally, a governance structure for the Syrian Arab Republic will have the central government as a hub but also the spokes connected to one another, to share needs, technical expertise and experiences, to barter and to mobilize collective action (among towns and regions) to further common interests.

8. Post-conflict Libya: a road map for institutional development

8. Post-conflict Libya: a road map for institutional development

The objective of this chapter is to identify the key Libyan institutions to be reformed or developed to meet the immediate post-conflict challenges, while keeping in mind the long-term objective of building effective and accountable institutions, capable of steering a process of sustainable socioeconomic development. It will spell out the principles of State-building and governance that all Libyan society needs to agree on. The political vision is consolidated with an economic vision, laying the foundations for a new model to manage, distribute and develop Libya's natural resources. The following observations are taken into consideration:

1. The fall of the Gaddafi regime in August 2011 was a breakdown of weak State institutions not based on any democratic social contract but tied to a revolutionary legitimacy that Gaddafi claimed for himself while advancing a stateless, anti-institution approach. The post-Gaddafi era was characterized by the spread of more than 1,600 armed militias that advanced similar revolutionary legitimacy rhetoric. In the absence of the State, it was naturally expected that the mixture of tribes, militias, arms and financial resources would lead to further struggle, civil war and the spread of terrorism in a vast country with porous borders.
2. The failure of the Gaddafi regime should not be taken as justification for another failure in inclusive State-building. The uprisings in 2011 were staged on the periphery and either echoed or developed local, regional, tribal and ideological orientations, resulting in post-Gaddafi Libya becoming a theatre for the continuation of long sublimated conflicts and impending fragmentation. Institutional shortcomings in the transition process have caused a reversion to fragmentation and the re-emergence of local identities.
3. Mistrust and division among Libyans has grown for a variety of reasons, including the post-2011 struggle and its repercussions. Therefore, any attempt to resolve the conflict and rebuild the State and its domain must start with a comprehensive national dialogue that excludes no party. Libyan society is not split into two halves; rather, it is splintered into a multitude of groups and factions, all of whom need to be given a stake in Libyan stability. The process of reconciliation must also include refugees and the displaced, those now branded as regime loyalists and representatives of the new Libyan State.
4. Power-sharing arrangements as an objective of the Libyan Political Dialogue and enacted in the Libyan Political Agreement proved ineffective. They ignored the reality that no power could be shared before it had been created. The power and authority of the Libyan State does not exist and needs to be

created. It has been carved up to suit the interests of non-State actors, relegating the State's role to nil.

5. Libya's vast natural resources and financial reserves have been more of a curse than a blessing. They negatively impacted on the approaches of consecutive governments who believed it only appropriate to pay money and award privileges to militias on the false pretext these were revolutionaries who deserved to be rewarded for their role in toppling the regime. This created a contest between State and revolutionary legitimacy, paving the way for yet more militias to extort finance and privileges, and gain economic, social and political roles. Governments compromised State institutions and legitimacy, and allocated resources to serve the interests of militias, which became the real authority, leading to civil war and the fragmentation of official authority.

Post-Gaddafi context

In the post-Gaddafi phase, an inherent weakness of civic and democratic culture, and the rising influence of the periphery at the expense of the centre, interacted with the politicization of public administration, exclusion and mistrust to dismantle the State and its institutions. The early part of the uprising was marked by signs of opposition to building military and security institutions and calls for the political isolation of all State middle- and high-ranking officials on the pretext they were former regime elements. They signalled that a formal, even transition was unlikely to achieve any desired outcome.

The absence of the State and its institutions led to an increase in the number of armed militia. Libya became a major destination for extremists and terrorists from various countries, facilitated by porous borders and arms proliferation. Institutions were hijacked and appropriated for tribal and regional interests, creating more drivers for conflict. Many new and ad hoc institutions were built to serve existing actors or meet the demands of factions. Institutions became reflective of the country's division, entrenching the struggle rather than reconciling the need for State-building.

Failure to agree on a vision for the desired State further weakened the remnants of its institutions and an already inefficient bureaucracy bloated with employees. Dysfunctionality became the order of the day, with critical lack of control over public spending leading to further corruption and squandering of public funds at unprecedented levels. Despite an increase in oil production and exports, Libya is facing a budget deficit that is likely to continue and threatening debt. Therefore, it is paramount that the State-building process proceeds immediately to enable government to regain trust and re-establish State legitimacy.

The current Libyan conflict and the political impasse stem from the failure of the country during the former regime to become a modern State with effective and legitimate institutions. Failure to resolve the conflict and deliver peace is rooted in a power-sharing approach that ignores Libya's State-building needs. Excluded actors need to be brought into the process in a manner that ensures the right kind of participation, buy-in and triangulation between these actors.

State-building has become the central objective in response to fragility and post-conflict needs. Conceptualizing and rebuilding the State and its institutions within the broader context of the relationship between State and society is an inclusive process that moves States from conflict-driven fragility to resilience and statehood. The most important task is to determine how the State is built and how power and authority are employed to achieve core objectives while establishing clear guidelines for interacting with society.

A. State-building: dealing with obstacles

This section deals with the two major challenges in the post-conflict phase. First, the immediate, critical challenges facing Libya are examined. The aim is to provide the essential elements of a national programme for salvation, an inventory of government responsibilities in post-conflict Libya. These are prerequisites for the more strategic task of institution building, the essence of the second major challenge that will be dealt with in the last section.

1. Diagnosis of current Libyan situation

Given the harsh realities of the post-2011 conflict, weak governments replaced the State. With a fragile governance system barely operating in a context dominated by militias, nepotism, tribalism and an exclusionary political process, Libya went further down the path of institutional failure. Therefore, it is paramount that the State-building process proceeds

immediately to enable any future government to regain trust and help re-establish State legitimacy.

The chaotic situation in Libya, especially after the division caused by the 2014 struggle for power, is illustrated by the following:

1. The proliferation of weapons threatens prospects for stability. The most serious outcome, however, may be the establishment of an arms culture rather than a dialogue culture, making force not the last resort but a necessity to achieving goals. It makes efforts towards disarmament, demobilization and reintegration more challenging.
2. The spread of popular frustration and negative attitudes towards change given the chaotic situation that followed the 17 February uprisings.
3. The rise of tribal and regional sentiments over national identity, including the apparent increase in calls for federalism, with some alarming expressions of separatist tendencies.
4. The acquisition of political, economic and social influence by leaders of armed militias as popular expressions and street mobilization retreated.
5. The continuing fragility of official institutions and the absence of the army and security services have increased the ferocity of foreign intervention, violating sovereignty and bringing an influx of terrorist groups.
6. Increasing divisions in society, the administrative inefficiency of official institutions and the lack of control over public spending, which has led to wider

corruption and the squandering of public funds at an unprecedented level. Despite an increase in oil production and exports, Libya is facing a budget deficit that is likely to continue for an extended period.

7. The weakness of judicial institutions and the absence of security protection led to the courts' being reluctant to issue verdicts. Attacks on and assassinations of judges and police officers paralysed the judicial process. This has led to prison overcrowding, with thousands of individuals jailed without trial since 2011 for allegedly being former regime loyalists or officials, or members of the armed forces. The delay in implementing transitional justice measures has further complicated the situation, hindering reconciliation and compromising judicial integrity. This has been exacerbated by illegal prison facilities run by non-State actors guilty of gross human rights violations.
8. Experience indicates religious institutions must be saved from abuse and politicization for partisan objectives since such exploitation previously led only to more chaos, fighting, hatred, intolerance and division.
9. The displacement of large numbers of Libyans and the inability of large numbers of Libyans forced into exile to return for fear of prosecution.
10. The international silence on the crimes committed against civilians, public facilities and property.
11. The disruption of vital services, such as electricity, water, fuel and food supplies, has become a fact of life Libyans have had to accept, along with the inability of the

banking system to function and cope with the cash crisis.

12. The infiltration of extremists, including ISIL/Da'esh, into many parts of the country.

Any approach must recognize the importance of hitherto excluded actors. These forces may be divided into three categories: military forces (some key leaders of armed militias); social forces (key tribal leaders); and political forces (key political parties and political figures, former regime supporters).

2. Immediate post-conflict tasks

In the immediate post-conflict phase, Libya needs to undertake a rapid programme to remove the anarchy and insecurity gripping the country, to alleviate peoples' suffering, and reinstate government functions and legitimacy. Success in implementing any national salvation programme and obtaining tangible results is key to creating the momentum needed for deeper changes. The immediate task is to focus on humanitarian needs, security, reactivating the macro economy and restoring basic services. However, this plan must be accompanied by a national reconciliation process based on a national peace conference to ensure a broader, more inclusive consensus on how to rebuild the State and its governance.

Such a transformation requires urgent action, interlinked activities and tangible outcomes. Given the paralysis of institutions and public administration, emergency interventions are unlikely to produce results if they are left to Libyan functionaries and bureaucracy. They

must be undertaken with concrete international help in both planning and implementation.

The action plan must focus on:

1. A rapid humanitarian intervention to meet the immediate needs of Libyans, particularly in areas most affected by the conflict or war destruction, including displaced persons. These interventions will vary from life-saving assistance to restoring basic services, such as health care, food supplies and housing.
2. Rehabilitation of essential infrastructures and support and security for the employees responsible for their management and operation.
3. According to the latest World Bank outlook, Libya has been in recession for the past four years, while real income has been in steady decline and inflation has accelerated since mid-2015. The obvious consequences of these macro-economic trends have been a deterioration in public finance, drainage of foreign reserves and a deficit in the balance of payments. The banking system has not been able to cope with these challenges and an acute currency or cash crisis that has plunged the lives of citizens into crisis. The Libyan dinar has been unable to compete with foreign currencies and been pushed to an unprecedented unofficial rate. Any action plan must ensure the banking sector is protected from the unlawful influence and dictations by militias. The task of security must be given back to the Economic Facilities Security Guard, which needs to be swiftly organized and upgraded. Moreover, an austerity plan should guarantee fiscal responsibility by reducing government spending to a level that meets the country's most urgent needs, which must be determined with international help and conform to the reinvigorated institutions as outlined later in this chapter.
4. A national plan for economic recovery is essential in the immediate post-conflict phase but it must be drafted and implemented with the direct involvement of international actors, in particular the World Bank, the International Monetary Fund and the United Nations Development Programme, and in conformity with the institutional framework provided here that caters for wealth creation rather than retain the existing reintermediation model of wealth distribution. Accordingly, it is crucial to revive a memorandum of understanding signed in 2011 by the Executive Office of the Transitional National Council, the World Bank and the United Nations to establish an international mechanism with national participation to oversee and control the revenues and government spending throughout the transitional period. The memorandum aims to address the financial management problems stemming from the continuous waste of Libyan funds and reserves.
5. Enhancing municipal capacity to implement, at their level or in regional zones or clusters, the interventions described here. This will help to activate the local governance mechanism and improve it through practice with international specialist help. It is also vital that municipalities are awarded tasks with wider objectives of reconciliation and disarmament in mind.

6. Security institutions need to be fully integrated into one coherent structure that guarantees efficiency, transparency, accountability and professionalism. A national plan must start with a mapping exercise that identifies the formations assuming the tasks of the security and police force.

3. State-building: dealing with immediate challenges

Identifying the obstacles that hinder such a goal is a priority that should be incorporated into an inclusive agreement. The resulting government should be tasked with implementing clear proposals to solve the crisis and respond to the many challenges characterizing the immediate post-conflict phase and the more immediate needs to restore stability and security, and reactivate the economy. Such proposals contained in the national salvation programme must accord with and strategically reflect the real challenges and respond to peoples' aspirations, based on an inclusive agreement of peace and reconciliation.

B. The challenge of sovereignty and security

Arms proliferation, militias, and DDR

Achieving the goals of disarmament, demobilization and reintegration (DDR) resonates with the objective to move away from militarizing society to developing society. It is

vital that alternatives are identified to address the ambitions and aspirations of young people currently stuck within armed militias and who see no better option to bridge the gap between their post-Gaddafi expectations and ensuing frustrations. This objective can be realized by adopting a three-stage strategy echoing both local context and international best practices drawn from post-conflict experience and DDR. The proposed approach stems from an understanding of the repercussions of continued arms proliferation and mushrooming of militias, which run counter to establishing security and building State institutions. Militias and their culture lay the door open for longer-term civil strife and conflict. However, the problem lies not in those individuals who carry arms but in the arms themselves, with the State or a legitimate authority lacking a monopoly on arms through police and army services.

Any approach to tackling this challenge must cater for the feelings, interests and fears of those carrying arms, whether they be individuals or militias. Any policy proposal must have an economic dimension that addresses the huge numbers of youths currently attached to militias and revitalizes them as an economic force, thereby abandoning a political judgement of them as a source of anarchy and an obstacle to the political process. Based on this understanding, a multistep approach could be adopted to reinstate security and stability but which also addresses the concerns of so-called revolutionaries who may be unsafe if they were to abandon their arms and tyranny return. The approach, however, must also acknowledge that militias and the spread of arms lead to many crimes, including unlawful and extrajudicial

killings, torture and human rights violations, and misappropriation of private and State assets.

Armed militiamen who have perpetrated such crimes will fear punishment and the loss of material privileges that brought them social status and influence over transitional authorities. Some of them have imposed or prevented legislation at gunpoint while others adhere to an ideology that despises the State. This indicates militiamen and their formations are not united in their objectives or orientations; dealing with this challenge, therefore, must be inclusive. The policy proposal advanced here includes three phases, in line with established DDR but with an eye on the challenges of the Libyan context.

(a) Economic

Adopting a transformation process that develops society, rather than militarizes it, will require that militiamen be offered economic privileges during reconstruction, such as ownership of land plots in new cities and towns and in locations with industrial, agricultural, tourist and service investment potential. This serves spatial development and a redistribution of the population, thereby relieving the pressure on major cities.

To this end, the Development Bank may be transformed into a bank for reconstruction and rehabilitation, empowered to give loans and interest-free finance to support projects led by armed youth on their assigned land plots that are based on the economic identity of each region and integrated into the economic recovery plan. This economic approach should

be consolidated by an economic and social youth empowerment programme to provide loans to deserving youth, enabling them to afford housing, marriage expenses and funding for a small project. This programme could be financed through the establishment of a small and medium enterprises financing fund.

Youth and armed men who qualify could be awarded scholarships and training to serve in and manage infrastructure projects. This would be the responsibility of a human resources development fund. Bonds and shares in public companies established by the State would be also awarded to these youth and armed men, while those qualified could be appointed to positions in State organs (central, regional or local) after appropriate training based on specialization and merit-based recruitment.

Individuals and groups who have looted and misappropriated public funds and private properties have a vested interest in obstructing efforts to reclaim these resources and restore justice. Although it is almost impossible to ascertain the figures, the most critical issue remains the lack of a sound mechanism to recover funds. Funds that have already left the country need to be traced and returned with international help, but a significant portion of funds remains inside the country and every effort should be made to prevent its migration or illegal transfer. Since Libya lacks any established methods or devices to realize such objectives, those suspected of having looted funds need to be encouraged to return and keep funds in Libya. It is proposed, therefore, that they become economic actors rather than spoilers by encouraging them to invest these

funds inside the country. One potentially suitable method is to allocate them the right to own plots of land, perhaps 10–15 hectares, to launch agricultural, service or economic enterprises and other projects.

Libya is such a vast country with much of its land underdeveloped or unused. To link the proposal with national objectives, the State would provide further incentives, such as tax havens, resulting in more projects that would revitalize and diversify the economy and create jobs.

(b) Legal options

Any approach must not ignore that militiamen have their own concerns, notably that many have been listed as wanted, by other countries and Interpol. A general amnesty law must be adopted as a priority, including a provision preventing the handover of Libyans for trial in foreign countries. The legal track must also address prisoners who had escaped in 2011 or who the Gaddafi regime had released from jail. Many of these were implicated in the uprisings and in crimes, and many remain members of militias. It is essential that a special commission set up by the judiciary reviews this issue and provides proposals to be adopted by the House of Representatives.

(c) Military and security track

To achieve the objectives of disarmament, demobilization and reintegration (DDR) as well as build the army, police, and security apparatus, recruitment to these institutions should allow for militiamen who qualify and meet professional criteria to join as individuals.

It is feasible that militia leaders could join with honorary officer status, based on their qualifications and their role and the importance of their militia.

(d) Weapons collection and disarmament

Libya is awash with all types of arms, including heavy and medium-size weapons. Any plan to collect arms should set priorities based on categories of arms, starting with heavy and medium-size arms that can be used to ignite large-scale struggles. Such arms must, without exception, be moved outside cities and urban areas and kept in military garrisons under the control of local career army officers. This operation should be linked to and begin simultaneously with national reconciliation. To help foster decentralization, municipalities should be involved in the process, with those adhering to this objective receiving additional budget allocations for development, thus encouraging inhabitants to actively support weapons collection.

Light weapons, however, should be part of a cash-for-guns programme, whereby arms are bought from citizens. Arms collected in one area should not be handed to other areas, but used to equip local police and security forces to enhance promote security and the rule of law. Purchase centres should open at official military facilities, with a price list drawn up by a committee of professional army and security personnel. The remuneration should be based on a time scale: higher cash returns awarded to handovers in the first two months but reduced to 50 per cent in the third and fourth months and 25 per cent in the fifth and

sixth months. After this time, light arms are handed over and registered under the names of their holders without financial compensation but with the right to carry them later according to law.

Heavy arms might be exchanged for budget allocations to the municipalities. These would be awarded to local councils or municipalities for providing lists of arms and their valued based on the prices determined by the professional committee. The municipality would receive an equal amount in central cash flows for its own budget for projects. It is important that these heavy arms are deposited in local military garrisons with professional military commanders recruited from the same regions. This is crucial for building confidence. As a further incentive, municipalities that hand over their arms early could be given priority funding for their projects or granted other economic advantages.

(e) Social track.

This track is geared towards medical and psychological measures. It is essential that the medical needs of the wounded are met and the corruption and squandering of public funds on their behalf ended. Medical and psychological rehabilitation centres need to be established in appropriate geographical locations as per need and properly equipped under professional supervision. A supplementary health insurance umbrella for the wounded and all those killed in the eight-month uprising and their families must be launched in addition to educational scholarships.

(f) Political track.

The previous tracks may not succeed in dealing with the challenge of arms and militias without appropriate political support. Therefore, a consultative council with oversight should be established and affiliated with House of Representatives. The council would include tribal notables and sheikhs, revolutionary leaders (prior to 20 August 2011, selected from actual leaders fighting at the front, with no involvement in criminal acts) and some civil society leaders, as well as former regime loyalists not implicated in criminal acts. It should be tasked with monitoring and raising the alarm about any deviation by the House of Representatives or the executive from the national salvation programme agreed upon by political forces as a framework for the work of those institutions in the transitional phase.

If the different tracks for DDR are accepted by all parties, a military force (stabilization maintenance force) needs to be established as a part of the army. Its number and profile should be determined in compliance with a security plan adopted by the government of national salvation. This force should include all stakeholders from established military brigades and actual front leaders. It will be properly armed under the command of career military officers of the Libyan army. Its mandate would be limited to the transitional phase and terminate when army and police institutions are re-established, and its members will be given the choice of continuing as soldiers or being integrated into development programmes. For this strategy to work, an amnesty law needs to be adopted offering amnesty to all since the

outbreak of the uprising. All crimes must be dealt with in the same manner and without discrimination, whether it be an act in support of the uprising or against it. It should be remembered that the crimes committed in the post-Gaddafi years were also ferocious and vicious, far exceeding in many senses those committed by the fallen regime. This proposed law should also have provisions for a practical, reconciliatory approach to looted assets and funds as explained below.

The spread of all kinds of arms offers a rather gloomy prospect, with a citizen-arms ratio of 5:1. This spread has been destructive and negatively impinged upon the value system, which will be difficult to remedy unless Libyans are ready and willing to compromise and reconcile. Issuing a general amnesty law is one suitable method that not only attracts militiamen but is also compatible with Libyan social traditions of pardon and reconciliation in the tribal order. Militiamen who have committed serious crimes will be reluctant to disarm. Providing them with amnesty as part of a comprehensive and inclusive reconciliation is an incentive that would alleviate their concerns about prosecution and/or acts of revenge. Otherwise, any DDR may not be acceptable or convincing to them.

C. The challenge of national reconciliation and transitional justice

National reconciliation is the prerequisite for stability, security and the revitalization of the economy. It is the soul guarantor of national unity, territorial integrity and a prosperous

future. Therefore, it is crucial to integrate all Libyans and mobilize their efforts and energy into building a national State. Historical precedents and experiences elsewhere in the world confirm the merits of inclusion in building for the future. In addition to its indispensable role of healing the wounds of conflict, national reconciliation and transitional justice are instrumental in relieving the burden on the judiciary in dealing with the legacy of crime and injustice of the Gaddafi regime in addition to the horrendous crimes and violations after its fall. The strong and influential presence of armed groups, political currents, the tribal scene, the role of former regime loyalists, and the changing role of Libya's citizens are all important factors to consider before embarking on national reconciliation.

In this context, it is suggested that a reconciliation and truth revelation authority be established. Its membership should comprise six elements:

1. Independent dignitaries and respected national figures.
2. Non-partisan prominent religious figures.
3. Social/tribal figures.
4. Independent judges.
5. Representatives of the former regime who were not implicated in crimes.
6. International experts and consultants.

While the documentation of all reconciliations will be carried out by the courts to ensure their continuity and guard against any violations, the task of this body would be to implement a national reconciliation and transitional justice programme. It will be a major actor for solving

and healing conflict-related issues that have negatively impinged upon the psyche of the people, irrespective of the perpetrators. The role of women and youth in the national reconciliation programme must be strengthened for it to have an effective impact. Trans-tribal/regional economic initiatives and projects should consolidate the process. Families of victims should be prime beneficiaries of these projects and allocated shares in them. The projects must be run by professional managers who are part of the State bureaucracy, adopting clearly defined rules and mechanisms. This economic measure could be the main pillar in the process of State-building. The national reconciliation required for peace and social cohesion contributes to both society and State-building. The government of national reconciliation should be concerned with realizing this noble goal and engage stakeholders in an all-inclusive national conference that results in a peace agreement providing the framework for a common vision along the principles outlined above.

The relentless pursuit of national reconciliation and transitional justice will pave the way for the return of Libyans forced into exile, provide fair trials to those wanted for justice, and maintain the security of those who are not, as well as settling their cases. One particularly key step in this direction would be to revoke the infamous Political and Administrative Isolation Law of 2013. This law was perceived by many Libyans as having inaugurated an era of vindictiveness and exclusion that has impacted any potential effort of reconciliation and inclusion. As such, the IPL is a recipe for the alienation of thousands of Libyan civil servants who could

contribute to the long and complex process of state building. It paved the way for further political instability and security volatility. The law, despite claims it was passed to ensure purity and prevent the so-called deep State from returning to rule, was passed at the barrel of the gun and was indicative of the prevalence of retribution and one-sided justice.

Judiciary activation

1. The national judiciary is already limited in resources, lacks capacity and unable to sustain any further burdens that would mar its reputation and impede its short- and medium-term role in the reconciliation process. In the longer term, this hinders its role as an independent authority to guarantee rights and protect the constitution. The justice system needs to be thought afresh. It suffers from many ills that have accumulated during past decades but have intensified in the post-Gaddafi era. Any approach, however, that is predicated on notions of purging and purification are bound to be political and partisan, and backfire. Any plan to activate the judiciary depends on the success of DDR. The most urgent task is to reactivate the judiciary police and to place all prisons under its control. It is important for this department to resume its duties in conjunction with the disarmament of militias. The judiciary police must be able to perform its functions as part of the justice system, adhering to and subordinate to judges and public prosecutors. This could be achieved with a two-phase plan:

2. Transfer prisoner/detainee locations. For example, those in the east are transferred to the west or the south for custody and trial, and vice versa.
3. Establish national and international courts with the participation of Libyan judges and a mandate to review all cases. Cases could be classified according to periods in which the alleged crimes took place. It is proposed that any accusation of criminal offence be categorized according to the following:
 - (a) **From September 1969 until 15 February 2011.** Crimes such as misappropriating private properties in relation to Law No. 4 and Law No. 88, killings and any other crimes against humanity are referred to special courts. Compensation should be not in cash but in the form of ownership of land plots or shares in investment companies;
 - (b) **From 15 February until the 20 October 2011.** Major crimes committed by former regime elements and militiamen (rebels) are referred to the International Criminal Court, which has jurisdiction as per Security Council Resolutions 1970 and 1973. This will prevent the reactivated Libyan judiciary being subject to blackmail, extortion or interference. The international special tribunal determines its own by-laws and what cases fall within its jurisdiction. Otherwise, a general amnesty is issued by the State, provided that the families of victims retain the right to litigate if they so desire. Another classification could be based on the type of crime; murder, torture,

terrorism and corruption, for example.

To manage the challenges of national reconciliation, there is a need to involve the reconciliation and truth revelation authority referred to above. This could be modelled on the Moroccan or South African experience but with specific attention paid to the unlawful practices after the fall of the regime. Achieving national reconciliation may not be feasible unless it is consolidated by applying transitional justice.

As for financial corruption and reclaiming State funds stolen or transferred overseas, these should be dealt with in conjunction with national reconciliation. There should be out-of-court settlements and a grace period to return illegally owned funds and assets into a designated State bank account. Incentives could be provided to speed up the operation, offering a choice to return 70-80 per cent of assets or requiring that 70 per cent of these assets are redeployed into the national economy in projects generating jobs and distributing benefits more broadly. A reconciliation agreement could be signed between the State and each individual for the return of assets, with the penalty of confiscating assets in cases of false information and referring the perpetrator to the court. The objective of this proposed mechanism is to protect the judiciary from corruption. It also addresses widespread financial corruption in the public and private sectors. The proposed mechanism

would limit the spread of corruption and contain the judiciary, protecting it from attempts of corruption.

This approach acknowledges the difficulties involved in retrieving misappropriated funds that may have been distributed into secret accounts or laundered into investments and assets in many countries. There may be disagreement over the time span of accountability, with some voices calling for the inclusion of all corruption since the establishment of the Libyan State, and others calling for it to be limited to the Gaddafi era. Justice, however, calls for the inclusion also of all crimes that took place in the post-Gaddafi era. The out-of-court mechanism must be based on agreement among actors and could be included in a social peace or amnesty and reconciliation legislation, to be preceded by an open call from the House of Representatives for the unconditional return of Libyans who left the country after 17 February 2011 fearing prosecution;

- (c) **From 20 October 2011 until the present.** This phase concerns practices and wrongdoings committed by rebels and armed militias fighting the Gaddafi regime, marked by all kinds of crimes, including human rights violations, misappropriation of public and private property, murder, torture, corruption and offences committed against individuals or areas, tribes or towns. This phase runs in parallel with the second phase and terminates with the adoption of a national accord charter by

all political factions once this transitional programme is adopted. Any steps taken in this phase must be in accordance with a general amnesty law issued by the legislature, determining how the State can act on behalf of affected areas, families and individuals.

Libyan diplomatic missions must be instructed to provide unconditionally all forms of assistance to Libyans abroad. This could be consolidated by structured visits to talk to leaders of armed groups and other Libyans in exile as part of the reconciliation and truth revelation process, providing them with guarantees of safety upon their return. Under the auspices of the reconciliation and truth revelation authority, tribal notables and sheikhs representing major tribes should visit all internally displaced Libyans and soothe their concerns, with the government providing essential services to ensure a dignified life for them until the final resolution is implemented.

D. The challenge of lack of military and security institutions

The proposal to deal with the absence of military and security institutions must appreciate the concerns in some quarters, including armed groups, that building an army and security institutions may be a prelude to the return of human rights violations and illegal acts that these institutions committed against certain political actors and prisoners during Gaddafi era. This concern, however, should not be used to prevent the building of military and security institutions, the absence of which would have grave

consequences, the least of which being the violation of national sovereignty and the spread of all kinds of crimes as the current situation demonstrates. The creation and activation of much-needed military and security institutions must be based on how such professional institutions are established with professional recruitment as well as a clear-cut vision and doctrine for the army and security institutions.

Building and activating the army

It is of outmost priority that Libyan factions agree on the doctrine by which an army could come into existence and assume its role. This should be enshrined in the constitution so that the army is solely entrusted with protecting the country and its constitution without interference in politics.

1. Criteria for building the army. The criteria are based on geography, population, the state of relations with neighbouring countries (hostile or friendly) and potential conflicts. Given the apparent disparity between population and area, Libya should rely on the criterion of quality rather than quantity when establishing a small professional army. The so-called smart army is a model that meets Libya's needs as it is built with the small population in mind. The objective should be to build a small number of operatives, with highly trained and well-equipped air force and border guard forces (with a navy role). These two forces should be supported with advanced technological hardware that substitutes the need for a large army. This implies that sources of armament, training and military research and development should be diversified to meet all needs while achieving maximum national security.
2. Criteria for recruitment. Given the differences in views of Libyan factions about the army, recruitment must be purely on merit. A committee of professional officers must be formed to set clear criteria for recruitment or conscription. This has to be in accordance with international professional standards. The process must be entirely professional and apolitical so the army does not become entangled in ideological or political contests or serving any partisan orientation.
3. Army command hierarchy. As is customary, the Libyan army will comprise several forces under the management of the joint chiefs of staff, the supreme command, led by a chairman. These forces will include infantry, navy, air force, air defence and border guard. The role of the supreme command must be given to the professional joint chiefs of staff of the armed forces, headed by the chief of the general staff of the armed forces. The supreme command of the armed forces will nominate three career officers based on professional criteria and present its nomination to the legislature. The legislature appoints one of the nominees to the position of chief of the general staff of the armed forces in a secret ballot. However, the appointment should not contradict the professional and merit-based criteria, such as high rank and seniority, good health and other conditions set by military laws.
4. General mobilization. An estimated 100,000 people are on State payroll as elements of

the armed forces. A large percentage of them, especially those of high rank, are not performing any duty and approaching or have reached retirement age. Many have not had any professional training for a few years and may be staying in the job to secure their salaries with no real interest in continuing in the profession. Therefore, an important aspect of restructuring and building the armed forces would be to remove the deadwood among military personnel. One proposal is to lower the age of retirement and raise retirement pensions. This would relieve the new army of the burden while allowing retirees and those who resign to be incorporated into a national reserve force, possibly named the national guard, which might also receive members of armed militias joining on individual basis. The force must be organized in accordance with existing national service legislation.

5. Police and security institutions. The police force should be rebuilt as a regular civilian body whose mission is to maintain security, peace and law and order. It should have nothing to do with politics and this must be asserted in the constitution.
 - Timing. The timing of the return of police to the street is important and must coincide with the disarmament of militias, not prior to it. This is vital to avoiding clashes between the police and the armed militias; if these were to happen, it would have a negative impact on the police, who would be incapable of matching the militias in arms and numbers;
 - Incentives. All police salaries must be raised in proportion to their duties. This

will help raise living standards and prevent corruption and extortion. A new police law needs to be enacted as soon as possible and have clear-cut provisions on organization, structure, performance, discipline, monitoring, and the protection of the police while performing duties, including the use of violence and rules of engagement;

- Armament. The quantity and quality of weapons the police force is entitled to use must correspond to their duties. However, the police force should be entitled to use modern technology to match task classification. In all cases the police should be able to protect themselves and enforce the law while performing duty;
- Structure. The structure of the police force needs to match the administrative structure of the country and its regional and local divisions and their respective needs. A general police chief/commissioner must be appointed in each municipality. Police chiefs would constitute a supreme council for the police force (SCPF) and make recommendations to the interior minister on policy design and implementation. It would also nominate three candidates to the prime minister, who would appoint one of them as the interior minister who acts also as chairman of the SCPF. Such a mechanism would help avoid any clash between the minister and the police, especially at this critical juncture. It would also help overcome regionalism and quotas-based appointments in sensitive positions;

- Internal security (Mabahith). The abuse by the Gaddafi regime of this service reduced it to performing regime protection as a priority, leading to its negative image. However, the past few years have shown how vital such a service is, especially when crime and terrorism have become such challenges. The reorganization and upgrading of this strategic service is crucial and must be approached against this backdrop but with a national security perspective. Given the circumstances and the high profile of the job, a chief of the internal security service (Mabahith) should be a career professional appointed by and answerable to the prime minister;
- External security (Mukhabraat). Given its critical role for national security, its leadership must be chosen carefully and not subject to political bargaining. The highest State executive, the president or whoever is performing such a role, should be entitled to appoint a chief of the external security service who reports directly to him.

These organization of these two security agencies must be afforded proper care and focus so they are able to rectify the imbalance and deal with the current security chaos, foreign infiltration, penetration and espionage, terrorism, and human and drugs trafficking. Readily available professional people and experts within the service, with no criminal record, must be reinstated and integrated within the services and take part in the reconstruction and upgrade. A specialized committee of competent career Libyan security

officers must be entrusted to elaborate the policy, general framework, specific mechanisms, programmes and action plan for immediate implementation.

E. The challenge of excessive centralization

Though much post-conflict resolution is centered on a strong central government capable of uniting a fragmented country, reinstating stability and revitalizing social cohesion, Libya's central government has had no real levers of power or authority except that of spending public money. Even though the Gaddafi era was marked with marginalization, Libyans were entitled to the same basics, but this soon evaporated while unprecedented squandering of public resources was the hallmark of the post-Gaddafi conflict. The World Bank warns that Libya may become an indebted nation as expenditure far exceeds revenue. Public expenditure is less directed towards services or infrastructure and improving the livelihood of Libyans. More Libyan regions and social segments are feeling marginalized and excluded, especially in the east where the Gaddafi policy of exclusion and marginalization and excessive post-2011 centralization have given impetus to a federalist model of wealth division and even some calls for secessions.

Libya is a vast country inhabited by a small number of people concentrated (64 per cent) in five major coastal cities. Therefore, spatial development is a strategic urgency, not a luxury option, as it addresses deprivation and marginalization, and provides for the inclusion

of the periphery and border areas, a cornerstone to national security. Addressing the ramifications of excessive centralization means dealing with population distribution and development through a population policy in conjunction with developmental plans to enable urban life to flourish. This spatial development is unlikely to deliver results unless supported by administrative decentralization that allows for the devolution of decision rights and allocation of resources. There is an urgent need to for fully integrated local governance based on governorates adopting regional public policies within the framework of the national development strategy and municipalities with branches executing their own projects in line with public policies.

The role of the central government would become that of regulator, with its oversight and financial review ensuring local budgets are managed according to sound practices and spent on what they were earmarked for. This implies a limited central government with seven sovereign ministries. The remaining functions would be handed to specialized councils, such as administering tenders, education, health, housing, planning, transportation and telecommunication, and other sectors that undertake national developmental planning and define the rules and regulations and public policies. Not only will this proposal address the concerns of federalists, it will launch an effective local governance system and development while maintaining national security. This proposed approach must be enshrined in the permanent constitution.

F. The challenge of managing the national economy

1. The economy

The need for the post-conflict approach to include economic elements is even more acute given Libya's rentier economy and the failure of development to achieve diversification and prosperity. Any post-conflict approach must address the macroeconomic challenges and adopt policies that, in the short and medium term, are needed to prevent a return to conflict. This may be achieved through a short-term plan geared towards alleviating current problems, selecting a range of projects that offer direct and indirect employment opportunities for youth.

To achieve administrative decentralization, the municipalities should be handed responsibility for the service sectors. Specialized ministerial councils should assume the task of policy planning for municipalities to follow and execute, and allocate them budgets and required finance. A high council for tenders is also needed. It should be responsible for tendering all State projects, ensuring transparency, professionalism and accountability in the management of State contracts.

2. Reviving the economy: spinning the wheel

Any strategy to revive the Libyan economy must identify several cities and towns that are safe, with a security level that permits State institutions to operate without major risks. A mapping of cities and towns for this purpose

must be carried out while identifying local actors, including civil society organizations, that can help in the process. The experience of the past few years indicates that some cities and towns have been peaceful and stable and could, therefore, be entrance locations.

- Service projects in safe cities/areas should be launched. The municipalities must be awarded appropriate contracting powers for projects worth less than 50 million Libyan dinars through tenders. Local youth entrepreneurs and contractors should be awarded a share so they have an economic opportunity to engage in reconstruction and development;
- Projects contracted by the State before 17 February 2011 to those safe cities/areas should be re-launched. Foreign companies contracted before 17 February 2011 should resume work and fulfil their contractual obligations. No excuse based on safety and security concerns should be accepted since these are not an issue in those areas. Any foreign or national contractor who fails to respond should be stripped of the contract, with no compensation and the contract transferred to Libyan interests, particularly qualified locals, thereby engaging and revitalizing the local private sector;
- Companies that return to honour their contracts should be obliged to subcontract or outsource activities, services and supplies to businesses employing youth in those cities/areas to boost the local economy;
- Legal action must be taken against companies that refuse to resume work. Contracts between the State and companies have a clear and explicit provision indicating no

company has the right to leave the country before informing the contracting authority. However, almost all foreign contractors left Libya, infringing legal obligations. But given the circumstances, a final note requesting them to resume work must be delivered before legal action is pursued;

- Trans-tribal and regional economic initiatives and projects should consolidate the process of national reconciliation and economic revival. This economic measure is the main pillar in the process of State-building.

3. Free economic zones

A link between the form of government and development of the peripheries that takes into consideration spatial development must be established. This is not only essential to economic recovery but central to national security. This objective may be achieved by establishing four free economic zones as follows:

- 2 in the south;
- 1 at the border with Egypt (the town of Musa'id);
- 1 at the border with Tunisia (Ras Ajdir) or at the Libya-Tunisian-Algerian border (Ghadames).

These four zones will act like economic magnets, creating economic centres and overcoming economic and developmental disparities among regions. They will also help to exploit regional resources, including human resources to manage them, and combat smuggling and cross-border criminal activities while developing transit trade routes in conjunction with strengthening border security.

4. Establishing a long-term development vision

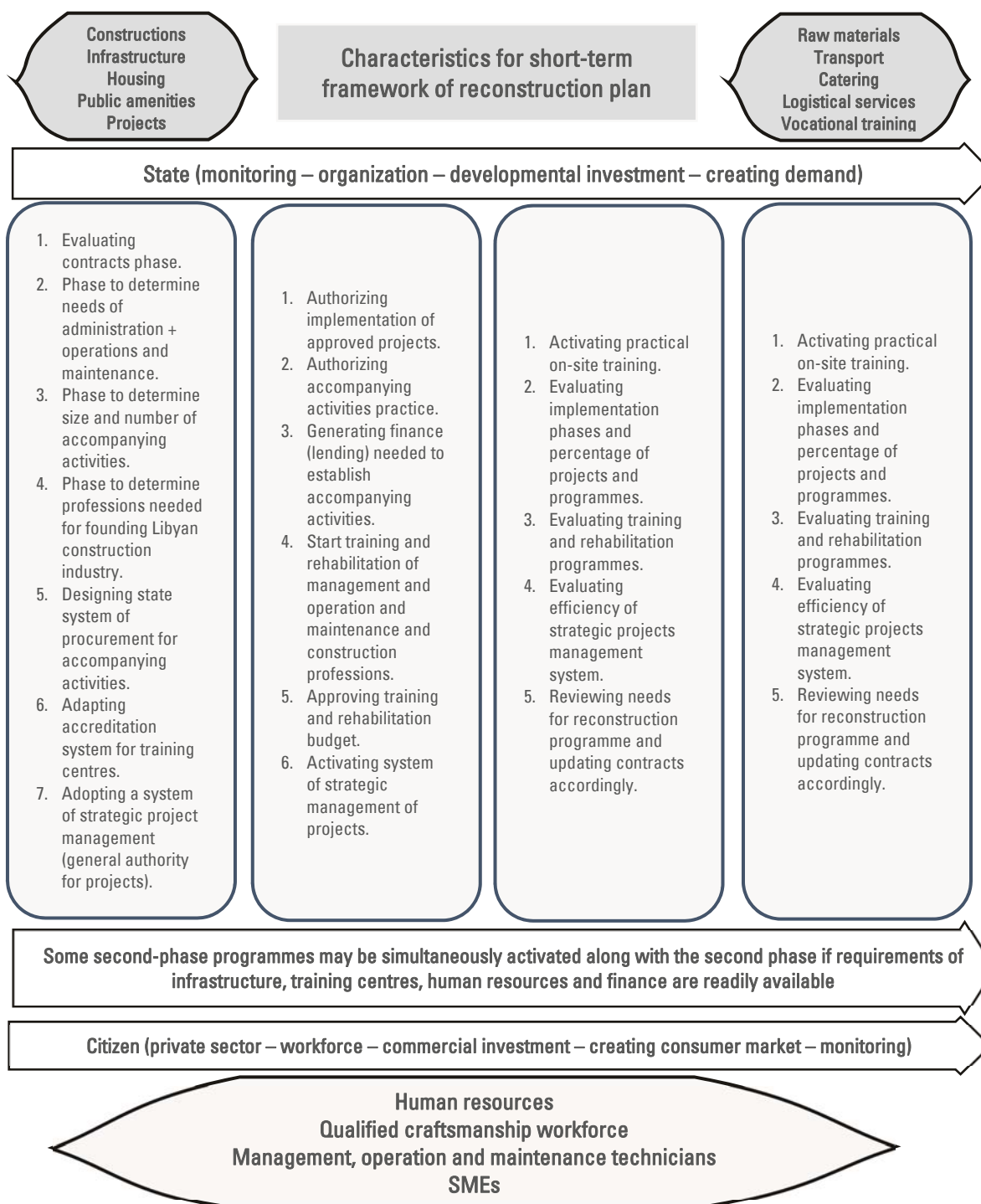
Establishing a long-term development vision is a prerequisite for shaping the national economy. It identifies alternatives and reduces reliance on oil. Seven university centres need to be established for each of the country's seven major regions, integrating all existing higher education and research centres. They should support regional economies by promoting economic identity, especially in the initial stage. If Sebha University, for example, specializes in alternative energy, all projects will be based on solar and wind energy, exploiting the Fezzan's region advantages in this field, with graduates employed in the same area. Graduates from Omar Al-Mukhtar University, with its agricultural focus, will work in that sector in the Green Mount area. The central region, where Libya's minerals and oil resources are located, will focus its economic identity on related industries and services, such as petrochemicals, while the western mountain area can focus on jobs in professional services, such as accounting, management and finance. The University of Benghazi, with its leading rank in economics and law, and Tripoli University, with its focus on engineering and medicine, will play their own parts.

The objective is sustainable development and economic diversification, with regional universities having central roles that enable them to invest in research and development, ensuring their continuous success and becoming centres of excellence in their respective fields. They will compete, thereby raising standards and attracting fee-paying

foreign students to boost national income while reducing the concentration of graduates seeking jobs in just a few major cities. Spatial development will also encourage reverse migration from the north to the south. These projects will support self-sufficiency for the regions, reduce feelings of marginalization and further national integration and reconciliation efforts.

5. Public administration

Public administration should be transformed into a professional, merit-based institution. Currently, public administration is opaque, overburdened with tens of thousands of employees. In 2015, the audit bureau said there were 1.5 million public administration employees in Libya. Among these are an estimated 500,000 ghost workers, or duplicates, on the public administration payroll. New civil service legislation is urgently needed to replace the outdated law in practice for the past six decades. The new legislation should create a civil service that is an organ of the State, responsible before the public, the law and the democratic government, and its employees politically neutral. An independent and neutral civil service commission is also badly needed, to effect the desired reform and restructuring at all levels of public administration while maintaining a merit-based and professional civil service. Its role could be consolidated and given appropriate priority with the establishment of a high-profile inter-ministerial committee subordinate to the prime minister or a minister in charge of the civil service.



Restructuring the State bureaucracy and sectors must reflect the developmental objectives discussed earlier. A modern decentralized structure needs to be developed with detailed, identifiable policies and action plans with relevant timelines. A key element of the relationship between local administration and the central government should be assigning the regulatory oversight role to the central government and giving local administration discretion in the management of its affairs. In this regard, management of service sectors should be delegated to municipalities while ministerial councils should be tasked with designing policies to which municipalities must adhere. Municipal budgets should be allocated and divided among the following sectors: housing and utilities; health and environment; communication; work; transport; agriculture; industry; economy and trade; women and child welfare; social affairs; sports; media and culture; archaeology; and tourism

6. Structure of the government of national unity

To achieve a decentralized approach and realize the post-conflict goals, a suitable government structure must be adapted to meet these objectives. The first post-conflict government must be a mechanism carefully designed to meet the challenges detailed in this report. It cannot be any ordinary government but one that acts like an emergency relief body while laying the foundations for the transition to a more inclusive and comprehensive State-building process. Therefore, it should be necessarily small and limited. Essential

functions should be performed through a basic government structure that includes:

- prime minister (also entrusted with the national reconciliation objective);
- first deputy prime minister (supervises agencies tasked with service provisions);
- second deputy prime minister (supervises agencies tasked with producing goods and materials);
- sovereign ministries for foreign affairs, the interior, defence, justice, finance and planning, and investment.

The remaining ministerial areas will be assigned to specialist establishments, authorities or agencies and institutions. Their roles will be regulatory, developing public policies to be executed at the municipal level (for a detailed proposed governance structure see attachments).

G. A vision and a new social contract

Given the nature of the conflict, there must be a common vision for State-building and consensus on its underlying principles. Such a vision would lay the foundations for the new State and its institutions and their relationship to the people. The proposed basic elements of this vision are outlined in attachment 2, emphasizing its role for recovery and peace linked to reconciliation.

1. The primacy of renewing the social contract

Libya's State structures were strongly implicated in the conflict itself. Many had been

involved in the Gaddafi regime's authoritarian and oppressive practices, generating animosity towards them, especially from some sectors of the populace and major post-2011 actors. The uprising and the practices that ensued created a major schism and polarized society vertically and horizontally, particularly the large segments of society that have been excluded post-2011 on allegations of their being former regime loyalists and that atrocities were committed in the name of the 17 February uprising. The State-building process implies a need to recognize the historical record of State formation and the importance of indigenous political and economic relations in shaping the social contract from which legitimacy and effectiveness emerge.

The State-building approach must address the management and distribution of the country's natural resources and reassert control over and manage the natural resource abundance in ways that support peace and economic recovery because it is a major source of rent and therefore a major theatre for contestation among the domestic leaders. State institutions are at the centre of legitimacy and social peace, fostering inclusive politics and mitigating potential conflict that three transitional bodies, the General National Congress, the House of Representatives and Constitution Drafting Assembly, have failed to address. In instances where the State has failed or is failing, the priority must be to rebuild trust and cooperation among citizens, which is the basis for the reconstitution of basic governance functions. This determines the right entry points and helps identify the fundamental pillars of such a strategy. Therefore, a genuine process of

national reconciliation needs to be embarked upon at the forefront.

As international experience demonstrates, it is essential that a truly inclusive national peace conference be held, one that would result in a peace and national reconciliation treaty. Forming a national constituent assembly is key to giving representation to all segments of society, so that all, including former regime loyalists, can agree on a common vision and the foundations for the State and its institutions. This, as literature indicates, conforms to the requirements to sequence post-conflict interventions and should be the focus of the rehabilitation phase. It is also a prerequisite for the ensuing reconfiguration, the development phase involving the State-building exercise and indispensable for legitimacy. Previous attempts to build peace were not realized since they were based on consolidating the interests, views, prejudices and prerogatives of "victors" to the exclusion of the "losers".

There was only one, monolithic "desired peace", which excluded any real or potential rivals, whose representatives had either been killed, were in jail or in exile. The objective of reaching a comprehensive and just peace deal was ruled out. As the Muslim Brotherhood-affiliated Libyan Organization for Policies and Strategies concluded, the victors of the February 2011 uprising went on ruling Libya, with further exclusion resulting from the political isolation law. This law created a rejection of the existence of the February uprising among Libyans inside and outside the country. Furthermore, invitations to go back to square one and launch the "first constituent" negotiations have been rejected.

Emergency entry points should address the biases and unjust practices against the so-called losers. The politically motivated steps taken by the General National Congress, while holding both the legislative and the executive powers, effectively awarded impunity to militias and privileged regions or tribes, and excluded others. These must be revoked. The consequence of these and other exclusionary policies and legislations must come to an end. It has, as Sayigh notes, created a context in which “transitional justice was replaced with victor’s justice ... coupled with the political isolation law of May 2013, which took the process of lustration and criminal prosecution of large numbers of civil servants and officers associated with the Qaddafi era to considerably greater lengths than in any other Arab country having faced a popular uprising, this generated a powerful backlash and eventually led to civil war”.²⁸⁵

Though the Commission of Sixty elected to draft the permanent constitution has voted on a document that should go to a referendum, disagreements and disputes have already engulfed the Constitution Drafting Assembly (CDA) and its product and the issue is now before the courts. CDA has been working in the absence of minority representation and has been boycotted by some members. It is important the international community ensures open, nationwide debate and negotiations that include those exiled in other countries. These negotiations should form part of the wider national reconciliation agreement and detail the elements of the fundamental constitutional structures and vision, including the role of Islamic sharia, the rights of cultural groups and regional and local governance. The broader the

ownership, the greater the chances that the root causes of the conflict will be placed on the peace-building agenda and that the parties will generate and maintain the political will to bring about necessary forms to democratize, familiarize, develop, and reconcile the country.

A national reconciliation process echoes traditional methods and practices common in Libyan culture and history and is vital in achieving the transition from a society subjected to violence to one that employs political methods to reach consensus and resolve conflict. One way to achieve this objective is to re-launch the Libyan national dialogue under the auspices of the United Nations. This could start by reassembling the Libyan Dialogue Committee so that it includes all elements of the current crisis, excluding no party except those groups designated by the United Nations as terrorist.

2. Elements of the social contract that provides a framework of principles for the constitution

Below is a set of principles and fundamentals that provide the framework necessary for drafting a constitution, resulting in a document to go to a referendum. The elements of the social contract need to result from inclusive national dialogue.

The basic principles of the proposed social contract:

1. All Libyans are equal in rights and duties, and are all partners assuming shared responsibility in the reconstruction of the

- homeland, a united Libya whose sovereignty may not be compromised or divided.
2. The constitution is the sole frame of reference for all Libyans upon which all laws of the land must be based.
 3. Decentralization is a guarantor against marginalization and provides for an equitable distribution of resources in a context of multiplicity, and maintains cohesion and peace. Separation of powers and the independence of the judiciary are pillars of the rule of law and its supremacy.
 4. Freedom of expression is guaranteed for all Libyans, irrespective of gender, ethnic group, tribe or region.
 5. Freedom to form political parties and freedom of association are guaranteed for all, without any discrimination. The only precondition is the admission of these principles, which Libyans agree upon.
 6. Islam and the noble goals of the sharia are the frame of reference with which laws must be compatible. This implies that sharia is not to be abused for political or partisan purposes.
 7. Libya's politics since independence has been one of experimentation and human effort that have attempted to realize Libyans aspirations with varying degrees of success and failure. The unifying thread should always be to build a national State that offers its citizens dignity and a decent life under the rule of law and respect for human rights.
 8. Crimes are not to be written off due to a lapse of time. All perpetrators must be brought to justice.
 9. Private ownership is sacred and may not be infringed upon unless by law for the public good.
 10. The wealth of Libya is for all Libyans. Balanced spatial development is not only the basis for just wealth distribution but also the essence of national security in a country with vast terrain and low population.
 11. Libyan assets that have been unlawfully appropriated, stolen, illegally transferred abroad or in a deceptive manner must be claimed back. This is a prime responsibility for any national government.
 12. The modern national army, with a doctrine of protecting the land and abiding by the constitution without interfering in politics, is a prerequisite for sovereignty.
 13. Law-bound professional and efficient security apparatus are urgently needed for the country's security and the safety of its inhabitants and their property.
 14. Cultural groups are an intrinsic element of Libyan society and a source of its richness. They must enjoy the same rights as all other citizens, and share duties in the homeland with all Libyans.
 15. National reconciliation and a general amnesty are the foundation for building society and State. All Libyans displaced or forced into exile must return to their homes and jobs without conditions. The State should facilitate this and provide appropriate compensation to all affected Libyans, and this must be awarded primacy by any government.
 16. Foreign policy should be based on mutual respect and reciprocity with all States. Libyan foreign policy and its diplomacy should serve the national interest and serve Libyans within the framework of maintaining and protecting sovereignty.

17. Laws at all levels, irrespective of when they were issued, must be reviewed to eliminate any contradiction with international law and the International Charter of Human Rights and the relevant protocols, and to conform to the goals of sharia. This task must be carried out before the proclamation of the constitution.
 18. All necessary provisions must be undertaken, and laws and procedures adopted, to address corruption and counter governmental incapacity and inefficient bureaucracy.
 19. Assistance and care must be provided to the families of all victims, disappeared persons and the disabled since February 2011. The State must provide all possible help, irrespective of political orientations. The Jihad Fund could be upgraded to finance this task.
 20. There should be direct international participation in the management of State finance, income, expenditure and monitoring. This active international role should be limited to the transitional phase until the constitution is adopted and a democratically elected government is in place.
 21. No Libyan citizen is to be handed over to foreign authorities for trial.
- Transit trade. Investing in the free zones in border cities, and building airports, seaports and commercial ship maintenance facilities along the Mediterranean coast.
 - Use of sea resources. Establishing industries with value added, activating international conventions in the Mediterranean basin in the field of fishing, developing a fishing fleet through joint ventures, and specializing in sea material-based cosmetics and medical products.
 - Tourism. Investing in cultural and desert tourism, and utilizing the country's archaeological heritage.
 - Education and health. Developing these sectors to cater for regional needs, and twinning local universities and hospitals with international ones.
 - Linking a future diversified Libyan economy to regional dynamics. Raise the human resources capacity of neighbouring African countries to help tackle illegal migration.
 - Construction. Develop infrastructure, enhance the role of the public sector.
 - Renewable and alternative energies. Exploiting the country's riches in solar and wind resources based on renewable energy technologies.

These principles could be firmly established by forging a national economic identity for Libya, based on the concept of having various sectors assigned to seven key provinces. This would ensure a diversified, knowledge-based and service economy that gradually reduces the dependency on oil. The seven sectors are:

A fundamental component of any agreement and social contract is how national wealth is distributed to deal with marginalization, thereby consolidating any peace agreement. It is vital that the flow of wealth in a centralized model of governance and economic management be

transformed into a more participatory and equitable model.

No agreement is possible if it remains locked within the existing centralized rentier model. The new round of the Libyan Dialogue should adopt at the outset a new economic model that enables funds to flow in a decentralized system that promotes funding rights rather than unaccountable rents via the Libyan Central Bank. Billions of dollars were released to a militia-subverted government, who bribed Libyans with a \$45 billion budget, buying a fragile, temporary legitimacy for elections. Instead, funds should have been released only under a post-conflict regime for public finance. Money was able to flow into the fragile system well before the necessary agreement was reached, at a time when society was just out of a bloody civil war and rapidly moving in the direction of more conflict. The grave consequences were that the democratic transition was compromised as it rested on appeasing the militias. If the centre continues to manipulate incentives and institutions, the struggle and conflict are less likely to be resolved.

Consequently, a new vision should look into restructuring how revenue is managed through a rights-based Libyan economic agreement (LEA). The proposal sets out the foundations for general fiscal rules that would govern how much of the budget the central, local, and social portions receive, and enshrine these fiscal rules in the constitutional declaration with the LPA. This would neutralize the politicizing of key sovereign economic institutions like the CBL, NOC and LIA, and build a solid base for an international assistance framework for Libyan governance.

3. Proposed model of four core rights

The proposed LEA identifies four core rights, each requiring a relevant institution to be established to implement them. Oil revenues and State assets are the subject matter of this proposed model and its binding force. It must be attempted in the knowledge that the final shape of these institutions is of longer-term trajectory but should be initially based on the enhanced role of the Libyan Central Bank, Libyan Investment Authority and National Oil Corporation, as well as the active role of international parties in establishing a Libyan economic governance mechanism with clear public finance management. These rights are categorized accordingly into four blocks:

1. Rights of the State. These rights are translated into several tasks, functions and duties performed at the central level and is related particularly to sovereignty in its fundamental sense. Rights and duties of the State include: monopoly over legitimate force in the central domain; ownership and exports of natural resources; allocation of oil revenues in accordance with a rights charter and national and local budget laws; macroeconomic and monetary policy; foreign policy and international relations; and strategic infrastructure projects (power, water).
2. Rights of local communities. These must meet local needs and aspirations while catering for the consequences of localized uprisings, grievances and security challenges, and helping economic viability. They include: a monopoly over legitimate force in the local domain; control of local budgets; managing the local economy;

investments and trade, and regulation of public assets; all social service delivery (health, education, housing); and the full independence of civil society.

3. Rights of the family to social security and stability. The objective of giving families' economic rights is to move beyond the long-time rentier practices, which have only helped to create shadow employment and clientelism. To realize the goals of a more equitable distribution of wealth, the proposed model gives Libyan families the right to universal basic income, which should replace the dysfunctional and damaging salaries and subsidies policies inherited from the Gaddafi era. A subsidy component in this income is honoured directly by the central government, and a salary component by the local government.
4. Rights of the Libyan citizen to private property. This right is crucial in giving all Libyans equal rights in all resources and assets owned by the State, thereby ending the long-time monopoly over these assets by a central authority associated with corruption and feelings of exclusion and marginalization by some regions. All citizens must have an equitable share in State-owned assets above the ground for production, devolution of asset-ownership instruments must be honoured directly by central government, ownership transfer must be gradual over time and according to institutional performance, and asset evaluation must be market-based.

These rights and their implementation require existing fiscal rules that consolidate the rentier economy to be abandoned and new ones

created. These new fiscal rules need to be enshrined in the common vision and part of the consensus, becoming constitutional rules to frame fiscal and monetary policies. Once such rules gain acceptance the existing centralized system of public finances and flow of funds will have to be radically changed. The Libyan Central Bank, which currently manages the flow of funds, appears to be the only functioning institution capable of leading a unified effort to effect the desired change. Therefore, the Bank needs to be empowered to play the role of unifier awarded the mandate by consensus. This consensus should unify the Bank itself and bring back coherency to the banking system. It should establish the undisputed neutrality of the Bank, including the appointment of a politically neutral governor and board of professional experts with substantive international assistance. If Libyan political actors were to indeed come to an agreement on economic rights for these institutions, then the independence and neutrality of the Central Bank of Libya, the NOC, and the LIA will be guaranteed, as it will no longer matter who is in political control in the central or local governments.

This approach, however, must avoid consolidating the existing policies of the rentier economy. The financial payments (rights) that individuals and families receive are better utilized when they are not cash handouts but "seed money" that can be invested in productive economic activities, thereby diversifying the national economy and familial income. The government should provide the context and the required regulations for this to be realized within the objectives sought in adopting the economic zones and their identities as explained above.

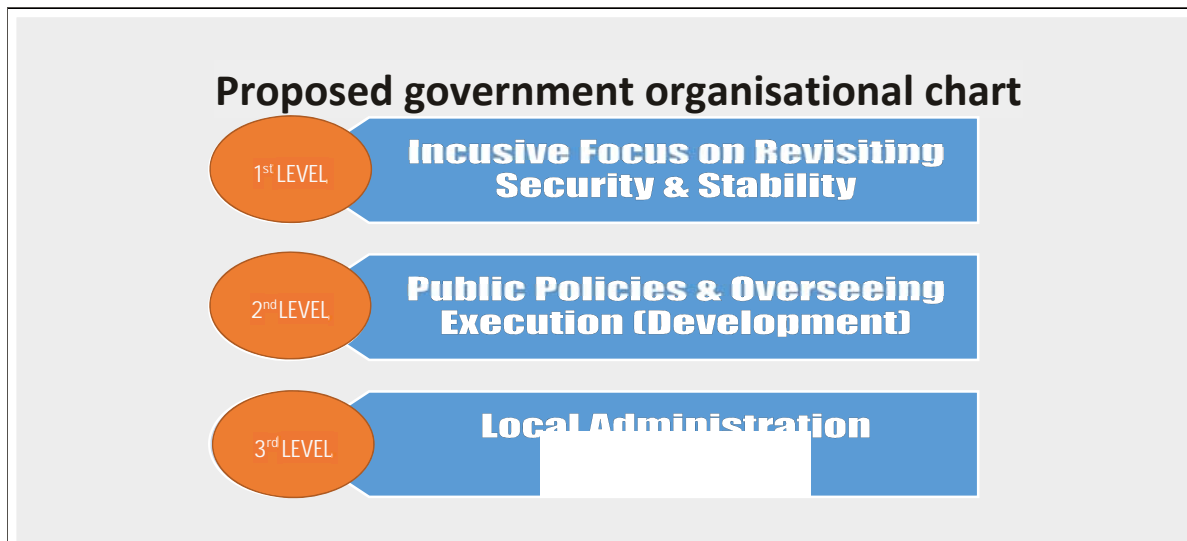
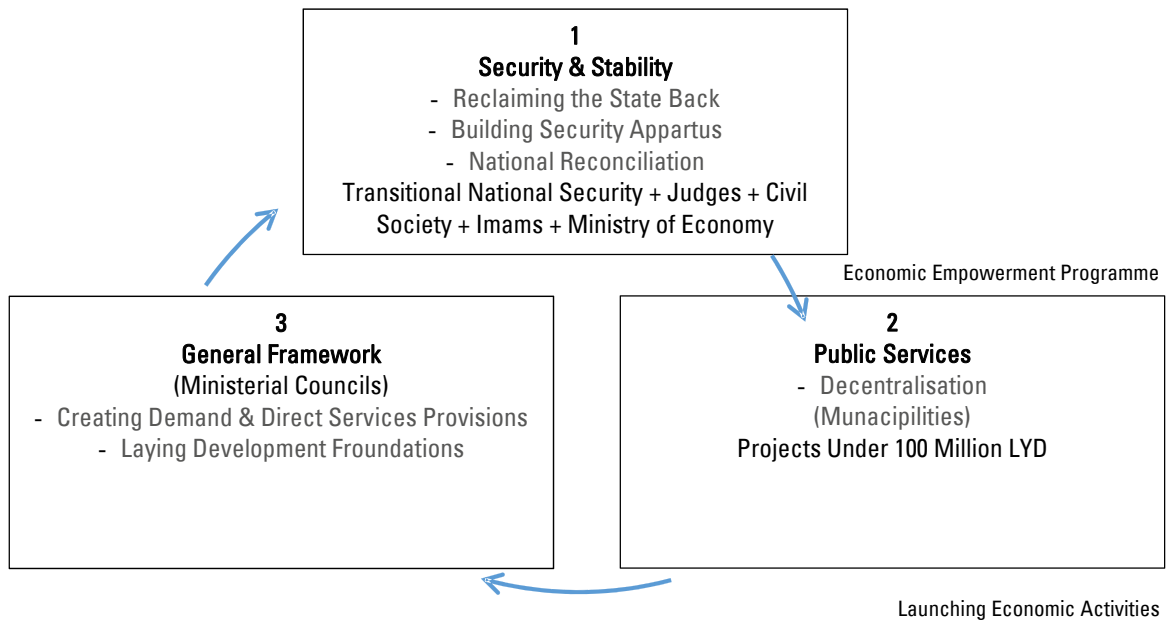
The government should provide incentives like tax havens and training.

In conclusion, there is an acute need for Libyans to reach consensus and share a

common vision for the State. If Libyans can overcome their wounds and grievances, and build a consensus, they will achieve their goals, regardless of the institutional model they adopt.

A proposed governance structure

Framework for Post-conflict Institutions



Proposed Government Organisational Chart 1st Level

**Higher Commission for
National Reconciliation**

Ifta House
Justice Minister
Deputy Interior Minister
Chief of Staff / Armed Forces
Chairman / Council of Notables
**Representative / Revolutionary
Leaders**
Representatives / Ex-Regime

Proposed Government Organisational Chart 1st Level

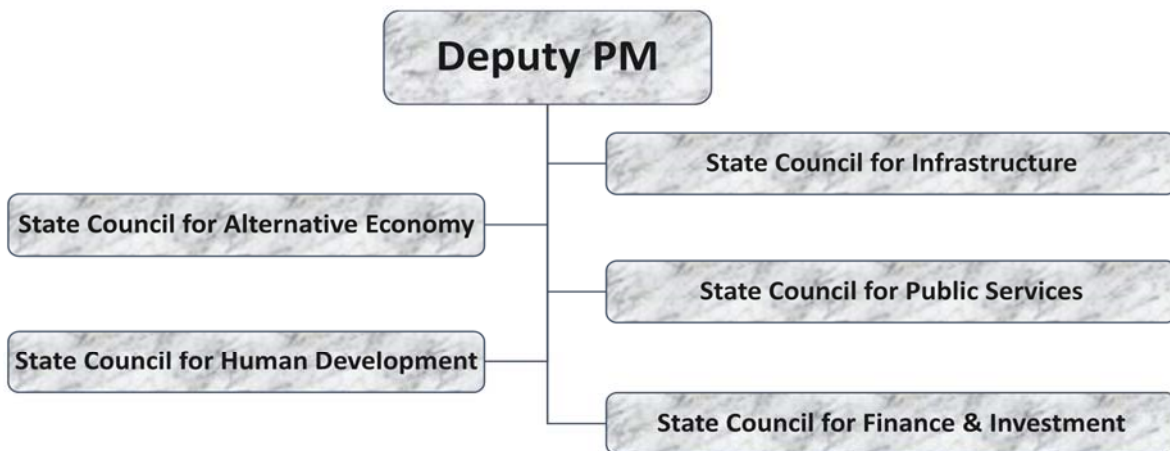
National Security Council

Minister of Interior
Minister of Defence
Foreign Affairs Minister
Chairman / General Intelligence Authority
Chairman / State Council of Alternative Economy
Chairman / State Council of Finance & Investment

Proposed Government Organisational Chart **1st Level**

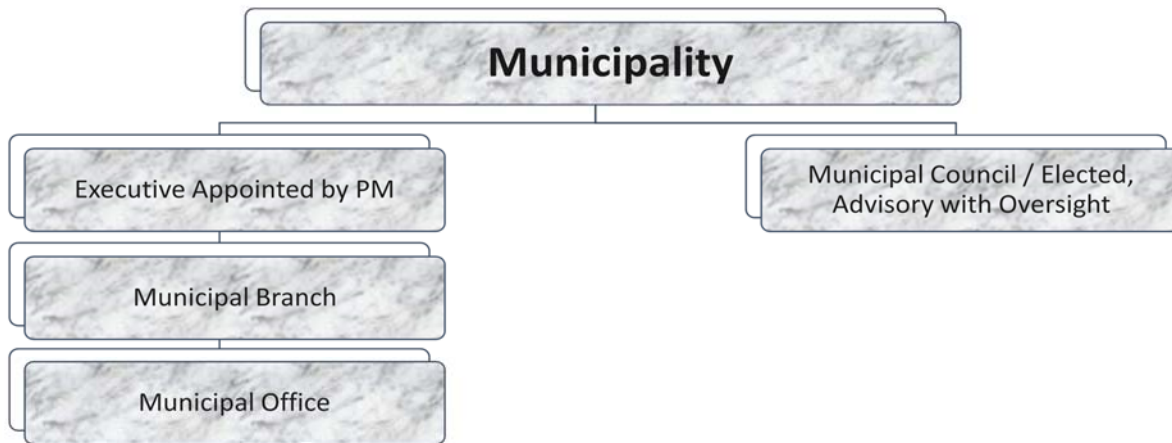


Proposed Government Organisational Chart **2nd Level**



(Ministerial Specialised Council)

Proposed Government Organisational Chart **3rd Level**



(Executive at Municipality Level)

9. Elements of a transition strategy for Yemen

9. Elements of a transition strategy for Yemen

This part of the report focuses on Yemen in the period immediately after combat ceases. The goal is to develop a policy road map for the rehabilitation and reform of State institutions in this country, in order to build a peaceful and inclusive society and accountable institutions. The goal is also to provide a vision that can be implemented by decision-makers and stakeholders in the post-war State-building institutional development process. Key elements will be identified within institutions that need urgent attention.

Given that the targeted period is immediately after the cessation of hostilities, the time scale may be two to three years after a permanent peace settlement. Eventually, mid-term and long-term institutional reforms will be needed for Yemen. These may be tackled in separate future studies. This case study is presented in three main sections: a historical and methodological introduction; the study core in which institutions are analysed in detail; and finally, recommendations and a conclusion.

The introduction presents an overview of the historical and current contexts of the conflict in Yemen, discussing State-building and challenges. The core of the chapter is dedicated to the institutions considered top priority after the cessation of hostilities: financial, security, administrative, judicial and political institutions, as well as the private sector and NGOs. A brief picture of their status before and during the war

is given. The objective here is to understand the need for their urgent reconstruction, and to recommend the most important steps to be taken in the first stages of their reform. This part of the report could serve as a guide for supporting institution-building and ensuring a durable peace. This presumes that the forces in conflict recognize the importance of peace-building, that substantial international support is provided, and that the needs of the population are prioritized.

A. Building State institutions in Yemen: track and setback

Over the past century, Yemen has witnessed successive cycles of violence that have affected the stability of its political system, its social fabric and the building of its institutions. Since the establishment of the modern Yemeni State in 1918 to the present time, the cycles of violence have varied in severity and geographical scope, but have occurred regularly, almost every 10-15 years.²⁸⁶ Those that have occurred since the 1960s will be briefly addressed here.

Until 1962, State institutions in northern Yemen were primitive, relying on ancient traditions inherited from the Ottoman rule of Yemen. In southern Yemen, administrative institutions were often confined to the city of Aden, in the first place, for the management of its port. With

the evacuation of the British occupation from southern Yemen in 1967, many technocrats departed immediately after the political and ideological changes occurred there. This had a negative impact on building stable and effective institutions for the young State.

As contemporary history shows, the two parts of Yemen (north and south) have experienced many turbulences since the 1960s²⁸⁷ that have impacted on the construction of modern, solid institutions. In the north, the war between the republican regime and the monarchy impeded the process of building modern institutions, hindered the imposition of State rule over all regions of the country and led to the proliferation of arms among tribes. The country entered a civil war that lasted from 1962 to 1970 and which was characterized by foreign interventions.²⁸⁸ This war ended after regional and international consensus was founded and a national reconciliation undertaken. Such a reconciliation could be an example to follow and a model to consider in Yemen's current situation. The United Nations then tried to help mitigate the conflict but the circumstances at the time were complex and financially difficult for the UN.²⁸⁹

The 1970s was a time of political unrest. In the north, a coup against civil rule occurred in 1974. Two presidents were assassinated, Ibrahim Al-Hamdi in 1977 and Ahmed Alghashmi in 1978.²⁹⁰ In the south, President Salim Rabie Ali was also assassinated in 1978. The decade featured border disputes between the two parts of Yemen and security remained volatile in many areas. In 1986, a murderous cycle of violence took place in Aden, resulting in human and

material tolls.²⁹¹ The State apparatus disintegrated and human resources left for the north. As a result, the social fabric was damaged, significant regionalism emerged and human rights violations and enforced disappearances were committed.²⁹²

After the reunification of north and south of Yemen into a single political entity, the Republic of Yemen, in 1990, a relatively brief civil war occurred in 1994, due to competition over power "combined with enduring ideological disagreements".²⁹³ The war damaged social cohesion, and negatively affected power sharing in the newly established State, and further "destroyed much of the buoyancy surrounding the idea of unity and by extension democratization" according to Phillips.²⁹⁴ This war altered the conditions of democratic possibility, transforming a democratic partnership into an authoritarian politics.²⁹⁵

Since the beginning of the first decade of the twenty-first century, weaknesses in the institutional structure of the State have emerged due to: proliferation of corruption, nepotism and patronage in the State apparatus, as well as the monopoly of power and wealth by the Hashed tribe and its branch in Sanhan.²⁹⁶ Technical and financial assistance provided by external support programmes had limited impact because of the lack of political will to achieve those reforms and the limited absorptive capacity for such support by the Yemeni administration. In Sa'ada, there emerged what later became known as Houthis or "Ansar Allah" (Supporters of God), a protest movement that grew into resistance to the authority of the State and entered into six wars against it.²⁹⁷ In the

south, the so-called “Hirak” (mobilization) emerged to claim structural reforms, and the demands grew for the re-division of Yemen into two parts, as it was before 1990. Terrorism in many areas also escalated and threatened security and peace. Many Yemenis and foreigners residing in Yemen were victims of such terror.

Then came the crisis of 2011, which shook the entire Arab region. But Yemen emerged, temporarily, with a political settlement under regional auspices through the so-called Gulf Initiative and a transitional period of two years. Under a framework agreement, President Ali Abdullah Saleh abdicated power and a referendum was held to elect the vice-president Abed Rabbo Mansour Hadi as a two-year consensus president and form a national unity government. The Yemen experience gained universal praise²⁹⁸ and a national dialogue conference was held with “a broad spectrum of participation. It included women, youth, civil society representatives, in addition to the political elite”.²⁹⁹ It received considerable international support and resulted, for the most part, in important outputs, some of which may constitute the nucleus of State reform and institution rebuilding.

In parallel, conflict areas continued to escalate during the transitional period due to incompetent leadership,³⁰⁰ persistent corruption and bribery, nepotism, patronage. “Too much of the old regime had survived to allow fundamental change in how national politics, or the security sector, functioned.”³⁰¹ This period was also characterized by the emergence of regionalism, weak State administration, political reprisals and

the exclusion of civil qualified human resources as, among other things, ideologically motivated acts.³⁰² The security situation deteriorated dramatically and large geographic areas fell into the hands of militias and armed terrorist groups. In addition to human and material tolls, State control over territories was weakened and decision-making lost political wisdom. All attempts to bridge the gaps between political parties failed. The living conditions of the entire population worsened due to political, security and economic instability.

The lack of consensus among conflicting parties and the absence of political wisdom culminated in the downfall of the capital Sanaa. In September 2014, a coup against the new regime and its institutions took place and an armed group of Houthis took over Sanaa and its facilities. A few months later, the president of the republic, the prime minister and ministers all left the capital and internal conflicts spread over different parts of Yemen. The foreign military intervention from March 2015 transformed Yemen into a full-scale and official war zone. Therefore, the previously conflicting Yemeni parties lost, to some extent, control of matter, and regional and international parties took over Yemeni affairs again.³⁰³

This all demonstrates that building a peaceful and inclusive society has failed on several previous occasions and, therefore, the next stage must learn from history and review the causes and consequences of the cycle of violence in all its forms. History in Yemen “is a keystone for anyone wanting to make sense of what happens inside the country today”.³⁰⁴ With this understanding, the project of building

effective, sustainable and accountable institutions can take shape.

Knowing this historical context of the conflict in Yemen helps to gain a better understanding of the current situation and to diagnose its most complex features in order to envision a road map for the post-war period under the prior existence of negotiated peace settlements.

1. Current challenges

Post-conflict countries are often labelled dysfunctional, fragile, weak and crumbling State. And “every dysfunctional State suffers from vulnerability to external shocks, internal conflict, competing economic and political structures and an inability to exercise effective legal control within its borders”.³⁰⁵ Yemen has been described as having all these features in a large body of literature, even before the conflicts and the current crisis. Evidently, these features are now in their harshest, most severe stages.

During this conflict and war, Yemen has faced many challenges, accumulations of the aforementioned instability, weak institution-building and lack of accountability. Prior to this war, Yemen was among the most vulnerable and poorest countries in the Middle East.³⁰⁶ Now the war has made its position in the list of fragile States even worse; this year it was ranked fourth.³⁰⁷ Yemen is also classified as a failed State³⁰⁸ or labelled as crumbling.³⁰⁹ Its transparency index is poor, ranking among the least transparent countries,³¹⁰ according to Transparency International; until 2008, Yemen’s ranking was 141 over 180.³¹¹ Human

development indicators also show a decline: from being ranked 133 in 2010 to 168 in 2013.

The priority now is to stop the war that has created a humanitarian crisis unprecedented in world history.³¹² There are many challenges faced by countries experiencing internal conflicts, but what sets Yemen apart is that the challenges are twofold; chronic internal conflicts as well as a direct external military intervention started in March 2015. That is why the terms war and conflict are used here. Yemen’s case is also marked by the restrictions imposed on the movement of individuals, money and goods. An economic blockade to its sea, air and land ports has increased the costs of supplies and human needs. According to some experts “the most damaging consequences for the wider Yemeni population have been how the conflict has undermined the systems by which the country functions – devastating the economy, social integration, the humanitarian situation and developmental progress. The result is that millions of people in Yemen are now enduring severe economic deprivation and near-starvation.”³¹³

Other factors that set Yemen apart are the multiplicity of parties internally involved in the conflicts and the diversity of external, regional and international actors. Parties in conflict have multiplied, their sources of support have diversified and their potential points of convergence diverged, and weapons have flowed from various sources. Another particularity is the inability of the international media to report on violations of the International Humanitarian Law, and International Human Rights Law. This creates

a general state of indifference elsewhere in the world and a tendency to forget about the atrocities happening in Yemen. It has been called the “forgotten war” in some of the world’s media and in the literature of international NGOs.³¹⁴

The most critical humanitarian challenges are food insecurity, malnutrition, the increased number of internally displaced persons, school dropouts, and inefficient health and sanitation systems.

The most important features of the current institutional structure, created by the war, are fragmentation, duplication and chaos. The fragmentation is apparent in two institutions of the presidency, two governments and two central banks. As well as the legislative and judicial institutions, political parties and some civil society organizations are also fragmented. As a result of this fragmentation, almost all institutions work independently of one another. Duplication permeates horizontal and vertical structures of State institutions; many are unable to provide basic services or achieve the most elementary tasks.

The army and police are the most complicated institutions in the current situation. Many entities possess different kinds of weapons, including heavy ones. Most of them are acting anarchically or under their improvised “laws” that no relation to the existing law of the State. The former official army is divided, fragmented into and affiliated with militias and armed groups on both sides of the conflict. Terrorist groups have also become widespread and drawn in those who may support them from one side, or those

unable to fight them alone from another side. The longer the war continues, the more the chaos becomes irreversible, greatly complicating the post-war process.

Assuming a cessation of hostilities and a comprehensive peace agreement that takes into account the specificity of Yemeni society and culture and which guarantees a durable peace and the prevention of resumed conflict, several priorities could be proposed from day one after the signing of a settlement. Adequate resources to realize these priorities should be maintained until the complete settlement of peace and transition into a mid- and long-term workplan.

2. Post-war: emergency priorities

The immediate post-war period is the most subtle and dangerous because it is close to the events of the conflict and could become an extension of that conflict. The scenes of war and its devastating effects are still vivid in people’s memories. That is why there is a methodological and practical difficulty in determining the post-war period. As stated by the UNDP in a 2008 report, “defining ‘post-conflict’ is not a straightforward task. In some situations, conflicts recur after a short period of peace. In other cases, some violence continues even when conflict has ostensibly ended. There is often no easy ‘before’ and ‘after’.”³¹⁵ In many cases, the cessation of combat is accompanied by prolonged instability, which places countries at high risk of conflict recurrence.³¹⁶ The previous cited UNDP report developed also what it called “milestones for peace-building”. It stated that “a post-conflict country should be

seen as lying somewhere along a continuum on each of these milestones, recognizing that it could sometimes move backward".³¹⁷ According to the report, the following milestones are the most important:

- Ceasing hostilities and violence;
 - Signing of peace agreements;
 - Demobilization, disarmament and reintegration;
 - Return of refugees and internally displaced persons;
 - Establishing the foundations for a functioning State;
 - Initiating reconciliation and societal integration;
 - Commencing economic recovery.
- (Ibid.).

It is not yet clear which of these milestones will be achieved for Yemen, but the assumption is that two of them may soon become reality; that is, the cessation of hostilities and violence, and the signing of peace agreements. The remaining milestones are, to some extent, subjects of the phase covered by this part of the report.

Because institution-building is complex and the procedures to be followed vary considerably, the proposal here is to approach priority elements within some institutions; that is, a short-term road map within two to three years after the cessation of hostilities and violence. Reform and reconstruction of the entire institutional system, obviously needed in the case of Yemen, can be achieved, however, through other comprehensive procedures that target all systems, subsystems and sectors of the State as part of medium- and long-term

plans. Those procedures can be in parallel to this short-term road map.

The ultimate goal is to overcome the post-conflict challenges of building a peaceful and inclusive society and accountable institutions. The best support for post-conflict countries, based on previous international experience, is to work with these countries and to support their own capacities as early as possible in the post-war period. This can be done through a rapid-response road map that recognizes the role and impact of the population through its inclusiveness and creates trust in State institutions by enhancing accountability. Choosing to tackle certain challenges immediately after war will be understood and welcomed as a first step on the long road to recovery of the country as a whole.

B. Institutional reform

The Arab governance report II: governance and institutional transformations in conflict-affected Arab countries identified four categories of institutions that must be given priority in the reform process: security, administrative, judicial and political.³¹⁸ The report indicated that these categories vary in importance depending on the type of conflict and the country in which the conflict is taking place.

Bearing in mind Yemen's specific situation, and the ultimate goal of this road map to ensure stability and prevent tensions being reignited and conflict resumed, the financial institutions should be separated from administrative institutions and given priority. This section of

the report will address some elements of the five categories of State institutions that are prioritized, in order of the urgency of their reform. Private sector and NGOs roles will also be discussed.

1. Financial institution

The financial institution was one of the most important tools used by the tribal elite in Yemen to rule, through monopolizing the wealth of the country and “to exercise tremendous control over the national economy and forge economic ties between the state and key (predominantly tribal and military) elites”.³¹⁹ There was a total absence of transparency and accountability. This same institution has again become one of the key instruments of the current conflict³²⁰ and of the ongoing war. The financial institution was one of the causes of the conflict, now it has also become a victim of it. The main reason for the dispute in Yemen is the fight over financial revenues, especially oil revenues. “After the oil exports dropped by 40 per cent, resources available for patronage began to decrease. The reduction in handouts led to increasing tension between the State and the excluded tribes.”³²¹ This decline in production has also been accompanied by the global tumble in oil prices. This has rendered the State’s foreign exchange resources weak and it has also weakened the political command abilities of the ruling elite. Other income resources suffer from a low rate on global standards. In addition, foreign investment has shrunk considerably.³²²

Because reform of the financial sector is complex and requires multiple sources of

expertise and accurate data, the report here addresses only the three main problems for which emergency priorities should be established. Namely the banking system, revenue collection and foreign aid. These questions will not be addressed in detail but some specific elements will be tackled according to their urgency after war.

The report will present a picture of the financial institution’s position (especially banking) before the war and what it became during the war, so that we can see the priorities associated with reforming this institution to meet the post-conflict challenges.

(a) Situation before the war

The banking sector’s problem is related to Yemen’s classification as a “high risk” country for the global financial system, due to security and political turmoil, terrorism and arms smuggling. Yemeni banks have been hit since 2010 when United States banks began closing their accounts there.³²³

As for revenues, the State budget in Yemen was dependent on oil and gas revenues at more than 65 per cent, which is about 25 per cent of GDP. It also relies on tax revenues, customs and services provided by the government to the population. These incomes are low by international standards. The tax estimates for 2016, for instance, represent only 5.6 per cent of GDP.³²⁴

Despite the launch of several financial and institutional reform programmes, the outcomes were modest and achieved no concrete results.

Foreign aid was fragmented according to the priorities of donor countries and their geopolitical interests. Furthermore, most aid was neither intended to support productive capacity-building, nor to generate sustainable national income sources in Yemen. Additionally, internal administrative corruption, a widespread phenomenon in Yemeni institutions, aggravated the management of finances.

Foreign aid remained relatively modest in relation to population and the basic humanitarian needs of a country such as Yemen, classified by the United Nations as one of the least developed countries. Reports stated that “Yemen remains heavily under-aided relative to other low-income countries, with only a small number of international donors. It receives less than \$13 per capita per annum (pa), compared to \$33 per capita pa in other Least Developed Countries (LDC).”³²⁵

(b) Current situation

With the start of the war in March 2015, and when Yemen was “coming under UN Chapter 7 jurisdiction, large European and American banks ceased to interact with Yemeni banks completely, compounding the burden and costs of international transfers to and from Yemen.”³²⁶ The war has resulted in banks being unable to convert their cash surpluses from foreign currency to feed their external accounts, leading to a significant reduction in the accounts of Yemeni banks with their correspondent banks abroad. “Yemeni banks became both unable to honor customer requests to withdraw cash – leading to further hoarding outside the banking system – and had no domestic currency to

deposit at the Central Bank of Yemen.” (Ibid.) The local currency rate and the banking system have collapsed dramatically.

The most significant problem for the financial system in Yemen is related to the Central Bank of Yemen (CBY). Since the beginning of the war, the CBY has been working with considerable neutrality with regards the conflictual parties. The International Crisis Group stated in a recent report that “there had been a tacit agreement between the warring sides to allow the institution [CBY] to function relatively free of interference”.³²⁷ The report added that “diplomats and economists widely agreed that the bank had remained largely impartial, facilitating the import of an increasingly limited list of basic commodities, protecting the value of the Riyal (Yemen currency) and paying public-sector salaries nationally under increasingly difficult economic circumstances”.³²⁸

When the decision was made in September 2016 to move the headquarters of CBY from Sanaa to Aden, a major problem arose over public-sector salaries. Since that time, the majority of employees have not been paid. There is no doubt that the resources of the State have been damaged and there has been a significant depletion of CBY cash reserves during the two years of war and conflict, but moving the bank’s headquarters worsened the situation. In addition to making it more difficult to operate with the same effectiveness,³²⁹ the move created unnecessary division in the banking institution and shattered hopes for any future agreement to support the independence of the CBY and its ability to manage the Yemeni economy in periods of war and conflict.

Moving the CBY from Sanaa was not welcomed. “Western governments had warned that removing the central bank, and losing its stock of well-trained technocrats would disrupt the economy and deepen the humanitarian crisis. Many observers wonder if this was not part of the plan.”³³⁰ It was, in fact, used as a political arm against public-sector employees in certain regions of the country.³³¹ The division of the financial sector was confirmed and there is now conflict between separate headquarters in the cities Sanaa and Aden. The decision taken in Aden to float the currency exchange rate in mid-August 2017 was rejected one week later in a statement issued from Sanaa.

As for incomes, “the Yemeni government lost as a result of the armed conflict the vast majority of its revenues – such as revenues from oil exports, which were the most important government source of foreign currency”.³³² Lack of transparency and accountability have affected the collection and disbursement of incomes. The situation has heightened the concerns of international financial institutions over the fate of Yemen’s reforms, which were started in 2010 to fight money laundering and the funding of terrorism. The division and duplication in income-generating institutions have caused revenues to be squandered, deprived the State treasury of most, if not all, of these revenues and helped to increase their misuse in the absence of any legal oversight or accountability.

Accurate foreign aid data are not available but most aid goes directly to humanitarian relief through international organizations operating in Yemen. Nevertheless, this aid remains relatively modest given Yemen’s needs. These multiple,

interrelated factors have contributed to the liquidity crisis in the banking sector since mid-2016.³³³ War and conflict have prevented action to address the situation. The priority is to put an end to the war and formulate comprehensive and lasting peace agreements.

(c) Summary and priorities

The first step is to rehabilitate the banking system. This cannot wait until hostilities cease and peace agreements are signed, but must be done while preparing for peace. Government employees have not received monthly salaries for more than a year. This has created difficult living conditions, high inflation and lack of basic services. No information is available about the fate of State revenues, and foreign aid is low given Yemen’s practical needs. Post-conflict countries are “unable to mobilize their own resources”.³³⁴ Yemen’s resources have also been damaged by the war. Those available are insufficient for reconstruction purposes and do not meet the urgent needs of any post-conflict agreement due to the magnitude of losses and their wide-ranging effects. Yemen, unable to mobilize its own resources, will be forced like other post-conflict countries to rely on foreign aid to finance its reconstruction. This funding helps to avoid, or at least reduce, the risk of conflict resuming. “Failure of post-conflict reconstruction increases the risk of new conflicts and systemic fragility.”³³⁵

Within a holistic approach to State- and peace-building, and given the scope of nationwide reform needed in Yemen, the mobilization of revenues needs to be a priority from day one after cessation of combat. “The success of the

post-conflict reconstruction agenda is critically contingent on the existence of a capable state that is able to deliver on its core functions, especially security, law and order, provision of public services, and revenue mobilization. The latter function is especially important not only for the performance of the other core functions of the state, but also for enabling the government to build the required policy space to truly own its development agenda.³³⁶

Other literature on management of the post-conflict period has also concluded that, “Countries in post-conflict recovery must re-establish monetary and exchange rate management regimes as soon as possible. They need a central bank that is substantially autonomous and immune to political pressures. Good exchange rate management is essential in post-conflict countries for restoring and maintaining trade competitiveness.”³³⁷ The most important steps after the cessation of war are the following:

1. Reforming the board of directors of the Central Bank of Yemen (CBY) in accordance with the law in force, and agreeing upon a bank governor from a pool of candidates who were not involved in the political dispute. Negotiated peace settlements should include specific clauses on the management of the CBY and provide guarantees of transparency in all bank activities, which must be conducted in an independent manner at its legal headquarters.
2. “Priority should be given to the rapid restoration of oil and gas production and export, as it is the main source of revenue for Yemen, while ensuring that all state and

public-sector revenues across Yemen (revenues of oil and gas sales, taxes, customs, revenues of public companies, etc.) are directed to the CBY and its branches in all governorates.”³³⁸

3. The CBY should pay the salaries of all State employees and ensure that it will continue to disburse them regularly. It should then schedule the payment of salaries not paid during the war. This scheduling can be based on the lists of approved employees as at the end of 2010 or any alternative date that Yemeni decision-makers agree on.
4. Urging donors to boost the external reserves of the CBY by depositing foreign currency in its accounts and providing direct support to finance the State budget deficit, which would allow the government to avoid financing the budget from inflationary resources that could exacerbate Yemen’s humanitarian crisis.³³⁹
5. The CBY shall receive and administer all foreign grants, aid, reparation, compensation and loans in accordance with existing and specific rules, with emphasis on transparency and accountability about the beneficiaries, and assessment of the expenditure matters. This is necessary to avoid the wrong uses of foreign that occurred in the previous period.³⁴⁰
6. Provide the CBY with the necessary technical support to reset the banking system and ensure the rights of consumers, be they institutions or individuals, to banking services.
7. It is important that CBY resumes cooperation with the international system to combat money laundering, terrorism and illegal smuggling of funds.

8. Initiate planning and mechanisms for an effective and responsive economic policy.

2. Security institution

The security institution is responsible for protecting the country and maintaining security and public order. It includes the army, police, border guards, customs and intelligence personnel.³⁴¹ Yemeni literature has distinguished between the military/armed forces on the one hand, and security or police on the other. The National Dialogue Conference (NDC) in Yemen set out two definitions for each of them: "The armed forces belong to the people. Their mission is to protect the country and preserve its security, unity, territorial integrity, sovereignty and republican system."³⁴² However, police are a "regular civil body that performs its duties in the service of the people and guarantees citizens' safety and protection of their rights and freedoms. It preserves security and public order and carries out the duties and applies orders issued by the courts as prescribed by law."³⁴³ There is a systematic difficulty in defining the security institution or the security sector because "there are almost as many definitions as there are scholars and institutional actors trying to define what the 'security sector' comprises".³⁴⁴ This term will be employed here as it is in the literature of the United Nations, and since the difference between the army and police, especially in Yemen, is not a difference in nature, nor in structure, but in some procedural tasks that meet the United Nations definition of the role of the security institution in general. In practice,

the interaction between the two sectors, military and police, is undeniable.

(a) The situation before the war

As noted above, all security sectors (army, police and intelligence) rely on their relationship to the ruling tribe.³⁴⁵ In fact, most of the leaders of the security institution have been affiliated to tribes, referred to in studies as "tribal militarization".³⁴⁶ It could also be called "tribalization of the army and police" in Yemen, where the security institution is fragmented and dissolved; that is, it does not represent the population as a whole. Military recruitment in Yemen "was based on a network of patronage, nepotism, and tribalism".³⁴⁷ Another expert confirms that in the security sector "recruitment, appointments, and promotions were overwhelmingly based on tribal, regional, and family loyalties".³⁴⁸ This institution is accounting for a quarter of the State budget and expenditure. Its share was at 7 per cent of GDP, which is more than the expenditure on the health sector, which receives only 1.3 per cent.³⁴⁹

It has been widely reported that some members of the security institution are involved in smuggling arms and trafficking weapons internally and externally.³⁵⁰ The proliferation of arms is a major problem that will have an impact on the post-conflict phase. The number of arms in the civil population's hands was estimated at 60 million pieces, distributed to 20 million people.³⁵¹ As of 2007, weapons were publicly sold, and there were 18 selling markets, and about 300 weapons retailers.³⁵²

Historically, different factors and waves contributed to the spread of arms: the cycle of wars and conflicts, such as the war between the monarchies and the republicans in the 1960s; the conflict between northern and southern Yemen in the 1970s; the civil war in 1994; the 2011 crisis and subsequent conflicts up until the current war; the social norms that glorify weapons possession;³⁵³ the dissemination of what can be called a “culture of arms” among the Yemeni population; and turning a blind eye to the trafficking of weapons by members of the security institutions themselves, reflected in the weakness of the institutions and the non-accountability to the standards and law, and confirmed by the impact of patronage within these institutions.

The proliferation of weapons has facilitated the possibility of armed groups and non-State actors gaining access to different kinds of weapons and establishing well-armed paramilitary groups and militias. The latter have been fighting the State, whose capacity was gradually weakened until security institutions collapsed altogether in 2014 when these militias entered the capital. The allegiance of the security sector to the divided tribes, structural bifurcations and division in leadership that took place after the crisis of 2011 were among the factors leading to the collapse of the security sector and its inability to make a stand against militias and armed groups. The result was the collapse of all State institutions.

Restructuring the security institution and introducing new names were initiated but without enabling real change or making a qualitative transformation that tackles the core

problem.³⁵⁴ It has even been said that “the more things change, the more they stay the same”.³⁵⁵ There was no clear vision, no studies or wide consultations, and the war did not enable changes to be completed. In the future, these tentative changes can be re-evaluated and new phases built on to what has been positively achieved.

Since the outbreak of war in March 2015, the security institution has worsened markedly, with internal division transformed into apparent conflict and constant fighting.

(b) Current situation

The outbreak of the war deepened the division within security institutions and escalated it into serious military confrontations. There has been a duplication of control of State institutions, by the de facto authority and its supporters based in Sanaa on the one hand, and the internationally recognized authority based mainly in Riyadh and its external and internal supporters on the other.

Yemen, therefore, has generally two armies, two police apparatuses and many intelligence services. Almost everything has been divided by two or more. There is no doubt that this division is not balanced quantitatively and qualitatively, but it is undeniable. Further complicating matters are smaller subdivisions: what is under the control of the de facto authority in Sanaa is a part of the regular army and police forces, three intelligence agencies and all of the technical and human infrastructure of the State. But in parallel, there are what are called popular committees, a type

of militia, and other armed groups affiliated with the Ansar Allah movement.

What is under the control of the internationally recognized authority, the so-called Legitimacy (*q.v.* political institutions), also has some elements of the army, police forces and unknown intelligence services. In addition, there are various armed groups, including some elements of the former regular army called the “national army”. It includes Yemeni regional militias, among them, extremist religious and tribal armed groups. It is alleged some are affiliated to terrorist groups such as al-Qaeda and Islamic State elements. There are also foreign forces from the coalition’s countries, in addition to the foreign mercenaries from several Arab and foreign countries.³⁵⁶

(c) Summary and priorities

The security institution must be given the highest priority in the post-conflict reform agenda in order to maintain security and peace, and make the required development attainable in the political, economic and social domains. The following steps can be taken:

1. Reunify the bifurcated and divided security sectors under one command with a clear hierarchy, and repartition internal powers based on operational and transparent parameters, away from duplication, factional, tribal or sectarian affinity. The National Dialogue Conference underlined the importance of “issuing laws to unify the command, control and guidance center [...] and to build an automated system, link hotlines and provide the necessary equipment”,³⁵⁷ to ensure an effective security environment. The reunification depends on the size of the institution and its nationwide composition. A time frame is needed to review the whole matter of the institution, its size, composition, repartition and demobilization. That may be stated by the negotiated peace agreements. Reunification of this institution would help to stream the repartition of police and army into areas of tension, especially those where extremist and terrorist groups are active and where turbulence caused by the war and chronic conflict continues.
2. Provide international expertise to reform and train the security sectors through a fast-track approach in cooperation with Yemeni specialists. To professionalize staff and help them address structural imbalances may be a longer-term endeavour. Substantial training on disarmament, specifically for medium and heavy weaponry held by non-State actors, needs to be addressed within the peace agreements and within the framework of the demobilization and reintegration agenda. Funding training should be launched from the first day of the implementation of the peace agreements.
3. Establish a mechanism for the verification and control of the neutrality of the security sector in order to build confidence in this institution among the parties who have been in conflict, and in the population generally. This can be initiated through an observational body run by independent, high-level civil and security experts, supported by international experts. The body would make recommendations to decision-makers and alert them to any new

divisions that may lead to conflict resuming. The body would assist and advise the security institution itself on how to use legitimate force to prevent militias and tribal, partisan, sectarian, regional or armed groups from threatening security and peace. There is a Yemeni constitutional principle, confirmed by the outcomes of the National Conference Dialogue, that stipulates only the State can establish the armed forces, and that any individual, body, party, group, organization or tribe is prohibited from establishing any military or paramilitary formations under any name.³⁵⁸ That principle should be emphasized when peace agreements are concluded.

4. Suspend the recruitment in the security sector for a period of three years during which the cases of demobilization, retirement, repartition and reintegration shall be studied based on professional, fair and transparent criteria, with the help of international expertise. This period should be a cost-evaluation one, an occasion to verify the mechanism of mixing or not mixing old combatants, and the differentiation or preferences between demobilization and reintegration.³⁵⁹ The outcomes of the National Conference Dialogue recommended “reconsidering all those recruited during 2011-2013 to be subject to the conditions of service in the armed forces and security in accordance with the law”.³⁶⁰ It is reasonable to conclude that those recruited after these years should also be subjected to this recommendation. Therefore, 2010 is considered the most suitable time limit beyond which re-evaluation of the security forces should be undertaken.

5. Emphasize the non-involvement of the security sector in the direct political arena, and the importance of the accountability of this institution to civil authorities of the State. During the phase after the cessation of hostilities there will be a wide range of political and administrative activities, and the security institution will play an important role in ensuring the success of these by sustaining stability for all the institutions of the State. From day one of this phase, “like any other part of the public sector, the security sector should be subject to the principles of good governance such as accountability, transparency, and democratic participation...”³⁶¹
6. Reinstate and reinforce the war on terrorism. There has been almost complete agreement since the start of the war that the only beneficiaries of the widening conflict in Yemen and the resulting collapse of State institutions are the extremist groups, such as al-Qaeda and the Islamic State. The process of combating extremism and terrorism must be a priority to avoid the collapse of the peace process and State institutions rebuilding.

3. Administrative institution

The administrative institutions “constitute the core element of the State. They are responsible for education, health care, water, sanitation, social welfare, poverty reduction, industrial and entrepreneurial support, agriculture, energy, taxation, economic policy, environment and citizen services”.³⁶² These institutions in Yemen have suffered from three main structural

problems: weak performance, rampant corruption and low-level competencies.

(a) Situation before the war

The most salient characteristic of the public sector is its obvious weakness in recruitment, promotion, qualification and effectiveness. Most recruitments are based on *wasata* (suspicious connections), and “qualifications and merit are not the basis of hiring and promotions.”³⁶³ Surveys show only 4.92 per cent of the public believed that *wasata* was not used in public sector employment.³⁶⁴ As for qualifications and competencies, studies indicate “few civil servants are educated: only 1 per cent hold a graduate degree, 16 per cent hold a bachelor’s degree and 23 per cent hold secondary school degrees. Thirteen per cent are illiterate”.³⁶⁵ Most civil servants do not have or know their job descriptions, resulting in public services lacking ineffectiveness.

After the 2011 crisis, the situation did not change favourably; on the contrary, it worsened. Many Yemeni commentators agree that “one of the tragedies of the transitional period, that began in February 2012 after the referendum, is that it has turned into a race on recruitment based on partisan criteria, regionalism, and corruption, with a disregard to competencies. Non-partisan young people, and other ordinary people were excluded. The competencies and qualifications were totally unrecognized [because those who] “managed this [transitional] period were the product of the former regime and they were the closest to it. However, their political and personal abilities were limited”,³⁶⁶ a viewpoint with which several

other analysts agree.³⁶⁷ This could partially explain how the national reconciliation government fell and even how the Yemeni capital fell in 2014. It was under the pretext of fighting growing corruption, nepotism and patronage in the transitional period. Nevertheless, today the de facto alternative is catastrophic in the view of many observers.

In summary, and as it was stated in 2010: “The public sector has significant human and institutional gaps, including inadequate skills among civil servants, institutional fragmentation of key functions of government, weak management and leadership, and inadequate information systems.”³⁶⁸ The situation today may be even more complicated.

(b) Current situation

Administrative institutions were gradually divided during the war. The various organs of the State came under the control of divided authorities, each exercising its powers according to the geographical location under its military control. Two governments were formed, one in Sanaa, the other in Riyadh, Aden and Marib. This division and fragmentation disrupted the performance of many basic services. Therefore, the peace agreements need to address, in order of priority, the reunification of the administrative institutions and their functioning in accordance with the laws and regulations in effect.

It is difficult to address all the administrative sectors of the State but the situation in Yemen has reached a catastrophic level. It is reported that Yemen is experiencing the largest

humanitarian crisis in the world, and it is difficult to determine what people need the most. Two-thirds of the population require humanitarian assistance and support. “There is a need for everything, everything is urgent: shelter, food, water, health services, sanitation and safety.”³⁶⁹ The weaknesses of these institutions before the war, as previously described, were exacerbated by the devastating consequences of the widespread and destructive conflict. The scope of rebuilding these institutions is vast, but for the time being, immediate needs must be prioritized. This report underlines that the current situation requires emergency action to be undertaken as soon as possible, not only after hostilities have ceased.

This part of the report discusses the priorities after the end of the war. It is recommended that ongoing efforts by the United Nations agencies and other international organizations be built upon. Key elements that need to be addressed from day one include food security, energy, education, health, water, shelter, roads and ports. For each of these elements, related issues will be presented in priority. Other issues could be integrated later after plans have been negotiated.

(c) Food crisis

The food crisis is the highest priority in the post-conflict phase. The situation in Yemen has reached a difficult stage. Statistics show that “more than 7 million people are on the verge of starvation, and 2.3 million children under the age of five suffer from malnutrition”.³⁷⁰ It is crucial to increase direct humanitarian support and cash assistance to solve the food crisis and extreme poverty, and help rehabilitate the

national social security and social development funds. There is also a need to rehabilitate institutions in this sector, for the medium and long term, to address the problems poorer members of the population will continue to endure.

(d) Internal displaced persons

Internally displaced persons (IDPs) have a long history in Yemen. Many waves of displacement were caused by natural disasters, the most severe in the 1980s in the province of Dhamar. Other natural disasters related to floods and landslides also caused the displacement of a limited number of people. The major waves of displacement, however, were caused by internal conflicts: first the wars in Sa'da province from 2004–2010; then the 2011 crisis, followed by the confrontation with Al-Qaeda and Ansar al-Shariah in the province of Abyan in 2011–2012.³⁷¹ After that came the war in 2015, which increased the number of IDPs sevenfold to 2.5 million that year. Another million were not able to move due to the lack of fuel and damaged roads. “The main triggers of displacement were flagrant disregard for international humanitarian and human rights law, and indiscriminate warfare that has targeted civilians and civilian infrastructure. The destruction of infrastructure such as hospitals, schools, markets, shops and water supplies has left 82 per cent of Yemen’s population in need of humanitarian assistance, including 14.4 million people who suffer from food insecurity.”³⁷² This displacement has created several problems that ignite further revenge attacks, making the conflict even more complicated and fueling its continuation. In addition, security is undermined, resulting in

displaced people being hassled and their livelihoods threatened. Women and children face the most severe problems.

Addressing the needs of IDPs is a priority in the short term, and also in the medium and long terms due to their large number. Since the start of the war, more than three million people have fled their homes in search of security and safety³⁷³ following the destruction of their homes and infrastructure by aerial bombardments. By 2017 the number of IDPs was estimated at two million,³⁷⁴ though the actual number could be higher. In fact, the invisibility of many IDPs, due to the strong sense of privacy among Yemenis and social solidarity between displaced and receiving families, has prevented specialized bodies from taking them into account. Another characteristic is the volatility, whereby displaced people are constantly shifting and relocating. Some end up returning to their original home.³⁷⁵ At the national level, there are 4.5 million need housing.³⁷⁶

Fortunately, Yemen already has a small structure to cope with displacement, which was set up before this war as a consequence of the Sa'ada wars and natural disasters. The executive unit attached to the Supreme Committee for the Treatment of Internal Displacement coordinated the assistance provided to IDPs. But the war made the IDPs issue more critical and complicated. A renewal of this initiative is urgently needed and should be adapted to the new context. IDPs will be a fundamental challenge for the post-conflict period when all displaced persons must be repatriated and a decent, secure life provided,

covering their health, education, social and economic needs. But in the post-war period, the State will suffer a shortage of financial, technical, human and organizational resources to employ in this and other sectors. The following recommendations on IDPs should be prioritized in the post-conflict phase:

1. Develop an emergency plan for IDPs in the most affected areas.
2. Establish a national commission to coordinate efforts and organize the relevant interventions.
3. Focus on protecting the most vulnerable groups of IDPs: women, children, persons with disabilities and the poorest.

(e) Energy sector

Energy services have become an essential part of human life and an important tool in the economic and environmental development of any country. Access to energy services, particularly in least developed countries, helps reduce poverty and provide other essential services such as clean water, health care, lighting, agricultural and industrial production, communications and technology. It also enhances competitiveness and economic growth; energy services support the various sectors in a country.³⁷⁷ Access to energy services means access to clean, reliable and reasonably priced services for lighting, cooking, heating, communication and production uses.³⁷⁸

These services in Yemen are not fully in place and the country has been suffering from a severe shortage of energy for a long time. Successive governments have attempted to

overcome energy production shortages but their efforts have been met with financial and structural obstacles. The gradual growth of energy production could not keep pace with the country's growing needs and was unable to provide energy access at any of the three internationally recognized levels: basic human needs, such as lighting, education, communication and community services; productive uses in agriculture, industry and transport; and modern society needs.³⁷⁹ There is consensus on the priority of the energy sector for post-conflict countries within the scope of their general needs. Experts stated that "the most obvious needs for infrastructure are energy, ports and roads. Without reliable energy, the formal sector cannot develop."³⁸⁰

Over the past few years, Yemen has suffered from extreme poverty in energy resources for all types of use at the family and community levels. Available statistics indicate that Yemen has the poorest energy resources in the Middle East. The number of people without access to electricity in 2016 all over the Middle East was 17.8 million; among them, the number of Yemenis was 14.2 million. In other words, the number of those deprived of electricity in Yemen alone is more than three times that in all other Middle Eastern countries combined. As for biomass, Yemen ranks first in the region, with about a third of its population, about 8.1 million, using it as a source of energy.³⁸¹ This energy crisis has had environmental implications and a significant impact on flora as people have cut all kinds of trees to be used for cooking. Flora in Yemen had improved in the two decades before the war because of the increasing availability of

clean cooking facilities, namely gas cylinders, in many rural areas.

Electricity production capacity in Yemen was 1.5 GW in 2012, according to the country's Ministry of Electricity, one of the lowest in the Middle East. It fell in 2013 to only 850 MW.³⁸²

Infrastructure in Yemen is insufficient to meet the country's needs and World Bank data indicate that only 40 per cent of Yemen's population has received electricity, without frequent interruptions, since 2010. Even for connected consumers, power outages are recurring because of ongoing attacks on the country's energy infrastructure and sabotage of transmission lines.

Although the war has created a sudden interest in alternative energy, especially solar energy, the cost remains high for Yemeni consumers, and efficiency is low. The problem of quality and cost is partly linked to the war as Yemeni ports suffer a de facto blockage. All maritime transport to Yemen is redirected to other regional ports for inspections, which impedes delivery to their final destination by the due date. The high cost of transport and long delays make everything highly expensive, including energy equipment. These barriers must be removed when the peace agreement is reached.

The energy sector is important because it serves all other sectors, making it a top priority. Its improvement will make a real impact on the lives of citizens and provide them with tangible proof of the end of this war and its harmful consequences. Ensuring the return of electricity and gas supplies, at reasonable prices, will constitute an important sign of the normalization

of people's lives. The key priorities for this sector can be summarized as follows:

1. Rehabilitate the Marib plant for electricity and other plants in Al-Mukha and Aden as soon as possible to meet the basic needs of the population, and public and private institutions. Accelerate the completion of the Maabar electricity station. Repair transmission lines in and between cities, and provide small generators and conversion plants to several cities across the country.
2. Encourage electrical connections to neighbouring countries that have a surplus of energy, such as Saudi Arabia and Oman. Purchase electricity for coastal cities, especially in the summer due to difficult and severe climatic conditions.
3. Encourage and promote the use of alternative energy, especially solar-generated power, and improve quality, cost and efficiency. Facilitate customs and tax to expand the use of alternative energy, especially in remote villages, while continuing to search for supplementary alternatives based on location.

(f) Education sector

The education sector in Yemen has suffered from chronic problems in quality and spread. The war accentuated these problems: schools have been bombarded, closed, taken by armed groups or occupied by IDPs. The salary crisis in the public sector has affected teachers; more than 166,000, about 73 per cent of the total number of teachers in Yemen, have no salaries.³⁸³ At least two million school-age

children are out of school, and more than 1,690 schools remain out of service. About 2.3 million children need support to have access to education, including 1.1 million children in areas severely affected by the conflict.³⁸⁴

An emergency plan is needed to help the education sector get back on track. The following examples demonstrate the interdependence of institutions. Restoring salary payments, discussed previously (*q.v.* financial institution) will help solve problems in education and non-education sectors as well. Repatriation of IDPs and demobilization of combatants will help schools return to their basic functions. Reintegration of combatants will restore education and its basic function. In the short term, the rehabilitation of some schools and the construction of others are urgently needed, especially in the highly-affected zones. In the medium to long term, there is a critical need to improve education in a sustainable way. This includes reforming the educational system and addressing curriculum, in particular that which promotes violence and hatred. This can be further reinforced by addressing other sectors and activities, such as culture and media, which could be the building blocks for an inclusive plan to ensure social cohesion.

(g) Health and water sector

The biggest challenge in the post-conflict phase is the response to the cholera epidemic that has spread in Yemen in 2017 and has led to significant human losses. "The total number of suspected cholera cases in Yemen this year is half a million in August, and nearly 2,000 people have died since the outbreak began rapidly at the

end of April.”³⁸⁵ The health sector also needs rehabilitation because of its inability to provide care; “between 19 March and 15 July 2017, the number of deaths and injuries in Yemen health facilities was 8,389 and 56,130, respectively. And since only 45 per cent of health facilities operate, the actual figures are likely to be higher.”³⁸⁶

Yemen’s water sector is a top priority due to the scarcity of water resources and poor supply services in cities and rural areas. It is reported that 16 million people need clean water, sanitation and health services, and 7.3 million are in desperate and immediate need. This represents an increase of 8 per cent since late 2014 as needs have intensified.³⁸⁷ An emergency plan that prioritizes the health, water and sanitation sectors is needed to meet basic life requirements immediately after the cessation of conflict.

(h) Transport and roads

The transport sector in Yemen was affected by the blockade of land, sea and air. A de facto blockade was imposed regardless of international laws, making Yemen a special case among countries in conflict in the Middle East. It was a major cause of Yemen’s food and humanitarian crisis given that more than 90 per cent of Yemen’s needs are imported.

Roads and bridges were damaged by air strikes, and the lack of routine maintenance. The absence of security and the shortages and high cost of fuel made the situation worse. In the post-conflict period all land, sea and air ports must be opened for trade and general movement. Some bridges and damaged roads should be rebuilt to facilitate

transport. The following policy proposals agreed on by Yemeni experts³⁸⁸ should be addressed in this order of priority:

1. Rehabilitate war-damaged ports and improve management to increase the efficiency of transport and unloading operations; for instance, provide new cranes for the port of Hodeidah to replace those damaged by aerial bombardment. This will increase portability and facilitate commercial traffic.
2. Ensure freedom of movement, securing roads and surveilling checkpoints, which in turn will facilitate commercial movement.
3. Reinstate and support the Road Safety Fund as well as the Social Fund for Development projects in rural areas. “Rural roads are crucial to the reintegration of the rural economy into the urban market, an essential aspect of post-conflict recovery.”³⁸⁹ This will also help to ensure that roads in and between cities are maintained. Studies have shown that “urban roads will be needed because, as the economy recovers, the private sector will rapidly invest in cars, which will lead to chronic congestion.”³⁹⁰ In other words, after the cessation of war, economic life is expected to flourish and this is a sign of peace and security.

There are sectors that have not been included in this part of the report. Their omission is not because they are not a priority; this report mainly covers the period immediately after the cessation of combat and emphasizes the top priorities. It is recommended these other sectors be considered in accordance with their impact on the process of peace and stability. Cultural

sites of high national and international value have been damaged, for example, and UNESCO must embark on an urgent plan for its areas of interest in cooperation with donors and other relevant organizations. Other sectors have also been affected, resulting in many people being unemployed. Such unemployment can also pose a threat to peace and stability.

On the civil service, the study recommends freezing recruitment in the public sectors for the next three years, and re-evaluating all recruitments, promotions, retirements, demobilizations and reintegration while taking 2010 as a baseline. A mechanism should also be established to ensure recruitments and promotions are based on needs, merits and qualifications, and not on partisan, regional or sectarian basis. Reviewing the wage scale and nationwide distribution of civil servants should be considered.

There is also a need to: encourage, fund and support vocational work; rehabilitate small enterprises and productive household programmes; disseminate food awareness programmes; help exchange expertise on local knowledge; support technical and vocational rehabilitation; and raise awareness of and combat poverty and disease. Non-governmental organizations could also participate in such projects.

The reform of this sector must begin by accelerating the response to the humanitarian situation and confronting the spectre of famine by providing financial, technical and logistical support through a transparent and effective mechanism to those urgently in need. There is a

need to address IDPs, energy, education, health, water, transport and other priority sectors within the administrative institutions in a coordinated manner as they have proved to be interdependent.

4. Judicial institutions

The judicial institutions “perform several key functions: punishing violent crime and property crime, reducing corruption, promoting the rule of law, defending human rights, enforcing contracts and maintaining and adjusting disputes”.³⁹¹ These institutions are a major area of focus during the State-building process. They are one of the most important pillars of the power of a State. The post-conflict phase calls for these institutions to be independent and strengthened to meet the needs of the population, especially for crimes committed during the conflict.

(a) Situation before the war

The judiciary in Yemen has the same characteristics as most other justice systems in Arab countries³⁹² with regards to weakness and ineffectiveness, lack of independence and submission to the executive apparatus, lack of transparency and accountability, and the influence of tribal elites. In Yemen before the war, most courts had been closed because of security breaches and the poor state of buildings, human resources and equipment. The crisis of this institution is a natural product of the State crisis. A report on conflict resolution and transitional justice in Yemen in 2014, concluded that: “As the Yemeni State has struggled to

regain political equilibrium, rule of law has deteriorated and criminality and armed conflict have increased. State institutions have weakened and now struggle to meet citizens' demands."³⁹³ The judiciary in Yemen is generally composed of two unequal sections: the formal judiciary and the informal judiciary, or what is known as the customary or tribal judiciary. The latter intervenes in about 80 per cent of disputes. In other words, the State is unable to exercise its authority under the quasi total domination of the informal judiciary.³⁹⁴ Instability during the transition period has led to "the political uncertainty and the rise in lawlessness [which] have simultaneously weakened both formal and informal actors' ability to resolve disputes sustainably and to prevent conflict".³⁹⁵

(b) Current situation

As the war intensified, the judicial system collapsed almost completely. The courts have been disrupted and most closed. Some judges have also been divided in favour of one or another of the conflicting parties, voluntarily or by force. Crime has spread to include murder, robbery, banditry and revenge. Crimes related to the conflict itself spread, exposing many citizens to massive attacks and resulting in the loss of lives and properties. The increasing number of grievances will place the judicial institution under considerable pressure, so fundamental steps must be taken and reforms launched for the short, medium and long term.

(c) Summary and priorities

The situation now requires an immediate rehabilitation of closed courts so they can start

working on disputes before they get worse, present a threat to social peace and hinder stability and development. To this end, the following steps can be taken:

1. Reform the supreme judicial organs, particularly the Supreme Court and the Supreme Judicial Council. The peace agreements should include the structuring criteria of these organs in accordance with the law of the judicial authority in force, in a manner that guarantees professionalism, expertise, seniority and high efficiency.
2. Re-open the courts and double their operating time so they can resolve as many cases as possible in a short period.
3. Unlike other public institutions, the judiciary needs to recruit more staff. It suffers a shortage of staffing when compared with Near and Middle East and global averages.³⁹⁶ Yemen needs to invest in ongoing training in the field of justice and professional skills,³⁹⁷ in particular the training of judges, prosecutors and lawyers on ways to deal with post-conflict issues. Heinous crimes have been committed and will ignite retaliations or revenges that can threaten security and stability. "Training for future judges and staff should focus not only on the High Judicial Institute in Sanaa but also, and especially as decentralization takes effect, on judicial centers outside Sanaa."³⁹⁸ For that purpose, this report suggests a fund be established to finance the judicial institutions for training, research, equipment and international expertise to meet the needs of the transitional period.
4. Conduct the usual judicial transfer, in accordance with the legal rules in force,

which was delayed by war, and support judicial inspection vis-à-vis staff performance, including accountability, in accordance with the law relevant to the judiciary; provide adequate security protection to courts and those involved in the judiciary.

5. Encourage reconciliation, arbitration and documentation of cases, thereby reducing the load on courts, especially in remote areas.
6. Support the use of traditional systems of justice or dispute resolution actors for their local knowledge, provided they play a role in sustaining security and stability, and adhere to the prevailing law. This is what specialists call alternative dispute resolution.³⁹⁹

(d) Political institutions

Political institutions include electoral systems, political parties and legislature⁴⁰⁰ as well as the executive arm, which in Yemen, includes the presidency, cabinet, provincial governors and local councils. Chronic problems have persisted in these institutions in all Arab countries. Studies have shown that “the political institutions in Arab countries are among the most centralized, least accountable and most non-competitive in the world”.⁴⁰¹ In Yemen, people accuse the elite in charge of political institutions of failing to meet, at different levels and on various occasions, the basic functions of the State. The Yemeni population appears to have little trust in its political institutions. Many feel that the war and conflicts reflect, to some extent, the failure of the political elite to manage these institutions. The use of violence to achieve political goals is responsible for the permanent

crisis Yemen finds itself in. The race to power relied on a violation of the social contract with the Yemeni people.

Most of the political institutions in the country have lost their legitimacy, which was based on the previous social contract, the constitution, and due to the people suffering from conflicts and war. The parties in the conflict have sacrificed the lives of Yemenis during this “war of leaders” as it was described by the United Nations Security Representative in his Security Council briefing in May 2017.

Political institutions have been divided vertically and horizontally. Yemen has more than one presidency and more than one government, and more than one of each sector belonging to the State apparatus. It is increasingly complicated and frustrating when people see some of these components unable to manage areas under their control.

These political institutions will be addressed by the negotiated peace settlements, but only some components will be addressed in this part of the report: the national reconciliation, referendum and elections, multi-partism and executive and legislative powers. Within each of these components, only some priority elements for post-conflict actions will be laid down.

(e) National reconciliation

National reconciliation is perhaps one of the most important steps to initiate in the post-conflict phase. Yemen has significant local experience in this area. At the end of the 1970s, Yemenis reached a “national compromise” after

a seven-year conflict. At the time, regional parties played, to some extent, a similar role to actors in this recent war, with some differences in the names of those actors and the geostrategic scope. After that compromise, those who were outside Yemen and had fought the republican regime returned and integrated into the political and social system of the republic, “and everything has been forgotten, and the page has been folded”.⁴⁰² Yemeni people back then moved past the wounds of war and conflict.

Another example is the general amnesty during and after the civil war of 1994. Also, some of the parties involved in the 1986 tragedy in Aden reconciled and overlooked the harmful residues of that conflict.

The National Dialogue Conference referred to “a process of political and social reconciliation based on comprehensive transitional justice mechanisms to move from the state of political conflict to a state of peace and the promotion of democracy”.⁴⁰³ The members of the conference saw the virtue of such reconciliation in establishing “a relationship between all political parties and members of society based on justice and the value of forgiveness, aiming at erasing conflicts and violations”.⁴⁰⁴ During the current war, the de facto government of national salvation in Sanaa announced a general amnesty for those participating in the war. It could be an important step to the larger national reconciliation based on an equal dialogue resulting in a sustainable peace and stability.

The historical experiences of Yemen in the reconciliation process, the forgiving nature of

the Yemeni people and the traditional arrangements for such processes could help tremendously in shaping a Yemen-specific mechanism by the Yemeni people themselves. If a regional consensus and international support for a comprehensive reconciliation is found, the process can be conducted based on needs to overcome the difficulties of the current situation. The international community should help outline the reconciliation to achieve peace and security within the framework of transitional justice, moving away from revenge and from giving impunity to those who have committed crimes that breach international humanitarian and human rights laws.

Such justice should include compensation and reparations mechanisms. Local knowledge in addition to social and tribal traditions can help with the implementation of reconciliation principles. The international community can assist in transmitting global experiences and by providing expertise for institution building and mechanisms for reconciliation, transitional justice and the negotiation of post-conflict and war reparations.

(f) Multi-partism

Yemen has a dynamic experience in multi-partism. After its reunification “a plethora of political parties in the early 1990s made Yemen one of the only Middle Eastern countries to tolerate peaceful, adversarial politics”.⁴⁰⁵ However, this pluralism was not immune to flaws that characterize parties in the Arab region in general: weakness and being manipulated by regimes, the breeding of a large number of parties, and the adoption of narrow regional or

sectarian boundaries. This, in turn, deprived these parties of representative capacity and social outreach at the national level, and created a lack of confidence in parties among the people of Yemen, with only about eight per cent trusting parties.⁴⁰⁶

Rebuilding an environment where political parties can compete and represent the interests of people at a national level must be one of the priorities of the period after the war. It is impossible to consider elections and democratization without organizing parties by law. On one hand, the war played a role in tearing apart these parties in Yemen, and dividing them vertically and horizontally into conflicting fractions. On the other hand, the continuation of armed groups belonging to political entities will lead to collapse and renewed violence. The parties involved in the conflict must, therefore, be integrated into civic party systems with social representation at the national level.

(g) Referendum and elections

The negotiated peace settlements will no doubt address the need to hold a referendum and elections to ensure the legitimacy of post-conflict governance and authority in the administration of the State. The literature suggests that in “many post-conflict situations, the government is required by donors to hold elections, so that citizens may have more influence than usual, so that the extent of their understanding of policy and governance may be atypically important”.⁴⁰⁷ Holding an election may not be urgent for Yemeni people compared with their urgent need for security and basic services,

but finding a way to give legitimacy to those in power is also a matter of urgency. A referendum could be the first step to building the State apparatus and to plan for elections. This “may require a ‘strong’ state and national coherence”,⁴⁰⁸ which should be secured in the short-term period following the war.

Before the war, the High Commission for Elections and Referendum had gone some way in arranging for a referendum and election process. It will be a priority for the post-conflict phase to re-activate and support this commission and benefit from its experience to accelerate the holding of any referendum or elections. This should be done while respecting the existing constitution or amendments agreed upon by the political parties and within a precise and strictly binding time frame. Experience has shown that failure to respect time frames exacerbates problems and leads to conflict. The establishment of a new social contract may be one of the projects at this post-conflict stage.

In addition to supporting the referendum and the preparations for elections, the report recommends supporting all democratic practices, such as public debates, political activities, freedom of information and an awareness of the role of journalism and its ethical codes in contributing to peace and stability in Yemen

(h) Executive and legislative powers

The main issue concerning these two components of the State is the question of legitimacy. Legitimacy is a controversial concept in politics.⁴⁰⁹ In Yemen it is now more

complicated than ever. The different parties to the conflict assume some kind of legitimacy. By evoking any of the three complementary conditions of such a highly controversial political notion, namely consent, law and norms, one may understand these divergences and misuses of the term on both sides.

The international community recognizes President Hadi's government, which is based mainly in Riyadh. This is a politically motivated position, justified by international resolutions issued by the United Nations Security Council. It is also based on external support represented by the GCC Initiative, a regional mechanism responsible for organizing the two-year transitional period (2012-2014). This was extended, by a kind of national consensus, for one extra year. The real challenge for this legitimacy is the internal consent and social norms. One expert in this matter said that "the identification of power with right endures so long as consent exists. If consent be withdrawn, that is the sign of a lack of political legitimacy".⁴¹⁰ As far as norms are concerned, the Hadi government is working under difficult circumstances, mostly from outside the country, without any effective human resources or infrastructure. Even its presence inside Yemen under the protection of foreign forces, and alleged alliance with extremist and armed groups, makes the social norms at a national level most questionable. The expert further stated that "the function of legitimacy is to respond to the need for social integration proper to the identity of a society".⁴¹¹ That is why it is so problematic, inconceivable even, to extrapolate legitimacy without national consent and social norms.

Then there is the de facto authority based in Sanaa. While not recognized by the international community, it has under its power most of the human resources and infrastructure of the State. The legislature is also working with it and legalizing its actions. In addition, it has a degree of national support, reflected in demonstrations and the systematic mobilizations of people. The blockade of air, sea and land, and the international isolation made any manoeuvre of this de facto authority difficult and created pronounced frustration among the population.

Legitimacy is questionable on both sides: president versus legislature, both working beyond their legal mandates; exile versus national government, though neither can respond to the real needs of the population for different reasons.

To change the status quo, it is crucial to initiate a dialogue between all the fragmented entities, bearing in mind that the more the dialogue is delayed, the bigger the risk of the situation worsening in the post-conflict period.

Three gradual steps are required, international, regional and national in nature. At the international level, there must be new resolutions that aim to bring an end to the current war and launch regional and national mechanisms for pacifying the region as a whole. At the regional level, the security of maritime routes and the national boundaries of all the regional players must be asserted, and a major programme of reconstruction launched. At the national level, local dialogue must be initiated, building on the accumulated achievements of

previous rounds of dialogue to set up the negotiated peace settlements.

5. Private sector and non-governmental organizations

Both of these components are essential for rebuilding the State. They serve all the institutions discussed in this part of the report.

Before the war, the private sector contributed to about 53.7 per cent of GDP and 75 per cent of gross investment. In 2013, political instability, poor electricity services and rampant corruption were the main obstacles facing private-sector enterprises.⁴¹²

The *Doing business* report for 2017, issued by the World Bank Group, showed that Yemen's ranking dropped to 179 out of 190 world economies.⁴¹³ It is a considerable drop, a consequence of war, when compared with 2014 when Yemen was ranked 137 out of 189 countries.⁴¹⁴ Even during the internal conflicts before the war, Yemen was ranked above the bottom 50 countries on this list.

Available data show that the private sector has experienced severe shocks, resulting in the closure of 26 per cent of businesses in the industry, trade and services sector by 2016. Some 42 per cent of women-owned enterprises, for instance, have closed, mainly due to the physical damages to 95 per cent of the total number of closed facilities, as well as the loss of capital and lack of electricity and fuel. As a result, 41 per cent of enterprises were forced to lay off about 55 per cent of their staff as of

October 2015. Daily working hours in enterprises have been reduced by 50.6 per cent, from 13.5 hours before March 2015 to 6.7 hours after that period.⁴¹⁵

Yemen's private sector suffered from the political instability, permanent crisis and internal conflicts. The war created more difficulties for this sector, including "external trade restriction, exacerbating energy crisis, widening fiscal and monetary imbalances, uncertain future of business climate and difficulty to access credit".⁴¹⁶ Other war-related challenges include transport and insurance difficulties, restricted movement and port closures. In addition, the private sector faces structural challenges, such as the "predominance of the family business pattern and small enterprises, fragile infrastructure, low skills of workers, weak rule of law and the weak economic, political and security stability".⁴¹⁷

The post-war phase will be an occasion to provide technical assistance to the private sector to help it reform itself and solve its structural and emerging problems. The sector needs to take part in the reform of the State and rebuilding peace. The United Nations Institute for Peace Guiding Principles of Stabilization and Reconstruction recommend that business actors be included to maximize the participation of all players involved in governance, and call for efforts to maximize the peacebuilding benefits of private sector activity. They further recommend that external peacebuilders should not wait until after peace deals are concluded before starting dialogue with private sector representatives.⁴¹⁸

The private sector will recover faster than the public sector because of its flexibility and rapid response to the transformation's requirements. The role of the private sector is complementary but essential to building State institutions, especially since several recommendations point to the importance of post-war partnership.⁴¹⁹ It is important to assign primary tasks to the private sector, such as addressing unemployment and labour market rehabilitation, attracting foreign investment, creating an environment suitable for business and investment⁴²⁰ and participating in major projects where it can be an active partner.

This sector should receive technical support and facilities to address its internal and external problems. The priority is to create a clear, transparent and fair mechanism to involve the private sector in the institutional reconstruction of the State, then to coordinate with it in the procedures that will stimulate the role of this sector and enhance its participation in the reform as a whole. Experts point out that "the fragile states policy frameworks of various bilateral OECD donors have also begun, in recent years, to refer to the need to consult or engage business not just on economic recovery issues but on conflict risk and prevention".⁴²¹

The private sector should benefit from institutional reforms and the alleviation of banking restrictions imposed on Yemen that particularly affect the sector. In the immediate post-war period, it is important to sustain the mechanism proposed by the World Bank in April 2017 that aims to help Yemeni importers secure foreign currency to import food.⁴²² Other mechanisms should be proposed to encourage the Yemeni and foreign private sector to inject

capital into the Yemeni market to compensate for the financial havoc that occurred in the country before and during the war.⁴²³ Collier states that a feature of this stage is the continuation of capital flight until policy is improved and risk is reduced. He notes that the large proportion of private wealth held abroad at the end of the civil war offers significant potential to accelerate recovery. An example is Uganda, where two-thirds of private wealth was held abroad until the mid-1990s when the wealth was brought home. He concludes that, "Since capital flight or repatriation is liable to be so important in post-conflict situations, policies should in part be set with a view to the objective of encouraging repatriation. The policies that have been found to affect capital flight are exchange rate overvaluation, high risks and low returns on domestic investment."⁴²⁴ Those policies are evident now in Yemen, and may be accentuated in the future.

It is important to involve both national and international non-governmental organizations (NGOs) in the post-conflict period. Their expertise, technical and human capacities, flexibility and diversity make them essential partners for accelerating post-war interventions, especially with humanitarian assistance.

At the national level, NGOs represent an important platform for the participation of women, youth, marginalized persons, persons with disabilities and others. They can participate in a range of tasks that support the work of State institutions and the community. Partnerships can be established among these organizations at national and international level, and between these organizations and

government, donors and local communities.⁴²⁵ Many NGOs in Yemen have gained the trust of both the population and donors.

C. General conclusion and recommendations

The International Monetary Fund enumerated early in 2016 several steps to be taken in the event of combat ceasing. It stated that, “As the conflict comes to an end, it will be first of all important to take stock of the damages caused by the conflict and identify reconstruction needs. Another priority will have to be restoring security and initiating an inclusive political process that addresses the grievances which ignited the conflict. Restarting hydrocarbon production and exports will be key for raising fiscal revenues to reduce the deficit and for earning foreign exchange to finance the much-needed imports for reconstruction. Restoring quickly basic education and health services as well as resuming the operations of programs benefiting the poor would be important for building confidence. [...] The international community needs to be ready to move quickly to support economic recovery and resumption of reforms once the political and security uncertainties subside.”⁴²⁶ These steps are still priorities today in the post-conflict period. The report will hereafter suggest a sequence for them, and identify other priority actions for the immediate post-war period.

The most important priorities can be summarized as follows:

1. Resume Central Bank of Yemen operations from its legal headquarters in Sanaa. It should be provided with resources to pay employee salaries. Scheduling the unpaid salaries based on 2014 or 2010 records should be considered to address social tensions that could endanger the peace process.
2. Consider establishing a permanent and effective peacekeeping monitoring mechanism, drawing on international expertise and local capacities. Any relapse, instability or violence will constitute “unbearable pressure on consensus-building processes and emerging fragile institutions, thereby affecting the legitimacy and credibility of the process itself and leaving it subject to authoritarian reversals”.⁴²⁷
3. Reunify the armed forces and security sector, and connect them to a unified command centre, emphasizing their monopoly on the legitimate use of force to maintain security and stability. Launch the medium and heavy disarmament programme, and the demobilization and reintegration programme.
4. Protect the independence of the judiciary and provide support to hasten the settlement of disputes and resolve post-conflict issues. This can be done through various mechanisms, ranging from formal legislation to conciliation and customary arbitration, to achieve security and provide justice, equity, reparation and compensation.
5. Coordinate with United Nations agencies and relevant bodies to develop a comprehensive database for the casualties.⁴²⁸
6. Launch a broad administrative and financial reform programme that provides basic

needs and rehabilitates the energy, health, education, water, sanitation, roads and ports sectors. Coordinating with the local community will enhance the “economic governance and effective service delivery: if local communities and groups feel excluded from socioeconomic opportunities (education, health care, access to social security, infrastructure and job opportunities), they will have less opportunity to resort to violent rebellion and anti-State attitudes”.⁴²⁹

7. Develop a fast-track initiative to train human resources in order to resolve post-conflict issues in various State institutions.
8. Establish sectoral bodies with highly qualified persons to effectively manage the funding of short-term projects and to help with planning medium- and long-term reforms and reconstruction. Highly qualified Yemeni and international experts can contribute to such a process.
9. Involve the private sector and NGOs in the reform process and provide them with a suitable environment to add value.

In summary, Yemen needs a comprehensive plan. Like any post-conflict country, it “needs socioeconomic reconstruction; that is, it needs social and economic development that benefits a majority of citizens.”⁴³⁰ Due to the magnitude of the destruction and the high number of people affected and in need, “External actors should accept that locally conceived and driven reform processes will take time and require an iterative approach. Entry points are likely to be far from perfect and local actors will be learning by doing. Progress is likely to be measured in small

steps. Patience and a willingness to take risks will be essential.”⁴³¹

Yemen’s international relations will be important in the post-conflict period. There must be reforms to rectify Yemen’s poor diplomatic representation so that the country can work effectively with the international community. This representation should be based on qualification and merit so that Yemen’s needs can be effectively conveyed. This will remedy the current situation, in which there has been profiting from war, nepotism and patronage.

Such measures also raise the importance of involving the Yemeni diaspora and newly displaced into the process of reconstruction and encouraging them to return home. There are more than 188,000 people displaced by the war living outside Yemen.⁴³² Among them are highly educated Yemenis who have a rich professional experience. Additionally, Yemeni investors will be encouraged to return and invest in the future of their country.

At the end of this part of the report, it is critical to emphasize the importance of drafting a new social contract, which could be implemented within the framework and timeline determined by the negotiated peace settlements. The report recommends that the new social contract should assert the importance of the unity, sovereignty and territorial integrity of Yemen as stipulated by United Nations Security Council resolutions. It may include a larger and effective financial and administrative decentralization, or a system of “regions” based on a referendum and the social participation of all groups and

components of the Yemeni citizenry. “Past transitions clearly show that constitution-writing is best done by a drafting committee that is representative, independent and includes, in addition to constitutional experts, civil society actors, academicians, representatives of main political parties and other key stakeholders.”⁴³³ Political parties should agree that the constitution needs to be based on international conventions and standards, and guarantee to protect Yemen from relapsing anew into ideological and sectarian disputes.

It is vital to carefully consider the Yemeni situation, to have a clear diagnosis based on its specificities, including its historical, cultural, social and political aspects. It is also vital to have a realistic and objective approach based on scientific, methodological standards. Facts, reliable data and resources were used to support recommendations. Emphasis was placed on Yemen’s historical and contemporary experiences. Recommendations were presented to tackle the immediate future as soon as hostilities cease, and can be reviewed once the war is over. Nevertheless, the situation in Yemen

requires several sectoral studies that combine and bring together multidisciplinary approaches.

The last two recommendations are: bring the war to an end through a Security Council resolution that requires all parties to immediately cease fire; and redraft this part of the report to set up a recovery and peacebuilding assessment.⁴³⁴ The assessment can detail how to help the prospective government identify, prioritize and sequence recovery and peacebuilding activities, provide an inclusive process to support political dialogue and the participation of stakeholders, and coordinate international support through a joint exercise and monitoring system.

These priority actions are essential steps on the long, healing journey Yemen needs to pursue. Beyond addressing the needs of its population, Yemen needs to meet global goals, such as the Sustainable Development Goals, within the allotted time frame. More detailed studies and expert assistance is needed to help Yemen recover from the lost years of war and conflict.

Conclusion: post-war risks in the Arab region and policy implications

A recent UNESCWA study⁴³⁵ analysed all 109 post-war episodes since 1970 to identify risk factors for a war relapse. The study drew on the large quantitative literature on civil war and post-war recovery, including work from the Uppsala Conflict Data Program, the Peace Research Institute Oslo, the Polity IV project, and the World Bank. The study paid particular attention to factors thought to drive patterns of war and instability in the Arab region, such as authoritarianism, youth unemployment and oil rents.

Using regression analysis, the study reveals a few key associations. The central findings are that political institutions, military factors and long-term income growth have the greatest impact on the risk of civil war relapse. In particular, post-war States with more representative and competitive political systems, as well as larger armed forces per capita, were better able to avoid war relapse.

The study undermines several prominent hypotheses about post-war stability; most economic indicators, all measures for ethnicity and culture, and most predetermined factors appear not to contribute to post-war risk, one way or the other, at statistically significant levels.

With one exception discussed below, there is no evidence that the economic characteristics of post-war countries strongly influence the

likelihood they will return to civil war. Income and development assistance per capita, oil rents as a percentage of GDP, overall unemployment rates and youth unemployment rates are not associated with civil war relapse.

Importantly, there is no evidence that the culture, religion or geopolitics of the Middle East and North Africa will distinctively impede post-war recovery. Conventional measures for Islam, Arab culture, and geographic location were introduced into the statistical models. None of these variables showed statistically significant correlations with the risk of war relapse since 1970, holding everything else constant. Such factors should not hinder post-war stabilization, recovery and transition in Iraq, Libya, the Syrian Arab Republic or Yemen. These findings broadly contradict often crude arguments about Arab or Muslim “exceptionalism” and conflict.

What did matter, then? The study found three primary sets of drivers of post-war relapse.

1. Political institutions of post-war countries

Democracy matters: it has large downward effects on the risk of relapse and is statistically significant across a number of different model specifications and alternative measures.

Democracies have an 82 per cent lower risk of relapse relative to all other regime types. Having held nationwide elections within the previous five years reduces risk of war relapse by about 56 per cent. Delaying elections is a risky strategy: The likelihood of relapse increases 6 per cent for every year that post-war elections are postponed. The results suggest that good governance, political competition and democratic legitimacy can greatly reduce risks in post-war settings.

We should not necessarily interpret these results as evidence that post-war elections are appropriate in all circumstances, or that such elections have no negative effects. However, the policy implications are straightforward: elections are context-dependent and should be held as early as is feasible and judicious in the post-war period, if not during the war termination phase itself. Delaying elections should be considered on a case-by-case basis. Policymakers should not resort to such delays to enhance a fake and unsustainable stability. Elections, especially early elections, may not be appropriate in every case, but on average they tend to decrease the risk of civil war relapse. If policymakers decide to delay elections (and there are certainly legitimate and practical reasons for doing so), then they should explore alternative risk-mitigation policies.

Adhering to human rights also evidently indicates for post-war stability. Since 1970 no country scoring “free” on the Freedom House ratings for civil liberties relapsed into civil war.

Decentralization also affects post-war risks, but differently as time passes. Decentralization correlates with lower risk of relapse for roughly

the first five years of a peace period, but it correlates with heightened risk thereafter. The results suggest that, depending on cases, decentralization may be a good short-term peacebuilding strategy but a poor long-term one. Decentralizing power to local actors through federalism or as part of a power-sharing settlement may encourage local actors to “buy-in” to the post-war political system and may entice ex-combatants to “give peace a chance” (Lennon and McCartney, 1969); however, this effect comes at a steep long-term cost. The findings suggest that, in the long run, decentralization hardens political divisions and generates its own conflict risk.

One possible interpretation is that decentralization inhibits the ability of central governments to deliver public goods to peripheral regions effectively. Another, somewhat related interpretation is that, in practice, post-war decentralization locks in place local wartime leaders who simply use the peace period to prepare for renewed conflict.

There are at least three implications emerging from this result. First, as a rule of thumb, decentralized governance in post-war countries should be avoided unless such reforms are necessary for parties to agree to a peace settlement, unless such reforms are necessary for a post-war society to survive its initial peace period, or unless the post-war environment is exceptionally favourable, risks are low, and actors are reasonably certain that decentralization can be safely pursued for its intrinsic benefits. Second, decentralization can be used to “purchase” short-term stability to give policymakers and stakeholders a window

of opportunity to enact longer-term political reforms, to stimulate economic recovery and long-term growth, or to reconcile societies torn apart by violence. After all, peace cannot endure in the long term if it does not survive the short term. Third, if decentralization is pursued, then the long-term risks generated from that institutional choice should be offset by other, risk-mitigating policies.

All told, the design of political institutions matters a great deal for shaping post-war risks.

2. Military and security-related factors

The findings of the study indicate the critical influence of military factors on the risk of relapse in post-war countries. Perhaps not surprisingly, larger security sectors reduce the risk of war relapse: greater numbers of military personnel per capita reduce risk at statistically significant levels. For every additional soldier in the national armed forces per 1,000 people, the risk of relapse is about seven per cent lower. For a country the size of Libya (approximately 6 million people), achieving a seven per cent reduction in conflict risk would require about 6,000 additional security personnel. For the Syrian Arab Republic, a similar effect would require approximately 20,000 additional personnel; difficult and perhaps expensive, but certainly a feasible scale for many States.

Increasing military personnel is a comparatively simple strategy for post-war governments to “purchase” a measure of stability, at least in the short run, even if high military expenditures are

an unsustainable policy choice for low- and middle-income countries in the long run.

Certainly, such personnel increases are often far more technically feasible, and often more politically palatable, than implementing tough economic reforms, establishing an effective administrative State, or democratizing and liberalizing governance. Larger militaries are better able to deter renewed rebel activity, as well as prevent or reduce other forms of conflict, such as terrorism, organized crime, and communal violence.

The presence of outside troops also has significant influence on risk. A consistent finding in the political science literature is that United Nations peacekeeping is associated with longer and more durable peace periods following civil war. The study lends support to this well-established finding.

However, the presence of non-United Nations foreign troops is profoundly adverse for post-war risks, almost tripling the risk of relapse. There are at least two potential interpretations of this latter finding. First, foreign troops may intervene in exceptionally difficult circumstances, and therefore their presence indicates post-war episodes that are most likely to fail. Second, foreign troops, particularly occupying armies, may generate their own conflict risk. The latter interpretation would echo some arguments made near the end of the United States occupation of Iraq that the presence of coalition troops was not dampening the insurgency but rather inflaming it. Such an interpretation also lends support to arguments that the Israeli occupation of the West Bank (and

before that, southern Lebanon and Gaza) is not a sustainable conflict-management strategy, even from the Israeli perspective.

3. Economic growth

The only economic variable found to be associated with post-war risk is income growth per capita. Notably, like decentralization, the relationship of income growth with risk changes over the course of the post-war period. In the initial post-war months, a five per cent annual GDP growth rate per capita is associated with 25 per cent greater risk of relapse, relative to flat growth. Over time, this economic growth-related risk decreases, until about 20 months into the peace period, when higher growth becomes a protective factor and begins mitigating the risk of war relapse. By month 75, a five per cent annual growth rate is associated with a 50 per cent reduction in risk of relapse, relative to flat growth.

This finding suggests that economic stabilization and recovery are not quick-win strategies to prevent war relapse, contrary to conventional wisdom in the international community. In the initial post-war years, high growth is associated with higher risk of war relapse – the Libyan case is worthy of mention with its post-2012 economy of predation – and the pacifying effects of income growth only kick in after two years. In the short run, rapid growth cannot substitute for the careful design of transitional political and military frameworks and may even prove destabilizing. Instead, the development- and humanitarian-centered recovery strategies advocated by the

international community should be pursued mainly for their intrinsic benefits, but policymakers should not expect such strategies to generate post-war stability and prevent war relapse on their own.

Nonetheless, in the long run, countries can see dramatic reductions in their risk of war relapse by maintaining high growth rates. This result indicates that economic policy in post-war countries should be focused on reforms that produce sustained, long-term growth.

(a) Policy implications for the Arab region

The policy implications of these questions are critical: international organizations, including the United Nations and the World Bank, have repeatedly and emphatically argued that post-war stabilization and recovery depends on implementing economic reforms, generating employment, eradicating poverty, establishing institutions, implementing post-war justice mechanisms, and other policies. Post-war governments have implemented policies reflecting those beliefs. If key components of this international peacebuilding consensus are incorrect, then resources are being wasted and lives are being put at risk.

The central findings of the ESCWA study are that political institutions, military factors and income growth have the greatest impact on the risk of civil war relapse in post-war countries.

Democracy, elections and greater numbers of troops per capita are clearly protective factors, substantially mitigating the risk of relapsing into civil war. Decentralization and income growth have significant impacts that change over time.

Decentralization is protective in the initial post-war phase, but substantially increases risk of relapse after approximately month 55. Higher income growth per capita is associated with greater risk of relapse until approximately month 20, and is increasingly protective thereafter. Foreign military interventions almost triple the risk of relapse, holding everything else constant. At the same time, several prominent hypotheses about post-war stability have been undermined: many economic indicators, all measures for culture, and most predetermined factors appear not to contribute to post-war risk, one way or the other, at statistically significant levels.

What are the lessons for policymakers and stakeholders in the Arab region?

(b) Representation, competition, and the rule of law

Post-war governance reforms in the Arab region should aim to increase the representativeness and competitiveness of political institutions, and post-war governments should adhere to international standards of human rights and the rule of law. The historical record indicates that such strategies are feasible, even despite recent setbacks to political reform in the Arab region. Despite various factors working against them, many post-war countries since 1970 have moved swiftly through their political transitions and established reasonably democratic regimes during their first post-war decade; they include Burundi, Guatemala, Liberia, Kosovo, Namibia, Nicaragua, Nepal, Peru and Sierra Leone. Though post-war democracy tends to emerge under favourable circumstances – a robust international peacekeeping mandate, a strong

and unified State, supportive regional contexts, or the absence of residual violence and resilient spoilers – and though favourable contexts are unlikely to be present in many post-war Arab countries, careful institutional reforms can probably still capture some of the risk-mitigating effects of democracy, human rights and the rule of law even in the absence of a full transition.

Elections are not a panacea. Reasonably free and fair elections were implemented in post-war Iraq (January 2005), post-war Lebanon (August to October 1992), and post-war Libya (July 2012). Each election was considered a reasonable success at the time, and yet each country failed to stabilize or fully transition to democracy. This points to the importance of embedding elections in a broader political reform framework: while the findings of this study suggest that elections can contribute to post-war success by reducing risk of relapse, they are not capable of preventing conflict relapse on their own. National reconciliation processes, good governance, the rule of law, political and civil liberties, and other institutional and governance reforms can contribute to the success of elections as a peacebuilding strategy.

In practice, intentional design can improve the competitiveness and representativeness of political institutions. For example, membership in parliament can be engineered such that ethnic and sectarian groups are proportionally represented, and such that half the membership is men and half women. Post-war governments can ensure representativeness through an electoral law that requires alternation on closed

party lists in a proportional representation system, or through direct appointments if elections are delayed. If interim parliamentarians are appointed under a power-sharing agreement, then each faction could be required to submit lists for consideration that are representative across ethnicity, sect and sex. International actors can also insist that post-war governments should govern according to international standards of human rights and the rule of law.

(c) Decentralization in the Arab context

Many expert observers have argued for some form of decentralized governance in post-war Iraq, Libya, the Syrian Arab Republic and Yemen, including federal arrangements. Countries in the Arab region are some of the most centralized polities in the world, and these regimes have been especially resistant to decentralization, even before the recent conflicts, because they perceive such reforms as precursors to State fragmentation, to neo-imperialist redesign of their borders, or to the formation of ethnic enclaves. The present conflicts have only reinforced these anxieties.

The findings in this study suggest that decentralization decreases short-term risk of relapse, but increases such risks in the long run. Therefore, if decentralization is pursued as a peacemaking and peacebuilding strategy in the Arab region, it must be done carefully and in combination with policies that reduce conflict risk in the long run; for example, policies to promote robust economic growth. In some places, such as in the least developed

countries, there may be too little institutional capacity at the local level to assume such responsibilities. In Yemen, for example, significant international support is needed to institutionalize effective, rule-based centre-local relationships, including monitoring, coordinating, guiding and, when necessary, overruling local authorities. Without external support in such contexts, decentralization is clearly a risky post-war strategy.

If decentralization reforms are pursued in post-war Arab countries, the challenge will be to institutionalize centre-local relationships that enhance local governance without entrenching regional divisions that subsequently lead to State fragmentation. In practice this means preventing armed groups from securing local monopolies of force and from subverting national peacebuilding and recovery programmes. Such a fragmented transition occurred in Libya post-Qaddafi, ultimately leading to the transition's collapse in 2014.⁴³⁶ Post-war Arab governments can balance against local armed groups by appointing strong transitional governors and district executives who are credible, civilian, well-respected and representative of local communities, and who can act as trustworthy interlocutors to these armed groups, as well as to their constituents. These leaders should be assisted by councils at the governorate and district levels that have strong technocratic flavours while still representing the communities in a given jurisdiction. Governorate and district governments should include equal numbers of women and men at all levels, including the top leadership.

(d) Professionalism and integration of the armed forces

A third lesson for post-war stability in the Arab region relates to the security sector. The findings in this study indicate that post-war governments should maintain or increase the number of active-duty military personnel under their control during the first decade of the post-war period. For every additional military personnel per 1,000 people, a country's risk of relapse declines approximately seven per cent. Though Arab militaries are some of the largest in the world on a per capita basis, conflicts in Iraq, Libya, the Syrian Arab Republic and Yemen have put tremendous stress on those governments' military forces, even leading to fragmentation and collapse in the cases of Libya and Yemen. In addition to rebel forces, new pro-government armed groups have stood up in all four countries. Reconstituting and reforming the security sectors in these countries will be a central task for all post-war governments.

How might this work in practice in the Arab region, in the context of negotiated settlements? As part of negotiated settlements, the highest-quality government and rebel forces could potentially be merged into a single command structure, and then carefully retrained, re-equipped and integrated fully over the post-war period. Such mergers are extremely difficult to implement in practice,⁴³⁷ but they are often the only way to conclude a settlement. Secondary forces, such as informal rebel units and pro-government armed groups could be withdrawn from the field, retrained, and redeployed as reserve forces, gendarmes, or national guards, along lines suggested by Wehrey (2014).

Demobilization and reintegration programmes could focus their efforts on the least effective rebel and loyalist forces.

If competing forces remain mobilized in a post-war environment, then issues of timing, coordination and boundary policing become paramount. Third-party military observers, perhaps from the United Nations and perhaps utilizing aerial surveillance technologies, could provide credible information to all parties on troop movements and counter-terrorism activities, in order to forestall misunderstandings and reduce perceptions of vulnerability. Furthermore, unarmed observers might helpfully contribute to retraining and redeploying lesser-quality forces, and the demobilization and reintegration of the least-effective forces. With the consent of post-war governments, international peacekeepers could also garrison some communities that would otherwise feel too vulnerable to demobilize their local militias or hand over weapons.

In negotiated settlement scenarios, post-war governments would probably establish an inclusive national security council and general staff to manage these processes. A national security law would be needed to provide the legal and institutional framework for the control and regulation of the security sector, including imposing military justice and discipline on all armed groups. Experiences in post-war Lebanon and post-Qaddafi Libya indicate how critical it is to enact, early in the post-war period, a national security law that provides a framework for the ongoing regulation and eventual integration or demobilization of all non-State armed groups. Once non-State armed groups entrench

themselves into post-war politics, it becomes increasingly hard, if not impossible, to subordinate them to the formal security sector, let alone demobilize them completely, without resort to force. The basic terms of such a law could be embedded into an overall peace agreement.

Attention to personnel numbers is important, but it is not the only way to enhance internal security in the post-war environment. Even before 2011, the Arab region's armed forces, intelligence agencies and police organizations were universally regarded as too large, under-trained, politicized, top-heavy with personnel, equipped with obsolete weapons systems, incapable of providing adequate levels of security, incapable of providing human rights-centred security, suffering from poor morale, unresponsive to civilian authorities, and unable to engage in long-term planning, produce transparent and accountable budgets, or submit to legislative or civilian oversight. In many countries in the region, the security sector's primary function was and is to protect the regime from domestic and international political opposition, rather than to supply public order, deter external aggression or provide justice to their societies. When wars in Iraq, Libya, the Syrian Arab Republic and Yemen finally end, post-war governments in those countries should not miss the opportunity to break from this regional pattern, and reconstitute their security sectors along global best practices (see, for example, Ban, 2014). Reforms should concentrate on improving human rights, human security, meritocracy, internal governance, external accountability and professionalization. Holding the size of the armed forces constant,

but improving their effectiveness, would presumably have beneficial effects on the risk of conflict relapse, similar to adding extra personnel per capita.

(e) Negotiating the exit of foreign troops and dealing with foreign fighters

Over the past five years, conflicts in the Arab region have become highly internationalized. The Syrian conflict is again instructive. Possibly tens of thousands of foreign troops are active in Syria: many countries from within the region and without have ground forces or affiliated armed groups operating in the country. A United States-led coalition has been bombing ISIL/Da'esh targets in the Syrian Arab Republic since September 2014, and Russia has conducted an air campaign in support of the Government since September 2015. The Gulf Cooperation Council has expressed readiness to send ground troops into the country. More than 30,000 foreign volunteers have traveled to the Syrian Arab Republic and Iraq to join ISIL/Da'esh. Large numbers of volunteers from several countries in the region and internationally have joined a variety of loyalist, Kurdish and independent non-State armed groups with a variety of organizational goals.

External influences are known to have great impact on the duration of civil wars and their outcomes. Dobbins and others (2013) identify "geopolitics" as a key driver of conflict relapse, and Weinstein and Francisco (2005) show how the sudden end of the Cold War, and the subsequent withdrawal of external support for proxies, swiftly ended the decades-long conflict in Mozambique. This ESCWA study has

provided evidence that the presence of foreign forces nearly triples the risk of conflict relapse.

Negotiating the rapid withdrawal of foreign forces is one clear strategy that post-war governments in the Arab region can adopt to reduce their risk of relapse. Compared with policies that require expensive or complex institutional reforms, such a post-war strategy is comparatively feasible in the sense that many foreign fighters can be withdrawn simply on the agreement of foreign powers. The international community, and the United Nations, could play a key role in facilitating the rapid but judicious withdrawal of foreign troops. International observers could also assist in the monitoring and verification of the exit of foreign ground troops.

Addressing the issue of non-State foreign fighters will be far more difficult. Post-war governments in the Arab region, with assistance from international and regional partners, should consider a regional demobilization and repatriation programme for fighters willing to return home to countries willing to take them. It is currently unclear how many foreign fighters will seek to return home after wars end in Iraq, Libya, the Syrian Arab Republic and Yemen. Some unknown proportion will go underground and try to spoil any settlement, and others will attempt to relocate to other theatres of war. Still others will join regional criminal networks that can exploit their skills in violent, clandestine and illicit activities. Rigorous research on this topic is sparse, but actors in the region should begin collecting best practices and begin planning now to sift fighters by their risk profiles, neutralizing some, and demobilizing, deradicalizing and reintegrating others.

(f) Long-term economic growth

The final lesson for post-war countries in the Arab region is the importance of sustained economic growth. Economic stabilization and recovery are critical components of post-war policymaking, but potential risks associated with rapid growth should be offset in the first two years of the post-war period. Once countries emerge from this fragile initial period, they can realize dramatic reductions in their risk of war relapse by maintaining high growth rates.

The costs of conflict in the Arab region are immense. In 2016, UN ESCWA estimated that the annual gross domestic product of the Syrian Arab Republic had been cut in half by the conflict, that cumulative economic losses were almost \$260 billion, and destruction of housing and infrastructure was approximately \$90 billion.⁴³⁸ The World Bank reported that Yemen's economy contracted by about 28 per cent in 2015.⁴³⁹ Libya's economy is almost totally dependent on oil production, and conflict in that country has dramatically impinged on official production and export since 2014. Iraq's economy has been hit by both the global oil shock and the ISIL/Da'esh insurgency.

The economic performance of post-war countries is quite variable, and development aid in such contexts can have profound influences on income growth.⁴⁴⁰ (In the dataset of post-war episodes used in this study, the mean annual growth rate is 3.0 per cent, with a standard deviation of 10.5.) Even countries devastated by war can rebound quickly, and middle-income countries are among the best performers in the dataset, suggesting that Iraq,

Libya and the Syrian Arab Republic could see sustained growth in any future post-war period. Though each case is different, the end of combat, the restart of oil exports and the injection of reconstruction funds should jumpstart the economies of each country. Maintaining high growth through the entire

first post-war decade, and thus capturing the large risk-mitigating impacts of growth, will be more difficult, especially given the well-known stagnation in the region. Policymakers should consider bold, persistent structural reforms to promote growth in the latter half of their post-war decades.

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266. Alvergne and Latouche, 2010, p. 467.
267. Swenden, 2002, p. 67.
268. Erbil, Sulaymaniah and Duhok.
269. UN-Habitat, 2011, p. 21.
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271. UN-Habitat, 2011, p. 21.
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273. Al-Abadi and Al-Matoury, 2014, p. 77.
274. USAID, 2007.
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277. Ibid., p. 27.
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279. As discussed in this section, officially, local powers were broadened and there were changes in the appointment of local office-holders and fiscal decentralization steps. However, there were no changes in the number of vertical tiers directly funded by the public budget, local expenditure powers, and number of civil servants as a ratio of the population in the jurisdiction where they work. The latter is expected to increase with the devolution of eight ministries, but had yet to materialize at the time of writing.
280. The Shura Council ruled in favour of maintaining centralization of the security sector based on 1994 legislation. Skype interview with constitutional building expert Zaid Al-Ali, 21 October 2016.
281. World Bank, 2016, iii.
282. World Bank, 2017, p. 218.
283. Kauzya, 2003.
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285. Sayigh, 2015.
286. Lackner, 2014, xiiv et seq.
287. Hill, 2017, p. 39 et seq.
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289. Orkaby, 2017, p. 79 et seq.
290. Knights, 2013, p. 264.
291. Hill, 2017, p. 45 et seq.
292. ECOSOC, 1999.
293. Wedeen, 2008, p. 60.
294. Hill, 2017, p. 49.
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296. Phillips, 2008, p. 4.

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298. Orkaby, 2017, p. 212.
299. ESCWA, 2016b, p. 35.
300. Variso, 2017.
301. Sayigh, 2015, p. 15.
302. Variso, 2017; Noman, 2017.
303. Cf. Orkaby, 2017, p. 214.
304. Day, 2012, p. 8.
305. Jackson, 2010, p. 119.
306. Bennett and others, 2010, p. 7.
307. FFP, 2017.
308. Torkington, 2017.
309. Sayigh, 2015.
310. 170 out of 176.
311. Bennett and others, 2010, p. 7.
312. OCHA, 2017.
313. SCSS, 2017.
314. Cf. Amnesty International, see; BBC, see <http://www.bbc.com/news/world-middle-east-34211979>. Deutsche Welle, see <http://www.dw.com/en/yemens-forgotten-war/av-37107442>. *Foreign Policy Digest*, see <https://intpolicydigest.org/2017/01/30/yemen-forgotten-war/>; <https://news.vice.com/story/yemens-forgotten-war-is-a-catastrophe-thats-getting-worse>.
315. UNDP, 2008b, xviii.
316. Ndikumana, 2016, p. 141.
317. UNDP, 2008b, xvii.
318. ESCWA, 2016b, p. 45.
319. Phillips, 2008, p. 73.
320. Salisbury, 2017, p. 30.
321. ESCWA, 2016, p. 79.
322. Phillips, 2008, p. 64.
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325. Bennett and others, 2010, vii.
326. Sanaa Center for Strategic Studies, 2017.
327. International Crisis Group, 2017, p. 4.
328. *Ibid.*, p. 4.
329. International Crisis Group, 2016.
330. Salisbury, 2017, p. 30.
331. International Crisis Group, 2016.

332. Sanaa Center for Strategic Studies, 2017.
333. Ibid.
334. Ndikumana, 2016, p. 141.
335. Ibid., p. 141.
336. Ibid., p. 142.
337. UNDP, 2008b, xxi.
338. Sanaa Center for Strategic Studies, 2017.
339. Ibid., 2017.
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344. Hänggi, 2004, p. 2.
345. Phillips, 2011, p. 51.
346. Knights, 2010, p. 266.
347. ESCWA, 2016b, p. 73.
348. Sayigh, 2015, p. 16.
349. Phillips, 2008, p. 70.
350. Hill, 2017; Clark, 2010; Phillips, 2008.
351. Phillips, 2008, p. 39.
352. Small Arms Survey, 2010, p. 6.
353. Ibid.
354. Sayigh, 2015, p. 12.
355. Knight, 2013, p. 282.
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The third edition of the Arab Governance Report introduces post-war best practices from international and regional experiences. It suggests strategies and policies for Libya and Yemen that focus on the immediate aftermath once combat ceases and a future political settlement. With the prioritization and sequencing of post-war policies dependent on distinctive historical trajectories, these road maps are tailored to the unique circumstances of each case.

The objective is to initiate debate on institution building and its role in supporting sustainable peace in both country contexts. It helps elucidate the design of post-conflict, consensus-based processes for reforming governance structures and rehabilitating key institutions after political settlement. The goal of effective institution building is to advance mechanisms to preserve and consolidate the peace process, and enhance State legitimacy through sustainably developing its capacity to take on the basic requirements of governance.

