# Human Rights and Poverty Reduction

## *Protecting rights in conflict situations and fragile states*

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## 1.  Introduction and summary

The concept of human rights has a range of potential applications in conflict situations and weak institutional environments. In conflict situations, wherever civilians are at risk, there is by definition an infringement of the individual's right to personal security, and in most cases infringements of a number of other rights. Post-conflict situations and weak institutional environments are also defined largely by the state's inability to meet the basic needs of its population. In this paper, two sets of questions will be examined concurrently: how rights can best be protected in conflict and post-conflict situations; and the extent to which a rights framework can help guide policy interventions in these contexts.

*Protection of civilians and provision of basic services during conflict*
Although the infringement of human rights on a widespread scale is a given in conflict situations and fragile states, there remains a debate as to what extent rights-based approaches[1] or policy frameworks provide useful tools in these contexts for guiding policy formulation and design of interventions by the international community. First, a rights-based approach is implicit in the set of principles established for guiding the protection of civilians. Secondly, a rights-based approach is often claimed to underlie the provision of humanitarian assistance to meet basic needs for the population in conflict situations.

*Focus and sequencing in a post-conflict phase*
A more challenging set of conceptual issues arises during situations of transition from war to peace. In such circumstances, there is general agreement that it is necessary to focus and sequence interventions, given the limited capacity for implementation. There are thus choices that must be made regarding different sets of policy issues, which may put different sets of rights in tension with each other. The 'peace before justice' imperative may lead to the prioritisation of the political process, with political compromises, above bringing perpetrators of atrocities to justice or the satisfaction of basic needs.

*Who should provide state functions to fulfil and protect rights in transition phases?*
A second set of questions relates to the question of the resumption of the capacity of the state to carry out a range of functions, from the provision of health and education services, to regulation of the private sector and the environment, to public borrowing and financial management. In transition situations where state institutions are inherently weak after years of conflict, there will be a question as to how to sequence the building of state capacity to deliver these services, and how or whether external agents should substitute for these functions in the short run. Trade-offs may become apparent if the provision of services by

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1.  A 'rights based approach to development', according to OHCHR, is a conceptual framework for the process of human development which is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.

other actors in the short run will undermine the state's capacity to carry out these functions in the future. Here, a useful approach could be to agree on roles and responsibilities over an agreed-upon timeframe, in order to fulfil basic needs among actors.

A rights-based approach can be useful in identifying which functions should be allocated to which actor. In a rights-based framework, the primary duty-bearer for the realisation of rights is the state. Accordingly, under a rights-based approach, the state has primary responsibility for the formulation and implementation of policy. Where other actors are assigned responsibility for the provision of state functions in a transitional context, such as policing or the delivery of health services, a strategy for the transfer of these functions back to the state should be devised from the start.

*Rights or citizenship*
An alternative to a rights-based framework is one which focuses on the construction of citizenship – in terms of both rights and duties – as central in a transition situation. The restoration of the bonds of citizenship and the trust of the citizens in the state might be seen as an overarching goal in a post-conflict situation. In this framework, it becomes essential that the state recovers the ability to deliver certain services to its citizens, in an even-handed way and on the basis of transparent criteria.

This approach argues for a very different approach to a post-conflict situation than recently employed in a number of countries; it is the formulation and implementation of a small number of carefully sequenced national programmes as managed by the government, rather than the delivery of a number of small 'quick impact projects' by external actors, that will foster the trust of the citizen in the state as an impartial and fair agent in allocation of resources. The approach would also argue for the use of the budget as the instrument of resource allocation and policy design. First, this allows for a connection to be made at a fundamental level between revenue and expenditure, or duties and rights. Secondly, it allows for allocations to be made on a transparent basis on a national scale.

The above approach argues for the state to carry the right and responsibility for implementing policy, unless another actor is assigned this responsibility for a defined period with a clear handover strategy. It then becomes incumbent on the international community to support the strengthening of state capacity to carry out these functions. Here, a viable model could be one whereby a state contracts the private sector or NGOs to implement policies to increase its capacity.

*Policing the red lines*
In a fragile context, especially with a newly established government or policy flux, policing the 'red lines' of acceptable governance becomes a critical role for the international community. There exist various configurations and models for the allocation of monitoring and policing functions, for the exercise of power and authority across different international actors.

## 2. Rights in a conflict situation: protection of civilians

The 'protection of civilians' agenda has been developed over the past few years in recognition of the need to identify new approaches and strategies for the international community to ensure protection of civilians during and after conflict. In 1999, the Security Council, recognising the different vulnerabilities of civilians during and after conflict, turned its attention to ways in which the international community could better ensure the protection of civilians during conflict.[2] This focus grew in part out of the identification of civilians as deliberate targets of warfare rather than incidental victims.

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2. The Report of the Secretary General of 30 March 2001 on the Protection of Civilians in Armed Conflict called for the establishment of a 'culture of protection'. Other reports were issued in September 1999 and November 2002, and an aide-memoire in March 2002.

The concept of protection of human rights is at the centre of this agenda. 'Protection' was defined by the ICRC in 1999 as encompassing 'all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and spirit of relevant bodies of law i.e. human rights law, international humanitarian law and refugee law' [ref]. Accordingly, protection is defined in terms of upholding human rights as well as preventing death.

Protection of civilians after war covers protection from a range of threats to security and well-being, including kidnapping, looting, siege, mutilation, rape and gender-based violence, forced migration, ethnic cleansing and genocide, environmental damage, landmines, UXOs and small arms, and the secondary effects of conflict, such as disease, malnutrition, starvation and denial of basic services.

International humanitarian law prohibits attacks on civilians, forced displacement, use of certain weapons, and practices of torture, through the Geneva Conventions and the Additional Protocols of 1977. While the law is comprehensive and unambiguous, protection of civilians is not ensured, as breaches result from the flouting of these provisions by state and non-state actors.

In its protection agenda, OCHA identifies a series of areas for intervention or monitoring. The first of these is humanitarian access, whereby access of humanitarian actors to a civilian population should be attained, through agreement with parties to the conflict. The second area identified is justice and reconciliation, whereby standards of protection should be upheld by the force of law, and violations regularly and reliably sanctioned, for example through the establishment of *ad hoc* tribunals. Other areas identified are forced displacement, land mines, small arms, and women and children.

OCHA recognises that the primary responsibility for protection of civilians lies with the relevant states and their government, and that the role of the international community can only be complementary to this. However, it recognises that where governments do not have the resources, will or capacity to do this unaided, armed groups, the private sector, member states, international organisations, civil society and the media can all play a role.

The role envisaged for the international community here includes: the delivery of humanitarian assistance; the monitoring and recording of violations of international humanitarian and human rights law, and reporting of such violations to those responsible and other decision-makers; institution-building, governance and development programmes; and, ultimately, the deployment of peacekeeping troops.

The key challenge in realising the protection agenda lies in the efficacy of *implementation*, in identifying the priorities and areas for intervention, assigning roles and responsibilities to actors, and developing strategies for implementation. A series of reports, most notably the Brahimi report,[3] stressed the need in any particular context to focus on a small number of realistic and achievable goals, through the use of a carefully wrought strategy. The 'light footprint' doctrine developed subsequent to the report's completion by Ambassador Brahimi further emphasised the need to maintain a focus on a small number of achievable goals. Here, it might be useful for analysts to distinguish between the role of the UN as a political facilitator – where increasing capacity for analysis and strategic planning within the UN is paramount – and as implementer of services, which often carries a heavier footprint.

A primary need in terms of protection in the aftermath of war (or to facilitate the cessation of war), is the deployment of peacekeeping forces. A hierarchy of needs approach states that the priority in terms of citizens is protection of lives and provision of basic security. The Brahimi report recognises that the (lack of) willingness of the international community to commit and deploy forces is often the critical constraint in ending civil wars or protecting civilians; it states that no amount of good intentions can substitute for the fundamental ability

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3. Report of the Panel on United Nations Peace Operations 2000.

to project credible force if complex peacekeeping is to succeed. However, recent conflicts and post-conflict situations have been marked by a failure of the international community to deploy either sufficient or indeed any forces, even though analysts agreed that this would be the single most significant intervention for the protection of civilians and saving of lives. This raises policy questions: first, as to how to increase the availability and commitment of peacekeeping forces (perhaps through the creation of a standing peacekeeping force and pooled financing for such operations); and secondly, as to whether there are alternative effective strategies for peacekeeping, where international forces are not available. These might include community policing, domestic reconciliation strategies, and political pressure.

The development of the protection of civilians agenda over the last years has marked a change in policy orientation, putting a rights framework at the heart of the UN agency response to crisis. While it provides a useful and appropriate goal, there is a question as to whether the framework of protection of civilians is currently adequate, as it has so far failed to provide guidance on hierarchies of civilians' needs, on locus of responsibility, or on implementation methodologies.

## 3.  Conflict mitigation and prevention

An interesting issue is whether a rights-based approach has any value in seeking to prevent or mitigate conflict. Some argue that the provision of aid in some conflict situations may serve to perpetuate conflict and/or shore up otherwise unsustainable regimes. Another dimension relates to the need, in conflict negotiations, to interact with parties to the conflict, who may themselves be responsible for violations of human rights; an agreement may serve to endorse or legitimise their positions.

## 4.  Rights in a post-conflict context. Peace, justice or service delivery: prioritisation and sequencing interventions in post-conflict situations and fragile states

Human rights considerations and principles are often given high priority and embedded within the text of peace agreements, particularly those facilitated by the UN. These hold newly established governments to their international human rights obligations, reiterate principles of human rights to which the new government must adhere and, in some cases, establish human rights obligations.

In reaching an agreement and in holding the peace thereafter, there arises a potential conflict between the political process, and the imperative of reaching political compromise between actors, and a rule-of-law or justice-based approach which would prioritise the bringing to justice of perpetrators of atrocities. In some contexts, bringing individuals to account too early may compromise a political settlement. Conversely, failing to bring individuals to justice may undermine the trust of citizens at large in the political process. Further, a culture of tolerance of political actors' actions may lead to further perpetration of violence or criminality in an unaccountable climate. Reflections on recent conflicts have led to the conclusion by some that dealing with a narrow group of stakeholders without according sufficient attention to justice and the rule of law has resulted in the takeover of the state by a narrow elite with a stranglehold on the economic and political power of the state, leading to criminalisation of politics and the economy. Some have commented that fundamental principles are breached in the negotiation process because of the compromises that the negotiators perceive as necessary, and call for the need for negotiators to work more closely with the human rights community. It is clear that there needs to be considerable further reflection on strategies to balance the imperatives of peace and justice, and the identification of mechanisms to promote rule of law.

A peace agreement on paper requires practical implementation, and choices as to hierarchy of goals and priorities will need to be made. A second tension can arise between the political and rule of law processes on the one hand (including restoration of security institutions, DDR

processes) and the perceived need, on the other hand, to deliver reconstruction activities and restore functioning social services, regulatory functions, and a private sector. Even from a purely practical perspective, sequencing will be necessary, particularly when it comes to positive obligations to set up organisations and processes. Here, sequencing activities over a period of several years, rather than the annual budget cycles of the aid system, could help to delineate a realistic timeframe.

These tensions – between the political imperative of making a peace agreement hold at any cost, the imperatives of bringing individuals to justice for past human rights abuses, and the need to meet economic and social rights through provision of services – give rise to a set of difficult choices that needs to be managed in a post-conflict environment. Given that the UN has institutional responsibility for safeguarding the last of these, and responsibility for one or both of the first two, tensions will arise within the UN itself, where difficult compromises between its own institutions will need to be made.

## 5. Meeting human rights in a weak institutional environment

*Which rights* must *be met and which* should *be met: priorities and sequencing?*
- The International Bill of Human Rights – comprising the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights – sets out the primary human rights obligations of member states of the UN; a series of other treaties and instruments have also been ratified.
- This set of legal instruments provides a framework for determining which needs must be met, and which should be met. However, they provide little guidance as to determining sequence or hierarchy of rights.
- *Non-derogable rights:* Article 4 (2) of the International Covenant on Civil and Political Rights sets out those groups of rights which can never be restricted nor derogated. These include the rights to be free from: arbitrary deprivation of life; torture and other ill-treatment; slavery; imprisonment for debt; retroactive penalty; non-recognition of the law; and infringement of freedom of thought, conscience, and religion. Article 4 provides for derogation from other rights during periods of national emergency, under strictly limited circumstances.
- *Progressive realisation*: In a transition environment, it is not possible to restore services and meet all needs immediately. To determine which rights must be met and determine which are desirable over which timeframe in a post-conflict transition context, the concept of progressive realisation of economic and social rights may be of particular use. The Covenant on Economic, Social and Cultural Rights allows for the progressive realisation of those rights over time, subject to some limitations. First, the principle of non-discrimination still applies to ensure access to each right is being fulfilled. Secondly, there are some rights that must be met at all times, including basic requirements for food and shelter. Thirdly, the state is required not to deprive people of their own strategies for obtaining access to basic goods. Fourthly, the state is obliged to take steps towards implementation of the Covenant. These principles provide a useful framework for assisting the government and international community in determining priorities for restoration of state capacity to meet needs.
- *Minimum standards: the Sphere standards:* In terms of meeting economic and social rights, the Sphere standards, established in 1997, provide a normative guide to a minimum set of standards that should be met in a disaster context (including both natural disasters and conflict contexts), in five sectors: water supply and sanitation; nutrition; food aid; shelter; and health services. While the standards are a useful tool for providing consensus on a level of intervention, they assume that the provider will be the humanitarian community (through provision of supplies), rather than the government or the communities themselves. Here, it would be useful to make the distinction between meeting needs directly and equipping individuals and communities to meet their own needs through provision of cash alternatives.

- In terms of reaching agreement on a *hierarchy of rights*, no standardised tools have emerged; a hierarchy of rights will be context specific. Further work may be useful to agree on an assessment methodology to determine when a government is failing to fulfil human rights obligations in a given context, which would allow for entry of humanitarian actors on a transparent and clear basis where necessary. A second tool that might be useful would be a framework to determine a hierarchy of rights and set of minimum standards over time in a given country context. Such approaches could equip donors, UN agencies and NGOs with valuable tools for providing input to planning and budgeting processes, to influence the efficacy of project and programme design.

*Who has the responsibility for provision of rights?*
The issue of implementation of strategy and policy raises the question of location of responsibility for delivery of economic and social rights.

- The state, under its human rights obligations enshrined in the Covenant on Economic, Social and Cultural Rights, has the primary duty to fulfil the rights of its citizens.
- As fragile states may not have institutional capability to meet obligations in the short term, the practice of substitution of functions by other actors in the aid community has become common. This involves trade-offs: consideration will need to be given as to whether substitution is necessary in the short term to deliver a specific right or service, as against the impact in undermining state institutions to carry out the function over the longer term.
- Several different parts of the *UN system* are allocated responsibility for protection of rights, including the Security Council,[4] the General Assembly, ECOSOC, Human Rights Rapporteurs, *ad hoc* Commissions of Inquiry established by the Commission on Human Rights, and ICRC. The UN, through specially created missions or one of its more than 30 agencies, can intervene to carry out a particular function for a limited duration – either to assume administrative authority in all areas of the state (e.g. Kosovo, East Timor) or to substitute for a particular function, e.g. policing. The Brahimi report cautioned against affording the UN responsibility for implementation of major complex operations without substantial reform, particularly in its approach to recruitment.
- An alternative model is the use of the *military* in carrying out reconstruction or humanitarian efforts, e.g. in Iraq and Afghanistan and, most recently, the tsunami. An understandable and valid reaction from the humanitarian community has been to stress the importance of keeping a clear line between military intervention and humanitarian activity; however, it is already clear that the military possess significant resources and capabilities, including access to logistical support and strategic planning, and increasingly articulated interest in pre- and post-war planning. While it is a *fait accompli* that the Pentagon is investing a substantial proportion of its annual US$550bn budget into humanitarian and reconstruction activities through bodies such as the PRTs, it would seem necessary to examine how synergies can be developed between military intervention and post-conflict state-building activities.
- *NGOs* have adopted rights-based frameworks in planning their own interventions. A key challenge in this area is the capability of NGOs to meet the criteria of universality or non-discrimination; NGOs will rarely be able to meet all the needs of a population on an equitable basis. Although the NGO community has built up significant capacity in implementation of projects, when planning operations NGOs as service providers will compete with the government for financial and human resources. It should also be remembered that it is not only donors that can contract NGOs; there are also examples of the government entering into the same type of service delivery contracts with NGOs.

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4. The Security Council must play a leading role in protecting civilians in wartime, by urging belligerents to adhere strictly to the recognised standards of international humanitarian and human rights law. It also has responsibility for providing the necessary resources for life-saving aid and assistance, by ensuring that peacekeeping mandates provide for the protection of civilians. The General Assembly plays a role in reaffirming and advancing the normative framework upon which the international system is built, and urging its individual member states to ensure and promote compliance with these norms.

A useful tool in weak institutional environments might be a map which sets out over a 5-10 year framework a strategy for increasing state capacity to carry out essential functions. This would have a clear delineation of alternative actors to carry out those functions in the short term, and sunset clauses and strategies to ensure handover to the state. Joint planning operations, as set out in Framework for Cooperation in Peace-Building (S/2001/138), can be helpful in this regard. A clear framework regarding which actor provides which service to which group of stakeholders over what timeframe could offer clarity for the humanitarian community in transition situations. It would also help in avoiding unhealthy competition for resources and duplication of service delivery. This approach could be reflected in a government- international community compact, monitored over time.

*How: a programmatic, rights-based approach to social policy or quick impact projects?*
There are two different mental models of delivery of aid in weak institutional environments. One assumes a weak state, and prioritises the imperative of delivering services and realising the human rights of the poor and vulnerable by establishing projects and programmes to deliver aid in the short term. The second posits that in the longer term the state must assume the functions of managing the implementation of policy for its citizens, and prioritises the restoration of capacity of weak state institutions. It is becoming clear that it is necessary to strike a balance between these two models, providing for the long-term strategy of strengthening state institutions, while allowing substitution of functions where required, within delimited areas and timeframes.

The rights-based approach might argue for either model. On the one hand, where it is imperative for basic human needs or rights to be met, a compelling case can be made for intervention in the form of quick impact projects. On the other hand, it is acknowledged by human rights theories that for every right there is a duty-bearer; in the case of the set of human rights acknowledged by the UN system, the duty-bearer is the state. This argues for prioritising investments in the state in order that it may fulfil the rights of its citizens.

There is a question as to whether the provision of aid through multiple projects to deliver a peace-dividend after war in short timeframes is an appropriate strategy in all contexts. First, delivery of aid in such contexts is extremely expensive and may not represent value for money over the longer term. Secondly, delivery of aid in dangerous contexts may divert scarce security resources away from protection of national citizens to protection of aid workers, again increasing the cost of aid. Thirdly, delivery of aid by external actors may serve to undermine the bond between citizen and state. An urgent current issue regards formulating approaches to the delivery of essential services that are cost effective, efficient and support the peace-building process rather than undermine it.

In post-conflict situations, a compelling case can also be made as to there being an overarching need to restore the trust of citizens in their state, and to re-establish the social contract between citizens and the state that will underpin the creation of stability, security and sustainability. Economic inequities and allocation of resources to one group rather than another can cause or exacerbate conflict. A perspective that prioritises citizenship rights would argue for a policy-based, programmatic approach to the allocation of resources. Here, the budget process plays a central role in creating a transparent, accountable mechanism for the allocation of assistance. It also acts as an instrument in bringing transparency to the process of linking the level of revenue collected to the level of public expenditure and standards of service delivery provided, reinforcing the citizen-state relationship.

*How much? Cost-effective approaches to realisation of rights in conflict situations*
Where large sums of resources are being programmed, whether or not rights are realised will be determined by the efficacy of the implementation process. Here, two factors emerge as important: first, the cost effectiveness of interventions – the more cost effective interventions are, the more people can be reached. The creation of public value will be determined by the efficiency of the delivery process. The second factor is the fairness of allocation. Here, to support the formation of citizenship rights, the allocation of resources must take place

against principles of even-handedness, according to criteria across different social, ethnic, geographical, gender and racial divides.

Many of the existing implementation modalities used by the aid business are extremely cost ineffective, sometimes costing more than 90 cents in the dollar in overhead and delivery costs. The inefficiencies are caused by layers of contractual chains, with sub-contracting from agency to agency, each obliged to support head offices and small project units. The project approach, whereby small quick impact projects are delivered on an *ad hoc* bottom-up basis, can also exacerbate tensions and conflict, undermining the trust of the citizens in the resource allocation process.

Both these factors argue for the use of policy-based approaches using national programmes. Such approaches mean that the state must either implement or manage through sub-contracting the provision of basic services, such as health or education. Another vehicle for this is the use of community-driven development approaches, whereby the government allocates block grants according to a criteria-based formula to groups of citizens, usually on a geographic basis. Against the allocation of grants, there is a series of simple rules whereby citizens are required to form groups, elect representatives, and account transparently for expenditure. This modality for implementation of resources in a post-conflict situation has the advantage of reducing overheads significantly, enfranchising all citizens in the development process, and ensuring that efficient choices of expenditure are made.

## 6.  Rights and the private sector

Another perspective on the concept of rights in fragile states and post-conflict situations concerns the issue of the private sector. A rights-based approach is potentially relevant for at least two reasons. First, if a model of enfranchising citizens in the state through distribution of expenditure is adopted, increasing the size of the economic pie becomes important. Emphasis is rarely put on the creation of wealth as a priority in fragile state conditions, even though this can have the effect of providing a 'peace dividend' far more effectively and potentially sustainably than redistribution through humanitarian aid alone. Policy prescriptions for creating jobs on a large scale to realise the right to work would require the establishment of labour schemes or instruments to catalyse the growth of industry.

Secondly, the creation of a regulatory regime for the private sector which, follows principles of open and fair competition and allows access to the market regardless of affiliation or identity, is important in any circumstances; it is particularly important for generating the trust of the citizenry. However, it is precisely in fragile states environments that regulatory capacity will by definition be low; in a time of political flux, the propensity for lack of transparency or fair processes may be higher. Fair rules for the allocation of economic and land rights will be especially important to the shape of society and relative power and wealth of different groups.

## 7.  The 'red lines': holding the state to account for protecting human rights

In a conflict or fragile state context, the state is by definition not able to protect or deliver on all the rights of its citizens. However, once a transition path is articulated as a matter of government policy, and/or agreed with the international community, the latter can play a crucial role in holding the government accountable to its promises and to international standards of human rights across many areas of governance.

It can do this through a number of mechanisms, e.g. reviews and analysis through government or non-governmental channels; increasing transparency through issuing such reports publicly; issuing public statements through its officials and rapporteurs; imposing conditionalities on its aid against certain 'non-derogable' standards; and political pressure.

Roles and responsibilities, for monitoring different aspects of state performance or fulfilment of human rights through implementation of policies and protection of citizens, can be assigned to an array of international organisations. These include the Office of the High Commissioner for Human Rights and its rapporteurs and *ad hoc* Commissions of Inquiry, as well as rapporteurs from a number of other UN agencies. Non-governmental watchdogs, such as Human Rights Watch, Transparency International and Amnesty International, can also play a valuable role in monitoring adherence to human rights standards. Investigative journalism and media reports can also play a useful accountability role.

A challenging set of questions arises as to which sets of standards should be applied and enforced in a conflict or fragile state situation. Political and civil liberty standards are sometimes afforded a higher priority than economic and social rights, when the state is beginning to reacquire the capacity to deliver social services. The concept of a minimum set of standards to apply can be useful.

## 8. Conclusion

In terms of seeking to protect rights in conflict and post-conflict situations, it is clear that a number of tools have emerged and are being deployed by the international community, ranging from military intervention and diplomatic pressure through to humanitarian activities.

The uses of rights-based frameworks or approaches may have some value in some contexts. First, they can help enforce a minimum set of standards for protection of civilians' rights, although it is clear that there needs to be further work on defining what constitutes a minimum set of rights in a particular context. Secondly, a rights-based framework could lead analysis towards a concept of citizenship rights that would inform the need to programme aid on an equitable basis across a given territory, through national mechanisms. Thirdly, an emphasis on rights might also focus attention on the state as the primary duty-bearer of those rights and, accordingly, on establishment of state capabilities in post-conflict situations. Lastly, given resource scarcity, rights-based approaches might highlight for policy-makers the need to make trade-offs between implementation mechanisms and cost effectiveness in delivery, in order to increase the collective ability to satisfy rights.