State Capacity and Non-state Service Provision in Fragile and Conflict-affected States

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Contents

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Executive Summary

This paper set out to identify how states with weak capacity can effectively fulfil the 'indirect' service provider roles of co-ordinating, financing, and setting and applying standards for the provision of basic services by non-state providers (NSPs). Four categories of indirect role are identified: 1) setting the policy environment and engaging in policy dialogue, 2) regulating and facilitating, 3) contracting, and 4) entering into mutual and informal agreements. Through these indirect roles, the state can in principle assume responsibility for the provision of basic services without necessarily being involved in direct provision.

Most non-state provision operates free from any systematic government intervention, co-ordination or oversight - the scale and often informal nature of non-state providers means they are usually unrecognised. But non-state actors (including entrepreneurs, voluntary organisations and NGOs, faith-based and community organisations, and households) are the predominant providers of primary health-care, water supply and sanitation, and important providers of basic education to all sections of the population in the majority of developing countries, not exclusively in fragile and conflict affected states.

Whilst there is no simple relationship between levels of state weakness and levels of non-state provision, state fragility and/or conflict can result in a parallel system of non-state service delivery which is fragmented and uneven. Paradoxically, the need for large-scale approaches and quick co-ordination of services in fragile and post-conflict settings may require 'prematurely high' levels of state-NSP engagement, before the development of the underlying institutional structures that would support them.

Relations between state and non-state providers are affected by national histories, often leading to mistrust and a preference on both sides not to engage. State motives for intervention in non-state service delivery are driven more by historical evolution, ideologies and power relationships than by technical considerations, but nevertheless the technical case for intervention is important to understand. In fragile and conflict-affected settings, donors see the case for intervention in terms of the state building imperative.

Only in the most extreme humanitarian circumstances do donors consider it appropriate wholly to bypass the state and substitute for the indirect roles. Where there is will, donors have supported the capacity of government to perform large-scale contracting and national level policy dialogue and policy frameworks. Less attention has been given to supporting the sphere of regulation, or the development of informal and mutual agreements between state and non state actors.

State interventions that imply a direct controlling role for the state and which impose obligations on NSPs (i.e. contracting and regulation) require greater capacity (on both sides) and present greater risk of harm if performed badly than the roles of policy dialogue and entering into mutual agreements. In fragile and conflict-affected settings, capacity deficits are particularly acute in the following areas:

- The environment of non-state provision is typically one of policy unreliability and legal instability. Relationships are frequently beset by ambivalence and mutual mistrust, built on histories of policy change and rivalry. Confidence and continuity in policy and practice, which may be needed to ensure long-term relationships, is

likely to be absent. Formal dialogue may be impractical because of lack of suitable policy 'space', and is likely to exclude small and informal NSPs.

- Even in relatively strong states, regulatory capacity is low. In weak states, incentives for regulation may be absent or malign. Regulatory organisations often lack staff, skills, enforcement powers, or information on the sector to be regulated. Establishing or applying a regulatory framework for small-scale, informal non-state providers is particularly difficult.
- Contracting requires a supportive external environment of public sector institutional rules, laws and policies which is likely to be absent in unstable settings. There can also be profound constraints on contracting in the form of social and political resistance, lack of information on the cost and quality of service provision to enable the specification of contracts, and insufficient resources for monitoring. Tight performance based contracts may require a level of professional and organisational capacity that rules out local and informal providers.
- Informal partnership arrangements which rely on trust that has developed incrementally may be a means of achieving collective goals when there is a good strategic fit between collaborators, and when the benefits of partnership outweigh individual action. However, local relationships in the form of mutual agreements and co-production present problems of scaling-up into large programmes.

Summary of general lessons from the case studies

Government capacity to plan, co-ordinate, organise, regulate and finance the non-state sector is severely constrained in fragile and conflict affected settings, most acutely because of the state's weak legitimacy, coverage and competence, but also due to lack of basic information about the non-state sector and lack of basic organisational capacity to form and maintain relationships with NSPs.

There may be reluctance on the part of governments to withdraw from the direct role of provider to take on the indirect roles of oversight and stewardship. Governments may be more willing to engage with NSPs where there is recognition that government cannot alone deliver all services, and where public and private services are not in competition.

Where there is lack of willingness to engage, governments may need evidence that successful collaboration is possible. This can be demonstrated through small scale, pilot approaches at the local level.

As much as government capacity, the capacity and willingness of non-state actors influences the potential for successful engagement. Understanding the nature of the non-state sector in any given context (size, formality, level of organisation), and the limits to its own willingness to engage with government, is an important starting point for designing forms of mutually beneficial engagement.

The extent to which engagements are 'pro-service' may also be influenced by:

a) Government motives for engagement. Real, underlying motives can range from the wish to prohibit, control or takeover NSP, to genuinely seeking partnership.

b) The extent to which the providers that are most important to poor people are engaged. Informal or small providers are often overlooked or excluded.

Summary of lessons in relation to specific roles

Formal policy dialogue between government and NSPs, which requires a stable policy environment, may be imperfect, unrepresentative and at times unhelpful in fragile settings. It is very often constrained by mistrust, lack of credibility or legitimacy associated with all actors and prone to being hijacked by large NGOs. Spaces for dialogue need to allow actors autonomy, should seek to find complementarities, and should ultimately lead to other forms of engagement (e.g. partnership, or agreement about standard setting). Dialogue at this level is at best only an entry point to effective collaboration between state- and non-state actors.

Informal dialogue - at the operational level - could more likely be where synergies can be found. This is where mutual lessons can be learned and an understanding of constraints on both sides developed. This type of dialogue is likely to be ongoing but can either be pro-service or anti-service.

Regulation is more likely to be 'pro-service' where it offers incentives for compliance, and where it focuses on standards in terms of outputs and outcomes rather than inputs and entry controls. Command and control regulation has been unnecessarily elaborate and input-focused, and is largely unenforced or avoided. Two alternatives place less demands on the actors and may be more focused on improving services: (i) 'lighter touch' forms of regulation, where the rules are slimmed down, focused more on the quality of outputs and based more on incentives than controls, and (ii) substitutes for state regulation, such as external and self-accreditation, franchised service provision and community monitoring.

Wide scale, performance-based contracting has been successful in delivering services in some fragile and post-conflict settings*.* The sustainability of institutional arrangements for contracting that are separate from, or completely bypass, governments is often questioned. Partner country government ministries should be active participants in planning and developing contracting where possible. Where institutional arrangements bypass normal governmental channels they distort accountability relationships. The relationship between (semi-)independent contracting agencies and the potential for the progressive capacitation of the state is unknown.

Some successful contractual agreements with NGOs have a strong informal, relational element and grow out of earlier informal connections. They have worked well where responsibility for contracting is devolved to the level of government responsible for implementing it. There is a need for clarity of roles, but also flexibility to allow NGOs to draw on their strengths and to innovate. Small-scale contracts can be tailored to the local context, and allow the incremental development of capacity. Capacities required for contracting will differ according to the sector, and the scale, level of formality, and length of contract.

Informal and mutual agreements, based on independent contributions by the partners and non-hierarchic relationships between them can avoid the capacity problems and tensions implicit in formal contracting but may present other problems of non-transparency, exclusion of competition, and possible abuse of the trust on which they are founded.

Summary of policy implications

Recognise non-state service provision and adopt the 'do no harm' principle. NSP is here to stay, and may even grow and flourish in more stable states. This should not be seen as a problem in itself, but as part of the solution. It would be wrong to set the ambition of 'managing ' non-state provision in its entirety - this has not happened in any developing country - and it can be very harmful for low-capacity states to seek to regulate all NSP or to draw it into clumsy contracts.

Beware of generalisation. Non-state provision takes many forms in response to different histories. Its particular organizational form and capacity, the importance of its activities, who it serves, its accessibility to sections of the population, and the nature of its relationship with the state vary greatly between locations. All these may shift rapidly in response to political and economic change. The possibilities and case for state engagement have to be assessed not assumed.

The particular identities of NGOs and enterprises should be considered in deciding with whom and how the state should engage. While many NGOs and CBOs have an interest in working with government to improve service delivery, some forms of engagement may challenge the capacity and also threaten the autonomy of those that are nearer to being civil society actors. Classical contracts may be more suitable to enterprises; looser partnerships more suitable particularly to local NGOs.

State building can occur through any of the types of engagement with NSPs. Types of engagement should therefore be selected on the basis of their likely effectiveness in improving service delivery. Governments and donors are faced with difficult strategic choices about how to deploy limited capacity for engagement with NSPs effectively and without risk to pro-poor or pro-service outcomes. In fragile or conflict-affected settings, there is the dual goal of supporting state building. There is no meaningful way of resolving this trade-off by deciding which of the possible functions would be more inclined to build states and then trying to bring them about regardless of context. Any of these functions can be a state building activity; the question is to identify in the particular country context, which if any mode of engagement would most enable improved service provision and be most feasible.

Begin with less risky/small scale forms of engagement where possible. There may also be a trade-off between the effects of forms of engagement on service delivery and the risks resulting from bad engagement. In an ideal situation, *contracting out service delivery and regulating* non-state provision may present the quicker and more direct ways of bringing about improved service delivery but they also present risks of damaging existing service providers with no gain. Small-scale contracts and experiments in more localised regulation present less risk. *Policy dialogue and attempts to improve the policy environment* may have only long-term positive effects, but also carry small risks to non-state actors. *Encouraging mutual agreements and coordination* between state and non-state actors present opportunities for learning and no risk but can only have local immediate effects.

Adopt mixed approaches. The choice between forms of engagement does not have to be absolute. Rather than adopting a uniform plan of engagement in a particular country, it may be better to try different approaches in different regions or sectors. This could reduce the strain on government, for example of having to manage dialogue, regulation or contracting on a uniform national basis. Different approaches also present the opportunity for trial and learning.

1. Introduction

Purpose and approach

This paper reviews the literature on the roles of the state in regard to the provision of basic services by non-state actors, in order to identify how these may be performed and supported where state capacity is weak. It examines the evidence on ways in which states[1] have engaged with non-state providers (NSPs) - ostensibly at least to enhance the equity, efficiency and pro-poor delivery of services - in order to identify the factors determining successful engagement. The principal state roles considered are of setting the policy environment and promoting dialogue, regulation, and entering into agreements or contracts for the delivery of services. The services considered are primary health-care, primary education and basic water supply and sanitation.

Section 1 outlines the core issues, identifies the features of fragile and conflict affected states that may influence the relationship between state and non-state actors and the relationship between state building[2] and service delivery, and considers whether and how the available literature on relationships between states and non-state actors understands and addresses questions of (un)willingness and (in)capacity. Section 2 sets out the possible state roles and forms of engagement with non-state providers, outlining the technical case for intervention and contrasting this with the evolution of non-state provision and of the historical relationship between states and NSPs. Section 3 draws on available case study material on government-NSP engagement in fragile and conflict affected settings to determine the circumstances under which positive relationships may occur. In examining the evidence, this section considers the influence of capacity constraints on the part both of the state and of non-state actors, and how donors have facilitated engagement. Section 4 summarises the approaches that have been adopted to enhancing state effectiveness. A concluding section presents policy implications in relation to the aspects of capacity that may need to be strengthened, and the types of role that may best combine the twin objectives of state building and collaboration with non-state actors, given different levels of capacity.

The review draws on case studies of NSP-government engagement and recent donor material on service delivery in fragile and conflict affected states. The literature has some limitations; there are few empirical case studies of government-NSP engagement in fragile and conflict affected settings; the information that is available specifically in relation to the types of roles states can perform is dominated by contracting; and there appear to be few publicly available evaluations or lessons learned from donor programmes which have aimed to strengthen state capacity to perform the indirect roles.[3] As far as possible, the paper draws on examples from fragile and conflict affected states; however, the evidence base is thin (OECD 2008a:39). Much of what is written about them is based on normative, scenario type statements, with isolated examples. We therefore also refer to the slightly broader literature on state/non-state relations in non-fragile states where capacity deficits may be comparable. It is relevant to do so given that the broad conclusion from research

[1] The term 'state' is used to cover government (the policy-making arm) as well as public administration and agencies.
[2] State building in situations of fragility is defined by OECD DAC as: 'An endogenous process to enhance capacity, institutions and legitimacy of the state driven by state-society relations: In its simplest form, state building is the process of states functioning more effectively. Understood in this positive context, it can be defined as an endogenous process to develop capacity, institutions and legitimacy of the state driven by state-society relationships.' (OECD DAC, 2008:1)
[3] In undertaking this literature review, key international experts were contacted in an effort to gather relevant literature and grey material. Nevertheless, collecting publicly unavailable information in order to map donor programmes would require more systematic contact with donors and was beyond the scope and terms of reference for this study.

on service provision in most developing countries is that the roles of the state are poorly undertaken, and that most non-state provision is not governed by any systematic intervention. It is the exceptional cases of effective collaboration and coordination that have to be explained.

Outline of the issues

Though the evidence is by no means comprehensive, national studies indicate that non-state actors (including entrepreneurs, voluntary organisations and NGOs, faith-based and community organisations, and households) are the predominant providers of primary health-care, water supply and sanitation, and important providers of basic education to all sections of the population. This is probably true in the majority of developing countries, not exclusively in fragile states. There is no simple relationship between levels of state weakness and levels of non-state provision.

One response to the predominance of non-state provision might be to allow it to operate unhindered. This is the de facto though not de jure policy in most of the low-income countries for which there is evidence. States are often unable or unwilling to control or substitute for non-state provision. Indeed, why *should* they intervene in competitive 'market' provision? In regard to fragile states, the OECD DAC (2008a and b) offers two answers. First, where state building is the central objective, states gain legitimacy by being seen to provide services as part of the social contract with citizens. Ghani and Lockhart (2005:11) warn about the negative impact that non-state provision of core state functions can potentially have on the legitimacy and sovereignty of the state. Second, even if non-state actors are the *direct* providers of services to clients, there are some specific services (e.g. vaccination) and some *indirect* coordination, oversight and 'purchasing' functions (setting policy frameworks and ensuring service provision by setting standards, coordinating, regulating and financing) that independent providers left alone will not provide efficiently or at all.

Through these indirect functions, the state assumes responsibility for provision without necessarily being involved in delivery at all. In fragile and conflict affected states, whether and which of the direct or indirect provider functions the state should take on is presented by the OECD DAC (2008b: 40) as a matter that depends on its willingness and capacity - the defining characteristics of fragility[4]. Only in the most extreme humanitarian circumstances does the OECD DAC consider it appropriate for donors wholly (in regard to direct and indirect service provision) to bypass the state, with the risk of yet further undermining state capacity and accountability. Commins (2006) describes this as a trade-off between accountability and service delivery.

Even in less extreme circumstances, there are possible trade-offs between state building and the state's involvement in NSP which should affect the decision whether and how the state should intervene. One possibility is that what is good for state building may not be good for service delivery – for example, attempts by the state to regulate NSP may divert non-state actors from service delivery or be used for rent-seeking by government officials. Another trade-off may be between service delivery and accountability – for example, contracting NGOs to provide services on terms set by government may have the effect of emasculating their autonomy as civil society actors (thus ultimately undermining state building) (as Howell and Lind 2008 argue for Afghanistan).

[4] See Rose and Greeley (2006) for a useful elaboration of these concepts.

Elements of the analysis - willingness and capacity

There are different ways of understanding relationships between actors and explaining their performance. Because this paper is based on a literature review, it refers to the factors that are employed by studies as explanations of the performance of roles. However, it is guided as far as possible by the OECD documentation on fragile states and its understanding of capacity and willingness to perform key government functions for the benefit of all:

1. Capacity means having the core features that enable the state to mobilise resources for key objectives, and is determined by territorial control, effective exercise of political power, basic competence in economic management and sufficient administrative capacity for policy implementation.
2. Willingness refers to explicit political commitment to policies supporting human welfare. It is affected by the basis of the state's legitimacy in sources of support.

The studies we refer to are very largely not influenced directly by these categories. Most studies of state and non-state (particularly NGOs) agencies compare their comparative advantages as service providers (efficiency, proximity to clients etc) without considering how they might work together (Moran 2004). Some look at the performance of relationships in terms of outputs and outcomes, rather than at the capacity factors that determine performance. Others, including work on NSPs previously commissioned by DFID[5], use a more comprehensive view of capacity than just 'administrative capacity' (see point 1 above), based on the model of Hilderbrand and Grindle (2005). This covers (i) factors internal to an organisation – human resources, organisational arrangements, capital and finance, (ii) inter-organisational coordination within the task network, and (iii) the wider institutional environment and how this constrains or supports personal and organisational capacity. In a similar vein, Brinkerhoff (2007:1) summarises the definition of capacity as 'having the aptitudes, resources, relationships and facilitating conditions that are necessary to act effectively to achieve some intended purpose'. Most studies (as also the OECD) focus on the capacity of state agencies but, recognising that the concern is with the functioning of *relationships*, some examine the other side – the willingness and capacity of non-state bodies that might provide services or take on the state's core roles.

The direct concern with capacity is not the universal or even the main concern of academic studies, although they can be seen as relevant to the broader view of capacity. Many focus on the nature of inter-organisational relationships and, especially where NGOs are involved, the quality of their relations with government (complementary, cooperative, conflictual etc) and their effects on organisational identity and autonomy. Much of the literature emphasises the need to examine and explain relationships in their historical and institutional context: the long-term structuring of relations between state, market and civil society, and how these create path dependencies that limit the options that are possible and considered desirable (see references in Teamey and Mcloughlin 2009). By comparison, there are 'technically determinist' studies that explore how the economic characteristics of goods and services and types of market failure logically imply certain sorts of state intervention or partnership (see section 2).

[5] Mills et al 2001, Batley and Larbi 2004, Batley 2006, Palmer 2006, Rose 2006, Sansom 2006

What is distinct about the context of fragile and conflict-affected states?

The OECD establishes four scenarios within two broad categories – (a) declining states with arrested development or with deteriorating effectiveness, and (b) stabilising states embarked on post-conflict transition or on early recovery. For each of these, the capacity and willingness variables are differently permutated with different strategic implications. The stabilising (and especially 'early recovery') cases present the slightly more optimistic situations where will and capacity have ceased to decline and may be growing. '(I)n deteriorating conditions it might not be feasible or appropriate to work with the state, while in early recovery donors can start working alongside the state often through support to non-state actors, with a gradual transition to the state playing a greater role in service delivery' (Rose and Greeley 2006:5). Programming in states with low capacity and high willingness may be more possible than in states that are 'reticent, recalcitrant, or chronically unstable', but nevertheless requires grappling with sometimes messy and ambiguous political realities. Often there is no strong leadership championing reforms (Zivetz, 2006:3). Technocratic approaches are undermined where there is lack of will for engagement. 'Sophisticated strategies to improve the relationship between state regulators and private providers have little relevance where the government is repressive or lacking commitment to poverty reduction goals' (Berry, 2004:7).

With regard to engagement with non-state actors in service delivery, the willingness and capacity of the state to perform the indirect roles may be weak or absent, but the impact of fragility and/or conflict on services means the need for prioritisation, coordination and leadership may be great. The impacts of conflict and fragility on services are widely documented, and include deteriorated infrastructures, lack of trained and skilled technical personnel, weak information and management systems, severe financial constraints, and distorted or broken lines of accountability. In post-conflict environments, the systematic exclusion of certain groups further undermines service provision premised on norms of universality, equity and participation (Pavanello, 2008:10). Where the state has been weak or absent and services are predominantly delivered through small-scale 'for profit providers', households, community organisations, relief or humanitarian INGOs and NGOs, the potential for fragmentation presents a major co-ordination challenge. The state, civil society and the international community must arguably move into much tighter forms of collective action to meet these challenges (Wood, 2008).

The OECD DAC (2008) concludes that state fragility inevitably reduces the role of the state in favour of non-state actors. A legacy of state-avoidance strategies, particularly after a prolonged conflict, can embed a parallel structure in the service-delivery landscape, leaving the state relatively weak and under-resourced in favour of NGOs (Zivetz 2006:17). State legitimacy can also be weak compared to non-state actors - for example in Papua New Guinea, where church organisations are major service providers and are accorded stronger legitimacy and recognition than state actors (Hauck et al. 2005, cited in Brinkerhoff, 2007). Studies in Mozambique demonstrate how such imbalance can fuel resentment on the part of the state towards NSPs (Pavignani and Colombo, 2001). Another key concern is loss of government control over core issues of quality and access to services. NSP predominance may also weaken links of accountability by government to citizens, especially where donors are funding non-state organisations directly (OECD 2008:30 and 34). Concerns about accountability and state legitimacy are central to the notion of service delivery as a form of state building. The delivery of services is seen as an important catalyst for longer-term pro-poor social, economic and political change, and for reducing the sources of fragility (for example, social exclusion) (USAID, 2005; Meagher, 2005), also for avoiding 'backsliding' (USAID, 2005).

There is little disagreement that responding to the immediate needs of the population takes priority over actions to build government capacity where the state is a weak or non-existent partner, but debates arise regarding how to do the former without doing damage to the latter (Brinkerhoff, 2008). Studies have shown there has been insufficient attention to re-establishing government capacity for service delivery in post-conflict environments. This can reinforce, rather than remedy, the fragmentation of services. But as Brinkerhoff (2007) notes, capacity development efforts are likely to be more difficult in fragile states where societies have been fragmented by deteriorating or conflict conditions, and where trust and tolerance levels tend to be lower. Whilst the extent of residual capacity will necessarily vary between and within fragile contexts - the degree to which state functions remain intact is one aspect of this, another is the level of human capital remaining (e.g. the numbers of health workers in place) (Pavignani and Colombo, 2001) - fragile states are commonly characterised by lack of basic capability to self-organise and act to establish supportive relationships and to achieve policy coherence (Brinkerhoff, 2007).

2. Relationships between state and non-state actors in service provision

Forms of engagement

On a scale from more direct to more indirect state provision of basic services, the state's possible roles might go as follows:

1. State provides all aspects of a service including delivery to consumers
2. State is the main provider of a service, but there is also NSP competition and choice
3. State contracts in NSP to provide support inputs to state provision
4. State contracts out and finances direct provision by NSP
5. NSP operates as the main provider but within a framework of rules set by the state:
    I. Setting standards and regulating NSP
    II. Making policy frameworks and standards

Balabanova et al (2008) group and elaborate points 3-5 into the following main categories:

- Financing: Contracting and franchising NSP, subsidies to consumers and providers, vouchers; contracting in private finance for public services
- Regulating: Setting minimum standards and enforcing them, licensing, accrediting, promoting self-regulation, safeguarding consumers
- Stewardship: Formulating policies and strategies, involving non-state actors in deciding policy objectives, providing information to users and providers, monitoring needs, performance and outcomes

This broadly corresponds to the main types of engagement set out in section 3 of this report: policy environment and dialogue, regulation and facilitation, contracting, and mutual and informal agreements. It is important to point out that some of these – particularly the policy environment and regulation – open up some very general issues about governmental and legal processes that go well beyond a particular focus on state-NSP relations in specific sectors.[6]

The technical case for state intervention

The motives for state intervention may provide some guidance about which of these modalities is appropriate. In practice, motives are complex, diverse, and driven more by historical evolution, ideologies, power relations and the capacity of public and private agencies than by technical considerations. However, it may be useful for donors and governments considering how to work with non-state providers in particular sectors and contexts to assess the technical case for state intervention and what this implies for the level and form of engagement. Earlier papers, including some of the contributions to OECD fragile states discussion, use this sort of analysis (Besley 2007, Picciotto 1997, Batley 1996, USAID 2005, World Bank 2004, Commins 2006).[7] Some elements of the argument are useful for consideration of the empirical evidence.

[6] Given the limits of the study, we have maintained a tight focus. For example, we distinguish 'policy dialogue' from discussion in post-conflict situations between humanitarian relief agencies, donors and government about the integration of relief services. Policy dialogue implies a relationship with actors who retain a long term presence in the policy arena.

[7] A separate guidance paper could be written on this subject, setting out an approach to analysing service characteristics and contexts, and their implications for forms of regulation and service delivery.

The services considered in this paper - primary health-care, primary education, and basic water supply and sanitation - are predominantly 'private goods' at the point of delivery. In economic terms, private goods are ones that private actors are willing to provide because they can charge for them, since non-payers are 'excludable' and consumption is competitive ('rivalrous'). Nearest to 'public goods' are drinking water from rivers, communal wells and public standpipes (non-excludable, and non-rivalrous except in drought) and piped water and sewerage (excludable but non-rivalrous). But basic water and sanitation systems in developing countries often have more private characteristics – water vending, latrines, household waste-water into streets). The fact that non-state provision is abundant in most developing countries is evidence of the 'private goods' status of these services. This means that, for these basic services, government has the options of

- providing the service directly;
- contracting non-state actors to provide the service;
- acting as steward and regulator of NSP.

In addition to the role of directly delivering services, there are public goods aspects of the provision of all of these services: these are essentially the 'backroom' functions of supporting, coordinating and regulating within and between services: e.g. setting policy frameworks, enforcing standards, establishing common school curricula and exams, ensuring universal take-up of basic services, training staff, building mains pipelines, and ensuring the standards of drugs. For particular services, there are specific reasons why governments (or local governments and community organisations) would assume these stewardship and regulatory roles, and perhaps also advance into financing, contracting and direct provision:

- Health-care (but also other forms of professional service including education) is particularly associated with problems of information asymmetry, where consumers are unable to judge the quality of the service, may be misled by professionals, or choose less effective services.
- Education provided only with regard to individual benefits will fail to realise the wider benefits (positive externalities) associated with a universally educated population, including the nation-building that may result from a common syllabus and identity. Of all the services examined here, it is the one most often associated with the call for direct state provision (Rose and Greeley 2006:4).
- Clean water and sanitation are associated with the positive externalities (health and environment) that accrue to the whole population as a result of extending consumption to others.
- Finally, all these services have 'merit goods' characteristics, meaning that government intervention may be necessary to get people to consume 'what is in their own best interests', regardless of their own preferences. (Stiglitz, 2000) Moreover, 'left to itself the market will serve only those who have purchasing power' (Besley, 2007), implying the case for subsidised public or private provision.

The technical case for intervention takes us only so far. There is a major question about the capacity of governments to take on not only the direct provider roles but perhaps especially the indirect roles. The indirect roles imply a need for willingness and capacity to choose among competing objectives; define objectives for service provision; set standards, criteria, and output targets; and safeguard the broader public interest. (Rondinelli, 2006:28). Compared with direct service provision, these roles require different capacities to be performed effectively (Batley and Larbi, 2004). They necessarily involve multiple actors, complex interrelationships, and

collaboration (Balabanova, 2007) – and therefore require 'relational' capacity to strategise, regulate and coordinate with non-state actors (Robinson, 2008: 573).

'Evidence on government failure is fairly compelling' (Besley, 2007). A comparative study of the performance of indirect provider roles in a number of non-fragile developing countries (Ghana, Zimbabwe, South Africa, India, Sri Lanka, Malaysia, Thailand, Argentina and Venezuela) found that the conditions for the performance of these roles were exacting and that they were usually poorly performed (Batley and Larbi, 2004). Especially in the spheres of education and health, due to their qualitative nature and multiple objectives, there is difficulty in specifying contract requirements, gathering information, assessing performance, and enforcing standards through regulation and contracts.

Non-state provision and the context for relationships with the state

Systematic information on the scale of non-state provision is not available, given that much of it is unregistered, unregulated and unnoticed. But there are estimates from some countries – though the figures are rarely comparable. DFID-funded research in six countries of Africa and South Asia[8], drawing on a wide survey of the available literature found that the non-state sector (including small entrepreneurs, voluntary organisations and NGOs, traditional providers, faith-based and community organisations) is large and sometimes dominant, particularly in the health, water and sanitation sectors. Though this study did not cover post-conflict states, it is the only one we know of that has compared non-state provision and the history of relationships across several countries and across the three sectors that are the topic of this paper.

In Nigeria and Malawi, Christian medical missions provide around 60 percent and 37 percent of health-care services respectively, and in addition there is a myriad of for-profit providers. Faith-based organisations own the majority of schools in Malawi, although most are funded by the state and are closely integrated into the public system. In Nigeria, mission schools were taken over by the state in the 1970s. Private for-profit schools are important in both countries, attend the needs of low-income as well as high income groups, and are growing. In Malawi, they account for about four percent of primary and 40 percent of secondary schools; in Nigeria, the registered for-profit sector accounts for 20 percent of primary schools in some states but there is a huge unknown, unregistered category, said to account for about 40 percent of the children in school in Lagos. Water and sanitation are formally provided by the state, but in both countries the majority of the rural population depends largely on household and community provision while, outside the large cities, the majority or the urban population depend on water tankers, vendors or private boreholes.

The South Asian countries present a similar pattern with a particular predominance of NSP in the health sector. Over 80% of Pakistani households use private health practitioners (a third of whom are unqualified); in Bangladesh, the proportion is 88 percent. In India, although there is great variation between states, 80 percent of qualified allopathic doctors and 57 percent of hospitals operate privately, and non-allopathic medicine is almost entirely private. In all three countries the proportions using private health and education services is growing. In Pakistan and Bangladesh[9], 20-25% of total school enrolment is in non-state schools, with the proportion in

[8] This section is mainly based on research reported in articles by Batley, Palmer, Rose and Sansom (all 2004) based on research data at http://www.idd.bham.ac.uk/research/Service_Providers.shtml#study and http://www.idd.bham.ac.uk/research/Service_Providers.shtml#Whose

[9] Aliya madrasas account for 30% of secondary education students in Bangladesh (Bano 2008)

Pakistan reaching 35% in the case of primary schools (Andrabi *et al* 2006). In Bangladesh, most non-state enrolment is in state-assisted community and faith schools with teachers' salaries paid by government. As in the African countries, the majority of the rural population and around a third of the population of the larger cities do not have access to public piped water, but depend on private water vendors or on tube-wells managed by households, communities, NGOs or government agencies. According to the Pakistan Integrated Household Survey, 61 percent of all water systems are self-financed by individual households.[10]

Whereas NSP in water and sanitation is largely for the poor and for areas beyond the reach of public systems, non-state health and education services address a broader span of consumers. Non-state health services are probably as likely to serve the poor as the rich; in Pakistan, even the most 'vulnerable' population was as likely as the better-off to use private health-care but less likely to use non-state schools. In Nigeria, Malawi, India, Pakistan and Bangladesh, although government remains the main provider of primary education to all groups including the poor, non-state schools, particularly the unregistered ones, also serve poor families (Rose 2006, Rose and Greeley, and, specifically on Pakistan, Andrabi *et al* 2006).

It is clear that NSP offers a spectrum of services in terms of quality. However, it is wrong to assume that the poor choose non-state provision simply for want of access to public services. Surveys in Pakistan have found that users report dissatisfaction with government services and greater satisfaction with non-state provision of healthcare, education and water supply (CIET 2003 and Planning Commission 2003). A report for Enugu State in Nigeria showed that non-state health services were preferred because they were often more convenient, more considerate and cheaper (McClean and Salui 2003); similar findings come from a survey of traditional birth attendants in Malawi (Lule and Ssembatya 1994).

There is a great variety of types of provider. Individual entrepreneurs operate in health, education, water and sanitation, and are often the most abundant but least known category. Faith-based organisations and NGOs appear as direct providers in health and education, but very rarely in water supply except as facilitators - though there is a church-based water and sanitation system in Malawi. Community and household provision is most prevalent in water and sanitation, although community organisations often also act as funders and managers of schools.

Even this categorisation of NSP organisations describes only the tip of the iceberg of organisational variety. First, the categories are not wholly distinct; in particular, there are often very blurred boundaries between state and non-state providers – the same professional practitioners frequently operate in both sectors, standing in the way of transparent regulation and contracting (Mills *et al* 2001, Balabanova *et a*l 2008). Second, broad categories such as 'community organisation', 'NGO', 'FBO' and 'entrepreneur' disguise the variety of organisational forms and capacities that they include, making it difficult to generalise policy for governments' relations with the non-state sector. As already noted, even fragile states will have a residue of social and human capital which will affect the capacity to organise into businesses, CBOs and NGOs and the quality of their professionalism. OECD (2008b:26) suggests the pre-conflict human capital of Iraq continued to exist (if it hadn't migrated) in conflict Iraq, though now unorganised – unlike Timor Leste where it was always weak. Robust states, such as India, may have dense NGO activity partly as a spill-over of the

[10] An Oxfam (2009) briefing paper argues that claims about the scale of private provision are over-stated but this is based on a view of 'private' provision that includes only the formal private sector – e.g. clinics staffed by trained workers.

general level of the labour market, with sometimes higher levels of professionalism than can be found in state agencies (Nair 2007a:7-11).

Most private, mainly small-scale, commercial providers operate independently from government, occupying the gaps and deficiencies in public services or competing with them, and trying to avoid state attention. In some cases, NGOs or voluntary associations have adopted the same go-it-alone strategy, often supported by donors: Bangladesh is well known as a country where parallel systems of service delivery developed in the 1980s and 90s. However, many service-delivery NGOs work in collaboration with government, either to improve public services or to complement them. The case for this sort of 'partnership' is now widely promoted by donors and acknowledged, in principle, by governments and many NGOs (Bano, 2007; Nurul Alam, 2007; Nair, 2007a).

Current attempts to forge relations between state and non-state providers are affected by layers of historical experience, in which donors have often played a significant part. Mistrust is often accompanied by a preference on both sides not to engage, at least formally. For governments, faced with the sheer scale and volume of non-state providers, 'more often than not, turning a blind eye towards non-state providers may seem like the only rational alternative for overwhelmed systems' (Aga Khan, 2007:14).

While there are elements in common in the state-NSP relationship, national histories are specific. For example, Bangladesh is characterised by its history of large scale NGO activity, and by a small number of very large NGOs that work across sectors and channel donor funding to smaller organisations, in systems that have a high degree of autonomy from government (Nurul Alam, 2007). In Malawi, large-scale mission hospital and school systems work closely with government while retaining some management autonomy (Kadzamira et al, 2004). In India, government has set the parameters of the relationship, incorporating and defining the role NGOs and the private sector, but with is greater variety of modes of action in different political territories and levels of government (Nair, 2007a). In Pakistan, commitment to partnership with NGOs and the private sector grew under donor influence and was consolidated under Musharraf's military government, at least partly as a way of bypassing the civil bureaucracy and provincial political leaders (Bano, 2007).

Given the variety of historical experience leading to different structures of service delivery, the danger is of trying to bring about externally generated policy solutions that do not fit the context and which will therefore not endure. Policy choices are constrained (and supported) by the mix of service delivery models that are already in place, as Pavignani and Colombo (2008b) argue by reference to Afghanistan and Southern Sudan. In the latter, political, military and logistical factors determined the development of a rural health service that was fragmented, heavily dependent on NGO provision and with weak links to the urban-based tertiary hospitals.

3. Lessons from the exercise of state roles

This section draws on the available case study material on government-NSP engagement in fragile and conflict-affected states and low capacity settings to identify the factors which have influenced state effectiveness in stewarding, regulating, facilitating and financing the non-state sector. In particular, how have levels of state capacity affected (enabled or constrained) the possibilities for successful collaboration? What capacity may be needed in order for the state to perform the indirect roles effectively? As indicated in section 1, under 'capacity' we include organisational and wider institutional factors, as well as the connections between the actors, including government, state agencies, NSPs and donors.

The experience of government-NSP engagement is presented in four areas: 1) Policy environment and dialogue; 2) Regulation and facilitation; 3) Contracting and 4) Informal and mutual agreements. It should be noted that due to the limited case study material, the evidence presented here is only indicative of the issues that may enable or constrain state effectiveness. As noted above, in identifying case material we have had to focus on experiences of engagement that deal directly with service delivery. Also, we have drawn on some non-fragile states for material, not simply *faute de mieux* but because if in those contexts constraints and poor performance of roles are significant they are likely to be even more so in fragile states.

Whilst measuring the impact of the different forms of engagement in improving service standards and strengthening accountability is not the focus of this report, these are important considerations in determining what constitutes a 'successful engagement'. Such assessment is included here to the extent that it is evident in the case studies. Another aspect of 'successful engagement' illustrated where possible is the question whether and to what extent the exercise of state roles is more or less pro-poor.

Policy environment and dialogue

Non-state providers need a stable and predictable policy environment in which to operate (WHO, 2005). Government should in principle take responsibility for defining policy goals, and for leading the process of consultation, gathering information on needs and possible outcomes, priority setting and planning in relation to service delivery (Balabanova *et al*, 2008:22). These activities set the rules of engagement between government and NSPs and enable the more active roles of dialogue, regulation, and contracting.

But the policy continuity required for the development of long-term relationships may be absent in fragile and conflict-affected settings. Studies in Pakistan, Bangladesh, Nigeria and Malawi demonstrate that 'the environment of non-state provision is typically one of policy unreliability and legal instability. The relationship is frequently beset by ambivalence and mutual mistrust, built on histories of policy change and rivalry. Underlying this is a real struggle for territory and for the control of scarce financial resources.' (Batley, 2006:243). Nigeria and Pakistan, for example, have seen historical lurches from state takeover, to severe public service decline, through the incremental growth of market provision, to the advocacy of partnership (Larbi et al 2004). A recent report from an Asian Development Bank programme to improve relations between the government of Pakistan and NGOs concluded that confidence and continuity in policy and practice required 'suitable legislation that grasps the ethos of …engagement allowing the Government to look upon NGOs as allies, while

NGOs engage with Government without expectations of patronage or fear of coercion' (ADB, 2008:11).[11]

Donors can facilitate dialogue which seeks to build credibility, recognition and understanding of the capacity of the non-state sector, and to identify avenues for further collaboration (ADB, 2008). The aim of this level of dialogue is often to find complementarities between the roles of government and NSPs (Wakefield, 2004). But government agencies may be reluctant openly to recognise the existence of NSPs (with the implication that the state alone cannot provide adequate services) which can preclude real engagement (Sansom, 2006). Even where the principle of partnership with NGOs is formally espoused, the practice is often very different. There is limited evidence to indicate that government engagement with NSPs in the education sector has resulted in government actually accommodating the views of non-state actors, for example (Rose, 2007). In post-conflict Mozambique, certain NGOs did engage in dialogue with government through a donor-supported 'co-ordination scheme', but in reality policy was made behind closed doors (Pavignani and Durão, 1999).

Formal policy dialogue may require organisational capacity not present either in the non-state or public sector. The advent of increasingly formalised policy dialogue in Malawi has placed demands on NGOs that they are largely unable to meet, with the exception of a few large 'representative' NGOs (ActionAid, 2008). Government capacity to create and maintain institutional spaces to sustain dialogue (e.g. a unit and or an advisory board) are often constrained by shortage of trained human resources that can lead and manage a meaningful collaboration. In post-conflict Uganda, for example, both lack of skill and willingness to engage with mission health facilities at sub-national level was evident (Balabanova *et al*, 2008). In this case, the capacity of the non-state sector to better organise and represent itself through the development of 'bureaus' was key to enabling dialogue with government (Seengooba, Bataringaya and Kirunga, cited in Balabanova *et al,* 2008: 34)

Even where formal dialogue does take place, it can be harmonious, adversarial or non-existent, depending in part on historical circumstances (Moran, 2006). It is often restricted to the policy design stage in 'set-piece events' rather than in continuous interaction over policy implementation, and it can often involve NSPs only very cursorily. Government often choose to engage with the larger and more formal NGOs who, as indicated above, may be the only types with the requisite capacity to represent themselves, and may not necessarily be service delivery organisations. The result is that dialogue may rule out important service delivery organisations made up of small, informal NSPs. A World Bank study of the health sector in Bangladesh observed that: 'alternative private providers have very little interaction with government. Thus, public-private engagement has largely excluded service providers of greatest importance to the poor' (World Bank 2003 cited in Chowdhury et al 2004). In Nigeria, umbrella organisations or associations have sought to influence government on behalf of their members, often with the aim of challenging restrictive government practices. These associations tend to favour more established NSPs serving elite populations (Larbi *et al*, 2004). Accordingly, governments' ability to resist pressure from particular non-state providers is an aspect of capacity that may be needed for governments to protect the public interest (Balabanova *et al*, 2008:28).

[11] This programme aimed at strengthening collaboration and engagement between government and NGOs in general, although an aspect of this was relations with NSPs. See the full report at: http://www.adb.org/Documents/Reports/Consultant/33080-PAK/33080-PAK-TACR.PDF

In post-conflict situations, Pavignani and Colombo (2008a) describe the dangers of premature pressure by international agencies on national governments (Kosovo, Liberia and Angola) to formulate comprehensive health policies before capacity and information are in place. In Liberia and Angola this was compounded by competing donor-supported processes towards health policy formulation. Moreover, NGOs 'who usually know better what happens in reality…. are usually absent from the 'high' policy discussion' in these countries'.[12] In practice, governments of 'disrupted health sectors' are not able even to assemble information about the activities of NGOs, as a basis for coordinated action (ibid:19). The exclusion of private providers from routine information systems hinders the scope of government planning (Balabanova *et al*, 2008:38).

Spaces for formal dialogue become more harmonized with the advent of PRSPs and Sector Wide Approaches (SWAps), influenced by donors, including in post-conflict states such as Mozambique, Liberia and Rwanda (Pavignani and Colombo, 2008a). A USAID study of PRSPs in 21 African countries shows that they did include consultation with the private sector; however, non-state providers of social services were rarely involved – Rwanda was an exception (Fox, 2004). Sector level dialogue is likely to engage more directly with service providers. The Health SWAp in Bangladesh is noted as providing the opportunity for policy dialogue between state and NSP and as an opportunity for donors to highlight the need for greater and more effective public engagement with the non state sector (Chowdhury *et al*, 2004). The Education For All initiative is an example of how: 'international commitments can afford legitimacy to countries from the international community providing them with opportunities to benefit from increased aid…which, in turn, can enhance capacity to fulfil their commitments.' (Rose, 2006:5) But 'the slow, patient, inclusive negotiations leading to a SWAp in a stable health sector are out of place in an unstable one' (Pavignani, 2008b:62).

Informal dialogue between government and NSPs may be more prevalent in low capacity settings than formal dialogue - because the formal frameworks are not in place and more informal, local dialogue may require less capacity. A successful example of local level engagement and dialogue in the education sector in Somalia is cited by Rose. Here, NGOs initiated the engagement by inviting local government staff to training and presentations; and regional education bureaus have been set up in some areas to review alternative basic education programmes. 'Government direct involvement of this kind can help in learning of lessons directly from NGO innovations, while understanding the constraints they face' (Rose, 2007:40). A similar low-key ('soft, consensual and voluntary') model of coordination and dialogue between donors, UN agencies and NGOs supporting the Somali health sector is described by Pavignani (2008:8)[13]. Dialogue such as this, at the operational level, is seen by Batley (2006:250) as important because this is where the history of distrust and rivalry frustrates policy implementation. He goes on to argue that there is in practice a good deal of informal, local-level interaction between officials and non-state service deliverers but that it is not perceived as policy dialogue, is rarely transparent, and is often about doing deals about special privileges (for, example the protection of water truckers' control of the market in Lagos and Karachi).

[12] Enrico Pavignani, private communication 7 February 2009
[13] The Health Steering Committee of the Somalia Aid Coordination Body, based in Nairobi

Regulation and facilitation

The objective of regulation is that services be provided in an efficient, fair and sustainable manner, whilst bearing in mind social priorities set out by policy makers (both at national and local government level) (International Water Center, 2008). Regulation forms the basis on which non-state service providers are prohibited, permitted or encouraged to operate. It can, on one hand, seek to suppress non-state activity or, on the other, to promote its more efficient operation. Regulation can take the form of 'command and control' approaches (e.g. registration) or 'regulation by facilitation', which involves the use of incentives (e.g. payment or inputs such as training and equipment) in return for compliance with required standards (Palmer, 2006). But if, as Pavignani (2008c:17) argues, 'the difficulty of enforcing regulatory measures increases with the time they remained neglected', then the challenge of regulation in weak and fragile settings may be particularly acute.

Regulation is an inherently political activity, difficult to practise in contested situations where regulators may lack adequate incentives or political clout. Weak and contested public authorities are not in the position of enforcing legislation, assuming legislation exists. 'Unsurprisingly, public authorities in many cases prefer to drop the issue from the policy agenda, and concentrate on service provision' (Pavignani, 2008c:17). Even in relatively strong states, there is evidence that capacity to regulate successfully - particularly in relation to enforcement and monitoring - has been weak. Balabanova *et al* (2008:29) cite the case of the failure on the part of Indian government to regulate the private health sector through Consumer Forums. Here, in spite of comprehensive legal instruments being in place, the ability of government to enforce the law and deal with public demand for legal services is weak. The 2004 DFID-funded study of non-state providers found that cases of effective (pro-service) regulation were likely to occur where the regulator had information, was capable of enforcing standards, had no incentive to repress non-state providers, and where providers have incentives to comply (Batley 2006, Palmer 2006, Rose 2006). Efforts to strengthen regulatory capacity should therefore arguably focus on implementation, rather than on legislative and procedural issues (Pavignani, 2008c:17).

A key concern with regulation is that it may not be focused on the providers that are most important to the poor. In Bangladesh, for instance, the focus has been on undertaking and enforcing the registration of doctors. In contrast, the government had not (in 2006) yet begun to intervene to regulate the unqualified providers in the private sector, even though these were the most important providers for the poor (Chowdhury *et al*, 2006). Information on small-scale, informal non-state providers is often severely lacking, probably especially in fragile settings. Establishing or applying a regulatory framework on informal markets is extremely difficult. 'The scattered nature of small scale health providers makes traditional monitoring (e.g. in terms of visits or inspections) a formidable challenge' (Palmer, 2006:235). Instruments to regulate this sector are likely to be of an indirect or informal nature, and should begin with bringing these activities into the open (Pavignani, 2008c:17). In Mozambique, for example, government is planning to overcome lack of capacity to regulate informal providers by first identifying key aspects of service performance at the local level that should be monitored, and then using community committees to carry out the monitoring (Trémolet, 2006). Making data on the performance of providers publicly available mobilises the regulatory effects of reputation (Trémolet and Browning 2002).

Regulation, as practised, normally seeks to place controls on 'entry' into the market. This can often take the form of elaborate and highly bureaucratised registration schemes that place an enormous burden on the capacity of the regulator and can be

prohibitively cumbersome or expensive for NSPs.[14] These 'command and control' types of regulation can have an intrusive intent and rarely set a practicable basis on which standards of operation can be assessed. Command and control regulation tends to focus on monitoring inputs and restricting competition, rather than on the quality of outputs. In education in India, Pakistan and Bangladesh, for example, less attention has been paid to monitoring the quality and accessibility of non-government schools than on registering them and restricting competition (e.g. non-state schools must maintain a certain distance from or get the permission of government schools). Entry based regulations are often not, in practice, applied because regulatory organisations lack staff, skills, enforcement powers, or information on the sector to be regulated, or because NSPs avoid them and prefer to remain unrecognised (Mills *et al* 2001). An example is the Liberian pharmaceutical sector, where a combination of lack of commitment and political will to enforce the laws; together with a considerable number of conflicts between vested interests over a period of years have resulted in regulations and policies that are confused and contradictory, and unclear allocation of responsibility for implementation and enforcement (Osmond, O'Connell and Bunting, 2007).

Negative, anti-competitive regulation seems most likely to occur where there is a direct government service to protect (Batley, 2006). Double standards, whereby the government asks private operators to abide by quality requirements far beyond those attained in public facilities, are common in weak and disrupted health systems. Where the public sector is competing with private providers for resources and customers, conflicts of interest arise (Pavignani, 2008c:17). Cross-overs of employment between the public and private sectors may further undermine willingness to regulate. Regulatory capture, in which the regulated exert undue influence on the regulatory process, occurred in the case of the Health Professionals Council in (pre-crisis) Zimbabwe. In this case, not only were resources for inspection scarce, but there was also dominance of the medical profession among the regulators. There were also problems of weak regulatory design, outdated legislation, inadequate price and quality regulatory mechanisms, and unclear procedures for processing consumer complaints (Hongoro and Kumaranayake 2000 in Mills *et al* 2002). Regulatory agencies that are semi-autonomous from government are rare in low capacity settings. One successful example is the National Agency for Food and Drug Administration and Control in Nigeria. This agency requires drug vendors to sit an exam to obtain a license, and for products to be registered (Palmer, 2006). However, in this case the head of the agency was eventually removed from office after receiving threats.

Government regulation may be more desirable and effective when it is slimmed down and re-directed from the control of service inputs to monitoring and supporting the quality of outputs. This essentially means (i) stripping down the amount of procedural (input based) rules and (ii) replacing them with incentives – i.e. output or outcome performance measures for which they are rewarded. Lighter touch approaches to regulation can allow for the regulator to be divorced at least partly from the interests of the providers and also the predatory interest of government (Batley, 2006). An example of incentive- based regulation is the Government of Malawi's attempt to improve the quality of services delivered by traditional birth attendants by providing basic training and equipment and through the promotion of accreditation. But in this case, supervision was minimal because the task fell to district nurses who were already overloaded (Palmer, 2006). Incentive-based regulation can also take the form of the provision of vouchers which can only be used with accredited providers. A

[14] For example, in Nigeria, schools have to register with the Environment Agency, Ministry of Health, Fire Brigade, and Water Corporation, each of which requires a registration fee – see Rose, 2007.

successful example of this is the use of vouchers for antenatal care and delivery to pregnant women in Bangladesh (Palmer, 2006).

Substitutes for state regulation may be more effective; these include self-accreditation, franchise and community oversight, but there is limited evidence of their application in fragile settings. NGO accreditation has been applied by the Pakistan Centre for Philanthropy to set standards of good internal governance, transparent financial management and effective programme delivery assessed by an independent panel. In Azad Jammu Kashmir, Social Marketing Pakistan has franchised private clinics and pharmacies which have the right to use the 'Green Star' franchise brand if they undergo training and maintain standards. This case suggests that national NGOs can act effectively as regulators of the quality of services provided by local level service deliverers. In some cases, communities or client-users have become part of the process of regulation and monitoring of the performance of service providers supporting the 'short-route of accountability. A successful example of this is the BRAC model of community controlled schools (Rose, 2006). But self-regulation will only work where providers are organized enough to collaborate and competitive enough to care about reputation. Client control depends on clients having the information to assess service quality, a basis of organisation and authority to assert their demands. In weak and fragile settings, these preconditions are likely to be absent.

Contracting

Contracting NSPs to deliver services (contracting out) or to support government delivery (contracting in) is increasingly viewed as an appropriate option, particularly in situations of high willingness and very low capacity (OECD-DAC, 2008:34). In some cases, it has been acknowledged as perhaps the only realistic option to support the wide scale restoration of services where there is no government capacity for direct provision.[15] Another argument for contracting is that it frees up limited available government capacity to focus on the stewardship role (Zivetz, 2006; Balabanova *et al*, 2008). To the extent that contracting can set and enforce standards for the non-state sector, it can arguably address the potential for fragmentation, increase focus on measurable results, and encourage greater efficiency through competition (Loevinsohn, 2005:676). Where government retains a strategic space and a role in the allocation and monitoring of contracts, in principle it retains responsibility for the quality or delivery of services (Commins, 2006:23).

But contracting requires organisational capacity in at least three areas: 1) design (writing contracts, specifying services and performance measures) 2) management (setting up administrative and financial systems) and 3) monitoring (time and resources to visit contracted out facilities) (Balabanova *et al*, 2008:42). Even where there is experience of contracting, contracts are often designed and managed poorly due to basic administrative failures and unclear roles and responsibilities (Batley and Larbi, 2004). Without a supportive external environment of public sector institutional rules, regulations, laws, policies, it is difficult for public sector organisations to maintain commitments and therefore difficult to gain the confidence of contractors. In fragile contexts, there can be profound cultural and institutional constraints in the form of social and political resistance to change and lack of adaptive capacity in the face of vested interests. Where governments cannot guarantee political or economic stability, or a legal system that would ensure contractual rights, there may be little prospect for formal contracting (Batley, 2006). Contracting may also require a strong

[15] Specifically, the adoption of national-scale health contracting in Afghanistan was seen as the only viable option because NGOs offered the only critical mass of capacity available to deliver services on this scale (Zivetz, 2006).

relational element: Recent ESRC-funded research in India, Pakistan and Bangladesh has shown that even where contractual relationships are formally hierarchical (the government paying – sometimes with donor funding – NGOs to produce a service) the agreements that were most effective were those that had a strong informal, relational element and which had grown out of earlier informal connections[16].

Capacity to design contractual requirements, assess bids, develop performance measures, and monitor contracts is likely to be weak or absent in fragile states.[17] A key constraint is lack of information on the cost and quality of public and private service provision. The high profile case of large scale performance-based contracting for health in Afghanistan adopted a cost per capita approach, but concluded this was not a robust planning parameter: 'In the early stages of reconstruction in a post-conflict country…the lack of current data may make it necessary to take a pragmatic approach based on per capita costs until a better health management information system and better cost information are available' (Ameli and Newbrander, 2007:1).

Monitoring has been problematic across a spectrum of forms of contracting and sectors (Mcloughlin, 2008). It is likely to be particularly difficult in highly politicised or conflicted settings (Carlson, 2007). Responsibility for contract monitoring can be contracted out to an international private firm, as was the case in Afghanistan, but even in this case, where technical capacity was is in place, specifying and monitoring contracts for the delivery of services in remote areas was challenging (Palmer, Strong, Wali, and Sondorp, 2006:720). Corruption can undermine public trust in the private sector if the contracting process is not transparent and carefully supervised. In Cambodia, the effectiveness of public-private partnerships has been hampered by the widespread lack of transparency; the government's failure to negotiate openly contracts and the tendency of government officials to bypass laws and administrative processes in awarding contracts (Rondinelli, 2006: 26).

Different forms of contract require different levels of capacity on the part of government, as was found in a study of the contracting out of urban water supply and health-care in Africa and South Asia (Batley and Larbi, 2004). Short-term 'spot' contracts for one-off inputs (e.g. building works, or the supply of materials) are likely to be easier to design and manage; on the other hand they present transaction costs in the shape of frequent contracting and of the need to coordinate multiple contractors. Longer term and more complex arrangements, such as management contracts and concessions, have the advantage of wrapping all aspects of the service into one contract over a long period, potentially cutting transaction costs. On the other hand, the design of such contracts requires a great deal of information and experience to anticipate the relationships between all the elements of the service and to try to anticipate all the possible risks and uncertainties that may occur during the term of the contract. Because such complete knowledge does not exist, they are likely to depend on goodwill and trust between the partners to work out appropriate solutions over time.

It cannot be assumed that there is the required capacity within the non-state sector, any more than in government, to enter into contractual agreements. Tight performance based contracts, in particular, may require a level of professional and organisational capacity (to negotiate contracts, estimate costs and consider terms, fulfil reporting requirements and meet deadlines) that may rule out the local and informal providers that are often most important to poorer people. The scale of the

[16] http://www.idd.bham.ac.uk/research/Service_Providers.shtml#Whose

[17] We should not, however, conclude that bad contract management precludes the delivery of effective services by NGOs under contract: Loevinsohn and Harding's (2005: 679) influential study of contracting for health service delivery found that 'even in cases where contract management was not done well, contractors were still successful in delivering large-scale programmes'.

contracts being offered may also be prohibitive to NGOs. In Sudan, for example, NGOs have been unwilling, or unable, to take on contracts for the delivery of health services in entire provinces. Here, the Ministry of Health is now looking to revise the contract terms of reference so they are more appealing to NGOs (Carlson, 2007:18). NGOs may be unwilling to enter into contracts with government for other reasons, including weak financial incentives, lack of trust in government generally and confidence in their ability to pay (Mcloughlin, 2008). Tight, formal contracts may be particularly difficult for NGOs (by comparison with the private commercial sector) to comply with for reasons of organisational capacity and identity. Small NGOs may lack necessary accounting capacity and be unwilling to see themselves as agents of government, displacing their independent perceptions of the means and ends of public policy[18].

There is some evidence that formal contracting is increasingly taking the place of loose, relational agreements. For example, mission health facilities in Zimbabwe, Uganda, Tanzania, Uganda and Papua New Guinea have historically operated on the basis of missionary funding but as this source declined, they have been either taken over or part-funded by governments.[19] The relationship was initially on the basis of trust with no formal agreement. More recently some (e.g. in Papua New Guinea and Malawi) have entered into 'service agreements' with government, providing specified services in return for payment and within the framework of government policy. In Malawi, agreements moved from unwritten understandings to written MOUs, and from 2004 to formal service agreements. These were designed to clarify the terms on which government funding was given and thereby to relieve growing distrust suspicion about the fulfilment of obligations, sources and amounts of funding, and the relative benefits of government and CHAM officials. Within the framework of the service agreement, the managerial autonomy of hospitals to decide how they organise to deliver the service is protected by the fact that they negotiate collectively through their association (Green *et al*, 2002; Kadzamira *et al*, 2004).

Large-scale, formal (performance-based) contracting has been successful where it has relied on heavy donor financial and technical support. This approach, modelled on experience in Cambodia and Bangladesh, is a form of contracting increasingly being replicated in other fragile states, including Sudan and Liberia (Palmer, Strong, Wali, and Sondorp, 2006:718) A key factor influencing the success of this approach has been donor harmonisation and alignment. [20] But questions remain about the long-term feasibility and high costs of large-scale contracting.[21] In Liberia, government has been concerned about entering into contracts in the absence of guaranteed, long-term donor funding (Carlson, 2007). There is also debate about the impact of this approach on the capacitation of the state. In the Afghanistan case, Zivetz observes 'local health offices have little in the way of capacity, and resources flow directly to NGOs from Kabul. NGO salaries are higher and more reliable than government salaries, facilities where staff are only receiving government salaries were found to be largely non-functional…It is not surprising that local health departments find it difficult to exert their own authority in this situation' (Zivetz, 2006:18).

Conversely, contracting may build the capacity of the state for planning at the central level: The experience of contracting may have wider benefits on the policy and

[18] http://www.idd.bham.ac.uk/research/Service_Providers.shtml#Whose
[19] Mission hospitals are important providers, offering between 45-50% of health care services in Zimbabwe, Tanzania, Uganda and Papua New Guinea, and 35% in Malawi and Zambia.
[20] The Afghanistan model is now, in turn, likely to be replicated in other fragile settings (email from Clare Lockhart, Institute for State Effectiveness, 19.01.09)

regulatory processes. It can make government more conscious of its policy priorities and clearer about the standards against which it regulates providers. Contracts have the benefit of requiring a clearer specification of expectations and of providing a basis for monitoring of performance. (Batley and Larbi 2004:176; Mills *et al*, 2001). For example, in Afghanistan, a balanced scorecard approach to monitoring NGOs has been effective in identifying priority areas for improvement and in measuring performance over time (Hansen, 2008:107).

There are successful cases of small scale contracting at the local level which may occur more sporadically, may be less resource-intensive, and may allow a more incremental approach to the development of contracting capacity. An example is the relationship between the district health board and faith based hospitals in Enugu State, Nigeria. In this pilot case, government recognised that Enugu had no district hospital, so agreed to heavily subsidise selected faith based hospitals to provide emergency obstetric care for women. The evaluation of the pilot - which was supported by DFID - noted that a key to success was the fact that the State Health Board devolved responsibility for the scheme to district level. The report concludes that these small scale practical examples provide government with some experience to build on, and that this model would be simple to replicate where there are other gaps in government services (PATHS, 2008:98).

Contracts for non-state providers often include 'transition planning' for hand-back of functions to government (OECD DAC, 2008). Even where donors are funding NSPs directly, not through government, contracts for NSPs can require NGOs to contribute to long-term government policy and prepare for hand-back. An example is the Basic Services Fund in Southern Sudan, which requires NSP projects to systematically gather and analyse relevant project information for the benefit of future service delivery policies, programmes and projects and to support State and County level capacity building training and lesson learning (Mott McDonald, 2008:7). However, a recent evaluation found that whilst most NGO exit strategies assume a handover to government ministries - through training of government staff, establishment of community structures to oversee them, phasing out NGO incentives and handing over staff to government payroll - there were almost no instances where this had actually occurred. Ministries are simply in no position to take over staff. Contact between NGOs and government was at the level of information-sharing and consultation rather than co-planning, with the result that there was little sense of government ownership. The report recommends a 'learning by doing' approach that combines increased lesson-learning and a clearer role in directing programme implementation for the Southern Sudan Government to fulfil the potential of the programme to build the capacity of the state (Morton, 2008).

A rare example of where contracting has supported the capacitation of the state for direct service provision is Timor Leste, where government contracted NSPs on a short term basis requiring them to design district health plans and build the capacity of government health staff to take over. This, combined with separate capacity building at the government level, rapidly phased out NGO provision in favour of government provision. But certain attributes of the context of post-conflict Timor Leste may arguably have predisposed it to an early phase-out strategy. These included a relatively stable government and a cohesive society (Alonso, 2006). Also, some have argued that the rapid downsizing of the NGO sector may have been precipitous (Zivetz, 2006:24).

Contracting does not necessarily preclude state building, but there is a risk that it can (Eldon, 2008). The type of institutional arrangement for contracting is a key factor in

this debate. In stabilising contexts, where there is some will, partner country government ministries have been active participants in planning and programme development. In Afghanistan, the state has retained a role in regulation and monitoring through the donor-funded Grants and Contract Management Unit (GCMU), situated within the Ministry of Health. There is broad agreement that partnerships 'are only likely to be effective if governments maintain an active role in the management of the agreements rather than being left as a third party as international donors collaborate separately with NGOs' (Waters, 2007). Where contract management and payments originate in public ministries, they can arguably shift accountability from donors and NGOs to the state (Zivetz, 2006:21). On the other hand, institutional structures which completely bypass the state impact adversely on local level accountability. In Nepal, the World Bank contracted out rural water supply projects to NGOs and the private sector through a 'Fund Board' – an institution that was located separately from local government structures. This institutional approach was criticised for encouraging accountability towards the Fund Board, rather than the community served. In addition, the rigid, input-focused nature of the contracts is seen to have restricted NGOs from using approaches to suit local conditions and needs (Clayton, 1999).

In situations of both low capacity and low will, donors have 'substituted' for the role of government with a view to eventual handover. This has been the case in the Democratic Republic of Congo, where government has been more or less excluded from the process, and USAID has employed what Waldman (2006) calls the 'state avoidance' strategy of establishing contracts between the donor and contractor. In the very worst cases – states that are 'utterly failing' where there is no real prospect of reforming the civil service – Collier has advocated experimenting with a new institutional arrangement for contracting: Independent Service Authorities. These agencies would be autonomous from government, but jointly managed by government, donors and civil society, and would act as a wholesale contractor of both public and non-state service provision. These agencies are however seen as a last resort, not an option to be widely pursued, since they bypass government, rather than pursue incremental reform within the civil service (Collier, 2007)[22]. Whilst they might initially rely solely on donor funding, they are seen by Collier as permanent public institutions: 'Over time…the government might choose to channel more of its own revenues devoted to social spending through the ISA rather than through the spending ministries, whose role would then become focused on policy design. Similarly, the composition of the ISA board could evolve to phase out donor representatives as the government became confident that it could retain donor confidence and finance without them' (Collier, 2007).

The independent agency approach is acknowledged to be untested, but has some similarities with the practice in French West African countries of setting up specialist agencies (e.g. AGETIP in Senegal and AGETUR in Benin) with donor support to handle the contracting of infrastructure works (Fanou and Grant, 2000)[23]. Experience from Rwanda suggests that an independent well equipped fund holder organization which is able to separate the purchasing, service delivery and regulatory roles of local health authorities from the technical role of contract negotiation and fund disbursement can help avoid the possibilities for rent-seeking (Soeters, 2006). On the other hand, Sondorp argues that in the case of Afghanistan, the relative autonomy and isolation of the GCMU from the process of policy and strategy formulation meant

[22] Key features of Independent Service Authorities are: they facilitate a high degree of civil society scrutiny over service delivery; set up a basis of competition between public, private and NGO provision; and perform continuous evaluation to determine whether government, NGO or private provision works best.
[23] AGETIP's role may now have extended to social sectors – see http://www.agetip.sn/

that services contracted out may not be fully aligned with public health priorities (Sondorp, cited in Balabanova *et al*, 2008:37).

Informal and mutual agreements

Much research on relations between governments and NGOs in service delivery describes them as operating on a range between cooperation and conflict (Teamey and Mcloughlin, 2009). More cooperative forms of relationship may occur within the framework of loosely formalised agreements that retain a strong relational (informal and flexible) element. Research on South Asia found that sustained relationships had often evolved out of a history of informal contact that might then lead on to a more formalised written agreement[24]. This is opposite to the trajectory widely described in developed countries where formal contracts precede the development of trust and relational understandings (MacNeil 1978, Gazely 2007, Brown and Troutt 2004, Van Slyke 2006). The research in South Asia indicated that the evolutionary and informal nature of relationships provided an important basis of trust and mutual influence.

Informal agreements may also be 'mutual', where government and NGOs contribute their own separate funding to common or complementary ends and take on distinct roles. These arguably depend more on accumulated social capital and may be less technically demanding because parties bring their own financial and human resources, and neither stands in authority over the other (Batley, 2006). An example of collaboration through division of roles is in Bangladesh, where government signed MOUs with NGOs for the delivery of the National TB control Programme which outlined the respective tasks. Government provided treatment protocols, policy guidelines, drugs supplies and overall monitoring, while NGOs provided essential services in local implementation, management and awareness-raising. In this case, the authors argued that 'trust, recognition of comparative advantage, favourable regulatory frameworks, effective monitoring, transparency, and continued commitment are considered essential preconditions for successful and sustainable collaboration' (Ullah, 2006). A similar arrangement has been successful in the Democratic Republic of Congo (DRC), where NGOs have supported the implementation of government TB programme in hard to reach provinces. This case demonstrates that collaboration is possible even in very poor socio-economic situations where the state is disorganised, but only if consultation and dialogue are in place and if partners have clearly defined roles and responsibilities (Ndongosieme et al, 2007).

Partnerships based on mutual contributions may only be a means of achieving collective goals when there is a good strategic fit between collaborators, and when the benefits outweigh individual action (Aga Khan, 2007:25). A counter-case to the success in Bangladesh and DRC is in Pakistan, where the leasing out of government school buildings to private schools for an afternoon shift in return for which the NGOs have to pay for improvements to the building raised criticisms that 'partnership' was a means of extraction rather than facilitation (Rose, 2006). The South Asian research referred to above found that the NGOs that were most likely to relate with government on the basis of mutuality were those that were more independent in their funding, i.e. they did not depend on tied project funding but on untied grants and donations.

Co-production, which involves an informal agreement between formal organisations and communities or service recipients, has seen some success in low capacity

[24] This research is currently being written up for publication. Working papers are available at http://www.idd.bham.ac.uk/research/Service_Providers.shtml#Whose

settings.[25] Water and sanitation are rich in cases of co-production, the most widely cited being that of the Orangi Pilot Project (OPP) in Pakistan. Here, public utilities provide large sewers in agreement with community lane committees to fund and develop local sanitation systems, facilitated by an experienced local NGO. OPP has untied independent funding, avoids written agreements, and pursues its own approach to community sanitation in informal, relational agreements with government and communities. Another example is Somalia, where urban private-public partnerships are planned to be extended to rural areas where community committees have been failing to effectively operate. This project will support the relevant authorities to regulate and oversee the management of rural water systems, and the community committees will become community oversight bodies freed from daily operational issues to consider the wider effects of water usage.[26] That such cases seem particularly to occur in the water and sanitation sectors may relate to the fact that infrastructure has relatively lighter professional maintenance and management requirements by comparison with health and education, and local level systems are technically not complex. Moreover, neighbourhood based services (such as water and sanitation) where everyone has the same day to day experience of its performance provide the basis for local organisation (Batley 2006:250).

Specific local relationships in the form of mutual agreements and co-production may present problems of scaling-up into large programmes. However, they may offer the promise of scale and sustainability in other ways: they do not depend on external subsidy, the schemes have become institutionalised in the practice of local NGOs, and they are scaled-up not through large organisational structures but by replication of a model to other NGOs.

[25] Ostrom 1997 argues the central point of co-production is that no single principal is in control of all inputs to produce a service output, that production involves multiple public and private agencies including recipients/citizens.
[26] For further information about this project, contact WELL

4. The focus of approaches to enhancing state effectiveness

Based on the evidence from the preceding sections, the following applies our own judgement to the feasibility and risk of the alternative forms of state engagement with NSP. It presents a schematic view which might well be questioned in detail or in its direct application to particular contexts.

Table 1 presents the types of engagement in two broad categories: (i) Those that are unlikely to harm non-state provision if they are performed badly, but which could support good service provision if they are done well – policy dialogue, setting the policy framework and entering mutual agreements. They are relatively risk free because they affect only the general environment of service provision and/or do not impact obligatorily on specific non-state actors. (ii) Those – regulation and contracts – that imply a direct controlling and coordinating role for the state, that impose obligations on specific NSPs, and that therefore risk doing harm.

Table 1 also organises alternative activities within each type of engagement in a hierarchy going from those which demand less capacity to those that demand more. The potential for failed interventions increases as we move up each column. So, for reasons outlined in section 3, making short-term contracts demands less capacity (and present less risk of failure) than long-term concession arrangements. Comprehensive contracting out and universal regulation of providers are more demanding than localised approaches. Contracting of physical infrastructure presents fewer challenges than the contracting of social services.

The dilemma for donors, governments and those who do business with them is that the most desirable interventions from a service delivery viewpoint – for example, getting mass service delivery quickly operational by contracting it universally to NGOs - present high risk of failure, if government lacks the capacity to contract and the institutional conditions are not in place to enforce contract. From a state building perspective, the institutional conditions should be established before very concrete initiatives are taken to work with NSPs. The latter would argue for an incremental process of dialogue, leading to the design of legally and financially supported policy frameworks, and the step-by-step development of capacity to contract and regulate. This would both recognise the difficulty of building 'relational' capacity (Robinson 2008) whilst also presenting opportunities to do so incrementally, learning by doing with other local (non-state) actors.

The table assumes that the engagement is directly undertaken by government, supported by donors. In this case, the 'independent regulator' would be a regulatory body appointed by government but expected to act autonomously. Since this is extremely unlikely to be achievable in the context of the most fragile states – and is difficult even in the UK – alternatives can be considered. A regulatory or contracting body could be set up with a high degree of donor involvement (or oversight) and a residual or even nominal role for government, as in the Collier proposal for independent service authorities. This would reduce the capacity demands of large-scale contracting or regulation by detaching them from the local political context – but at the cost of state building.

Table 1: Types and levels of government engagement with NSPs

Required levels of capacity	Types of Engagement				
	Lower risk – non-obligatory engagement			Higher risk – more obligatory engagement	
	Dialogue	**Mutual agreements for service delivery**	**Creating the policy environment**	**Regulation**	**Contracting**
Higher levels of capacity		Long-term compacts for wider, shared activities between governments and NGO/CBOs		Independent output regulation of quality, accessibility and price of all government and NSP services	Long term , wide-ranging contracts for concession or franchise of social service provision
Medium levels of capacity	National and local dialogue about standards of provision, roles, relationships and spheres of operation	Specific, local agreements of joint financing in complementary projects – MOUs and co-production between govt and NGO/CBOs	General and sector policy frameworks identify roles and relations of state/NSP Legal recognition of NSPs and their rights to provide services	Application of legal requirements for government approved providers Publicising surveys of government and NSP performance and costs Encouragement of o Consumer forums and watch groups o Franchising by large to small NSPs o Self accreditation by NSP associations	Medium term service or management contracts for govt finance of localised private sector or NGO social service providers Medium term service or management contracts for govt finance of localised private infrastructure providers
Lower levels of capacity	Programme of informal encounters between govt and NSP nationally Exploring options for collaboration at local level Exchange of experience at local and national level	Agreement between specific NGOs and government agencies on target standards etc, arising from dialogue	Political agreement that NSPs are legitimate actors Non-interference in acceptable NSP activities Mapping of scale and type of NSP	Mutual planning of standards by govt and NSPs wishing to collaborate Establishing (but minimizing) 'entry' requirements based on service inputs	Government contracting in of specific inputs to its own services in 'spot contracts'

Table 1 can also be used to locate the types of approach to capacity-building that donors have typically undertaken, as indicated in the previous section. Donor activity has focused on promoting only a few of the alternative forms of engagement:

- Formal national level policy dialogue rather than the local and less formal dialogue that would be more likely to engage with direct service providers
- Development of general and sector policy frameworks, with emphasis given to 'partnerships' in service delivery
- Contracting by governments (with donor financing) in large-scale, medium or long-term programmes
- Establishing accountability of service providers to consumer groups.

Donors have left largely untouched the spheres of informal and more local level dialogue; informal, more mutual agreements between governments and NSPs; and the whole sphere of regulation. Informal, mutual and local level engagement present opportunities for learning and the development of trust between state and non-state actors - but, on the other hand, present problems of 'scaling-up'.

Table 2 summarises the internal organisational, inter-organisational, and external institutional factors that the literature indicates constrain state effectiveness in regulation and contracting and that therefore make them riskier interventions.

Table 2: Factors constraining state effectiveness to perform higher risk roles

Factors	**Regulation**	**Contracting**
Internal organisational factors	Weak administrative and accounting skills, and capacity for monitoring, performance assessment and enforcement Vested professional interests Inadequate information on price and performance Lack of experience of regulation Retention of qualified staff	Weak basic administrative and financial systems and skills Poor information systems to compare and monitor contractors Staff resistance and lack of incentive Lack of experience of contracting – design, performance assessment and enforcement Difficulty retaining qualified staff
Inter-organisational factors	Mistrust between regulators and NSPs Blurred boundaries between state and non-state activities – the regulators and the regulated	Lack of trust, credibility and legitimacy between actors Poor definition and co-ordination of roles between state agencies and with NSPs Gap between central contract design and local implementation agencies
External institutional factors	Weak and inconsistent regulatory framework Economic and political instability Political pressure on regulator, and lack of political will for enforcement Weak demands of civil society Neutrality of regulatory role not understood	Weak framework of contract law Lack of policy continuity Economic and financial instability. Absence of guaranteed long-term funding Social and political resistance to 'privatisation'

5. Conclusion and policy implications: How can governments effectively engage with non-state providers of basic services where capacity is weak?

It may be useful for donors and governments to think of types of engagement as suggested in Table 1, according to (i) the more or less obligatory nature of engagement with specific NSPs and therefore the risk of doing harm through poor or unsustained interventions, and (ii) the levels and types of capacity required for specific activities. Low levels of obligation and risk are imposed on NSPs by policy dialogue, setting the policy environment and entering mutual agreements. Higher levels of obligation and risk are imposed by formal contracts and regulation.

From a state-building perspective, it is a logical progression of institutional development to address first the general policy environment and to learn through mutually agreed relationships, before embarking on large-scale contracting and regulation. However, the particular context of fragile states presents a dilemma between the need to build engagement incrementally and the need to respond quickly to service imperatives. From a service delivery perspective, the scale and destruction of services may require large scale and more interventionist approaches and the fragmented nature of non-state provision may indicate the need for quick co-ordination. Paradoxically then, fragile and conflict affected states, where state capacity may be particularly weak and institutions need building, may be pushed into 'prematurely' direct forms of state engagement before the development of the underlying institutional structures.

Key lessons from the case studies

Government capacity to plan, co-ordinate, organize, regulate and finance the non-state sector is severely constrained in fragile settings. However, this is also true in most developing countries. The most acute constraints on government undertaking indirect roles in service provision are at the general level of the state's legitimacy, coverage and competence. In regard to engagement with NSP, there are basic constraints of 1) Lack of basic information about the non-state sector – its activities, its goals, services provided, costs of services. This lack of basic information consistently undermines the task of developing appropriate standards, providing adequate financing, and setting and enforcing appropriate regulations. 2) Lack of basic organizational capacity to form and maintain relationships with NSPs, or to monitor their activities.

There may be reluctance on the part of governments to withdraw from the direct role of provider to take on the indirect roles of oversight and stewardship.
The indirect roles may be less politically prestigious, offer less patronage opportunities and reduce public sector employment. Governments may be more willing to engage with NSPs where there is recognition that government cannot alone deliver all services, and where public and private services are not in competition. This is more likely in health, water and sanitation than education.

Where there is lack of willingness to engage, governments may need evidence that successful collaboration is possible, that complementarities can be found,

and that there is political advantage as a result. This can be demonstrated through small scale, pilot approaches at local level (e.g. contracting or informal collaboration).

As much as government capacity, the capacity and willingness of non-state actors influences the potential for successful engagement
In some cases, NSPs may initiate collaboration and engagement; in others they are too sceptical or unorganised to enter into the forms of engagement that donors or governments intend (e.g. formal policy dialogue, formal large-scale contracting). Understanding the nature of the non-state sector in any given context (size, formality, level of organisation), and the limits to its own willingness to engage with government is an important starting point for designing forms of engagement that are mutually beneficial.

The extent to which engagements are 'pro-service' is likely also to be influenced by:

a) Government motives for engagement. Real, underlying motives can range from the wish to prohibit, control or takeover NSP, to genuinely seeking partnership. Where there is limited recognition of the right of NSPs to exist, where government intention is to seek to control or inhibit NSP activities, or to reduce direct competition between government services and NSP services, interventions will not improve service outcomes. Channelling donor funds through a government that is not good-willed to NSP offers it a powerful instrument for exercising control.

b) The extent to which the providers that are most important to poor people are engaged. Informal or small providers are often overlooked by governments in planning and dialogue, and can be ruled out of contractual arrangements by their limited size and organisational capacity.

Lessons in relation to specific roles

Formal policy dialogue between government and NSPs, which requires a stable policy environment, may be imperfect, unrepresentative and at times unhelpful in fragile settings. It is very often constrained by mistrust, lack of credibility or legitimacy associated with all actors and is also prone to being hijacked by large NGOs. Donors can create spaces for dialogue in unstable settings, but formal dialogue needs to allow actors autonomy, should seek to find complementarities, and should ultimately lead to other forms of engagement (e.g. partnership, or agreement about standard setting). Dialogue at this level is at the best only an entry point to effective collaboration between state- and non-state actors.

Informal and local level dialogue - at the operational level - could more likely be where synergies can be found. This is where mutual lessons can be learned and an understanding of constraints and opportunities on both sides can be developed. This type of dialogue is likely to be ongoing. But as with formal dialogue, informal dialogue can either be pro-service or anti-service.

Regulation is more likely to be 'pro-service' where it offers incentives for compliance, and where it focuses on standards in terms of outputs and outcomes rather than inputs and entry controls. In most cases, command and control regulation has been unnecessarily elaborate and input-focused, placing unrealistic capacity requirements on both the implementing agency and the NSP, with the result that this sort of regulation is often unenforced or avoided. Two

alternatives that place less demands on the actors and are more capable of being focused on improving services are: (i) 'lighter touch' forms of regulation, where the rules are slimmed down, focused more on the quality of outputs and based more on incentives than controls, and (ii) substitutes for state regulation, such as external and self-accreditation, franchised service provision and community monitoring.

Wide scale, performance-based contracting has been successful in delivering services in some fragile and post-conflict settings. But this approach relies heavily on donor support, and is often entered into reluctantly by governments. The sustainability of institutional arrangements for contracting that are separate from, or completely bypass, governments depend for their sustainability on the continued presence of donors. Where institutional arrangements bypass normal governmental channels they also distort accountability relationships. In stabilising contexts, partner country government ministries should be active participants in planning and developing contracts. The relationship between (semi-)independent contracting agencies and the potential for the progressive capacitation of the state is unknown, but the experience of French West African agencies for contracting infrastructure is worth investigating further.

Some successful contractual agreements with NGOs have a strong informal, relational element and grow out of earlier informal connections. They have worked well where responsibility for contracting is devolved to the level of government responsible for implementing it. There is a need for clarity of roles, but also flexibility to allow NGOs to draw on their strengths and to innovate. Small-scale contracts can be tailored to the local context, and allow the incremental development of capacity. Capacities required for contracting will differ according to the sector, and the scale, level of formality, and length of contract.

Informal and mutual agreements, based on independent contributions by the partners and non-hierarchic relationships between them can avoid the capacity problems and tensions implicit in formal contracting but may present other problems of non-transparency, non- competition, and possible abuse of the trust on which they are founded.

Policy implications

Recognise non-state service provision and adopt the do no harm principle
NSP is here to stay, and may even grow and flourish in more stable states. This should not be seen as a problem in itself, but as part of the solution. It would be wrong to set the ambition of 'managing' non-state provision in its entirety - this has not happened in any developing country - and it can be very harmful for low-capacity states to seek to regulate all NSP or to draw it into clumsy contracts.

Beware of generalisation
Non-state provision takes many forms in response to different histories. Its particular organizational form and capacity, the importance of its activities, who it serves, its accessibility to sections of the population, and the nature of its relationship with the state vary greatly between locations. Moreover, all of these may shift rapidly in response to political and economic change – as new elites come to power, and new relationships and employment opportunities follow them. The possibilities and case for state engagement have to be periodically re-assessed not assumed.

Also, the particular identities of NGOs and enterprises should be considered in deciding with whom and how the state should engage. While many NGOs and CBOs have an interest in working with government to improve service delivery some forms of engagement may challenge the capacity and also threaten the autonomy of those that are nearer to being civil society actors. Classical contracts may be more suitable to enterprises; looser partnerships more suitable particularly to local NGOs – though this should not free them from accountability for performance.

State building can occur through any of the types of engagement with NSPs. Types of engagement should therefore be selected on the basis of their likely effectiveness in improving service delivery.

Governments and donors are faced with difficult strategic choices about how to deploy their limited capacity for engagement with NSPs most effectively, and without risk to pro-poor or pro-service outcomes. In fragile or conflict-affected settings, there is the dual goal of supporting state building. There is no meaningful way of resolving this trade-off by deciding which of the possible functions (policy, regulation, contracting or direct service delivery) would be more inclined to build states and then trying to bring them about regardless of context. The better approach is to accept that undertaking any of these functions is a state-building activity, and then to identify, in the particular country context, which if any mode of engagement would

(a) most enable improved (pro-poor) service provision
(b) be most feasible in terms of capacity and willingness to undertake them
(c) present the lowest risk of failure and damage to NSP.

Begin with less risky/small scale forms of engagement where possible

There may also be a trade-off between the effects of forms of engagement on service delivery and the risks resulting from bad engagement. In an ideal situation, *contracting out service delivery and regulating* non-state provision may present the quicker and more direct ways of bringing about improved service delivery but they also present risks. Regulation and contracting impact very directly on non-state actors and, if done badly, can damage existing service providers with no gain. Small-scale contracts and experiments in more localised regulation present less risk. *Policy dialogue and attempts to improve the policy environment* (e.g. through dialogue, creating policy frameworks and legislation) may have only long-term positive effects, but also carry small risks to non-state actors; moreover, these are clearly roles that only the state can perform. *Encouraging mutual agreements and coordination* between state and non-state actors present opportunities for learning and no risk but can only have local immediate effects.

Adopt mixed approaches

The choice between forms of engagement does not have to be absolute. Rather than adopting a uniform plan of engagement in a particular country, it may be better to try different approaches in different regions or sectors. This could reduce the strain on government, for example of having to manage dialogue, regulation or contracting on a uniform national basis. Different approaches also present the opportunity for trial and learning. Direct state service delivery could function (perhaps with contracting in of NSP inputs) in some areas; contracting out to INGOs or firms in others; policy dialogue and encouragement of self-regulation could apply more generally and include even those NSPs which will continue to operate without any direct engagement with the state.

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