



# Working on legitimacy in land governance

Training manual

Radboud University



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## Colophon

This training manual is an output of 'Grounded Legitimacy - Strengthening local land registration in conflict-affected northern Uganda', a project of the Centre for International Conflict Analysis & Management (CICAM), Institute for Management Research, Radboud University Nijmegen and ZOA Netherlands, in collaboration with ZOA Uganda and GIZ-RELAPU Uganda.

This project explored how the Ugandan state legitimizes itself through decentralized land governance, and how interventions by development organizations to support local land registration feed into the legitimacy of the Ugandan state, as well as that of customary authorities. The project included ethnographic fieldwork in Nwoya and Soroti Districts of Uganda on the dynamics of legitimation around land governance and how development interventions feed into these. It also included a series of workshops that explored how development practitioners in northern Uganda actually strategize around legitimacy. This training programme builds on the experiences of these trainings, and includes examples from our own field-research. The fieldwork also inspired the story lines for the video-clips.

The programme and accompanying video-clips can be freely used, as long as credits are given to the authors. We appreciate your comments to further improve the training: [m.vanleeuwen@fm.ru.nl](mailto:m.vanleeuwen@fm.ru.nl)

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# Aims of the training

The ways in which local public authorities deal with land issues has important consequences for their legitimacy: their appreciation and acceptance by citizens.<sup>1</sup> Through their land governance practices, authorities may prove their goodwill, trustworthiness and capacities in service delivery; or instead show their disinterest in citizens' needs, feed distrust or generate perceptions of (ethnic) bias, and so contribute to instability.

Intentionally or unwittingly, interventions by development organizations may feed into these dynamics of legitimation. Land-related interventions reshuffle roles and responsibilities in land governance, and fuel competition between state and customary authorities. Interventions may effectively authorize or disqualify certain state and customary authorities. They may contribute to credibility and transparent practices of land governance, or enhance state control, or patronage.<sup>2</sup> Moreover, interveners tend to adhere to, and promote, particular understandings of legitimate authority, or of what they consider legitimate norms, e.g. concerning women's land rights. The challenge for development organizations is thus to better understand how their interventions and assumptions affect local dynamics of legitimation, as well as their own legitimacy.

This training aims to help development practitioners in the land sector to become more sensitive to questions of legitimacy and better understand:

- the dynamics and practices of legitimation in the exercise of power by state and non-state authorities;
- how interventions to enhance local capacities for land services provision feed into these dynamics of legitimation, including how interventions affect the legitimacy of development organizations themselves;
- how to better take legitimacy into account, and so work in a more conflict-sensitive way.

The manual includes a work-plan for a 2½ -day training programme on these topics, including a series of exercises, a power-point presentation, and preparatory notes for facilitators, including examples from our own research on this theme in northern Uganda, and references for further reading.

This training manual is accompanied by a series of video-clips that illustrate practices of legitimation around land and its governance, and the impact of interventions around land. The work-plan provides suggestions on how these video-clips may be used to introduce legitimation-issues around land, or to start reflection on participants' own interventions.

While the training programme focuses on interventions in the field of land governance, with slight adaptations, it might well be used for interventions in other fields.

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<sup>1</sup> C. Lund & C. Boone, C. (2013) 'Land politics in Africa: Constituting authority over territory, property and persons Africa', *Journal of the International African Institute*, 83(1):1–13.

<sup>2</sup> See C. Mcloughlin (2015) 'When does service delivery improve the legitimacy of a fragile or conflict-affected state?', *Governance, An International Journal of Policy, Administration, and Institutions*, 28(3):341-356.

# Theoretical notes for facilitators

## 1 Legitimacy, an introduction

A sociological understanding of '**legitimacy**' can be formulated as the 'beliefs within a given constituency or other relevant audience that a political institution's exercise of authority is appropriate'.<sup>3</sup> Stated otherwise, 'legitimacy' is the extent to which those that are in a position of 'power' are accepted by those they govern. As such, legitimacy can be understood as 'acceptance of authority'.

Legitimacy is a concern for any institution or person that exercises **authority**; that occupies a position of leadership or is involved in governing others. This may be the government and its representatives, but also other types of leaders and leadership, such as traditional or religious leadership, notables of a community, family-heads, police or army commanders, or those in charge of an association. Legitimacy is a concern as well for development organizations when implementing their programmes.

Notice, that in some academic literature authority is *equated* with legitimacy: an institution is considered as having authority if it is perceived as legitimate. In this training programme, however, we use the term authority just to refer to those that are *in a position* of power. This does by no means imply that those occupying such a position indeed are evaluated as 'legitimate'. On the contrary, there are numerous instances of illegitimate authority.



For instance, the police have the *authority* to ask for identity documents, arrest people, or even use force if necessary. Yet, if police officers lack the means to perform their tasks, abuse their authority, or are corrupt, they may not be seen as *legitimate*.

The above definition highlights the important role of those that are governed in assessments of legitimacy. Indeed, a person or institution may be considered as 'legitimate', because (s)he has been legally appointed to govern, to make decisions, and enforce them; or because (s)he acts in compliance with the law. However, next to legal status and conformity to the law, the ability of an authority to secure compliance and impose decisions depends—at least to some degree—on the acceptance or support of those that are governed.

This acceptance of authority is conventionally understood as **voluntary**. Those that are governed may not like certain decisions, but will nonetheless comply with them, if they believe that they were made in a correct way or for the good of all. This emphasis on the voluntary nature of acceptance is also expressed in another definition of legitimacy as 'worthiness of support'.<sup>4</sup> It emphasizes that legitimacy often involves the sense of people that something is 'right', or morally good, and that it thus should be supported.

<sup>3</sup> J. Tallberg & M. Zürn (2019) 'The legitimacy and legitimation of international organizations: introduction and framework', *The Review of International Organizations*, p. 5.

<sup>4</sup> R.D. Lamb (2014) *Rethinking legitimacy and illegitimacy: A new approach to assessing support and opposition across disciplines*. Washington D.C., Centre for Strategic & International Studies.

Legitimacy is often considered an essential element for ensuring **compliance** with decisions and demands made by authorities, and encourages participation in the execution of public action. Voluntary participation and living up to leadership's decisions may reduce the costs of public institutions and their work.

In some circumstances, **coercion** or even the use of violence may be considered as necessary to ensure compliance, by those in power, or even by those they govern.<sup>5</sup> A certain measure of repression or violent policing may be deemed legitimate to assure law and order, or fight crime. Yet, generally, legitimacy as a means to ensure compliance is seen as the opposite of coercion,<sup>6</sup> and violence will only be used when legitimacy is lost.

The idea that a 'strong man' is needed to assure law and order, or of 'mano dura' policies to fight crime and insecurity have gained popularity in various corners of the world.

In contrast, **partial or even a lack of legitimacy** may result in ineffective governance. In the absence of legitimacy, leaders need other things to ensure compliance: they may need to seduce, persuade, pay, or force people.<sup>7</sup> However, such alternative strategies to generate consent tend to be less effective, more costly, or undesirable. **Illegitimacy**, finally, may nurture resistance to things that people oppose, or even result in violence.

The crucial takeaway here is, that legitimacy affects the degree of an institution's or person's authority and therefore the compliance of a specific constituency with imposed rules. Legitimacy is furthermore affected by the actions of those in positions of authority. It can be more or less purposively influenced through **acts of legitimation**: attempts to affect legitimacy beliefs and assessments.<sup>8</sup> How this works is the core concern of this training.

## 2 'Grounded legitimacy'

What makes something –a leader, an institution, a norm– legitimate? Various reasons why people would bestow legitimacy to persons or institutions have been identified in the literature.

Legality - Legitimacy may result from legislation, that identifies certain people and certain rules to be in charge.

Tradition - Legitimate authority may rest on a belief of the intrinsic rightness or even sanctity of the authority of certain individuals/families and of the traditions they promote, for the simple reason that those have been in power since time immemorial.



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<sup>5</sup> To some political scientists and sociologists, the monopoly on the legitimate use of violence is at the heart of state-building.

<sup>6</sup> J. Tallberg & M. Zürn (2019) 'The legitimacy and legitimation of international organizations: introduction and framework', The Review of International Organizations.

<sup>7</sup> R.D. Lamb (2014) Rethinking legitimacy and illegitimacy: A new approach to assessing support and opposition across disciplines. Washington D.C., Centre for Strategic & International Studies.

<sup>8</sup> Jonas Tallberg & Michael Zürn (2019) 'The legitimacy and legitimation of international organizations; Introduction and framework, The Review of International Organizations.



Charisma - Legitimacy may depend on the esteem that leaders have due to their exceptional behaviour, achievements/heroism, which in turn may bestow power to the norms they reveal or ordain.<sup>9</sup>

Expertise - Legitimacy may result from the fact that leaders claim or are seen to avail of certain specialized knowledge.

Input legitimacy – Legitimacy may result from satisfaction with the ways in which leaders are selected -e.g. because they have been elected democratically by their citizens-; or decisions are being made.

Exemplary behaviour – Legitimacy may result from the ways in which those in power operate, and the extent to which their behaviour is considered just, fair, and transparent; or the extent to which citizens consider them representative ('throughput legitimacy').

Effectiveness – legitimacy may rest on the effectiveness of leaders in making decisions and their provision of services, such as security, rule of law, and development ('output legitimacy').

Social trust and belonging – the personal ties that authorities have with communities or their belonging to the same (ethnic) group

Many discussions on legitimacy are quite **normative** in nature, and assume that there is some sort of a 'right' way of exercising authority,<sup>10</sup> and thus focus on the characteristics and capabilities of those in power. This notion suggests universality in what makes citizens accept the power of public authorities. It implies that one can identify legitimacy of certain leaders and institutions on the basis of some sort of check-box list of criteria.

This training starts from the notion that to understand 'legitimacy' we need to move beyond the notion of universal standards of performance, and instead explore '**grounded legitimacy**',<sup>11</sup> and explore how legitimacy actually evolves and comes about in daily practices. Such an understanding considers that:

- Legitimacy is not a given, in the sense that it can be assessed with reference to standard performance criteria; instead, it is a **dynamic** process, that may change due to progressive experience; and is **contextual**, influenced by locally prevailing values, beliefs, and experiences. What would be legitimate in one setting (a specific time and place), is not necessarily so elsewhere.
- Legitimacy is neither just an attribute of those in power, nor something granted by those that are governed – instead, it is the outcome of **interaction** between citizens and authorities. It involves a relationship between authorities and those they govern, including ongoing re-assessment of what legitimacy entails.
- Legitimation is not a bilateral relationship between those in power and those that are governed – instead, it is often **contested** between a diversity of authorities that claim legitimacy, and which may try to delegitimize others.

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<sup>9</sup> These first three 'sources' of legitimate rule were identified by Max Weber, a German economist and sociologist, in 1922.

<sup>10</sup> A. McCullough (2015) *The legitimacy of states and armed non-state actors: Topic guide*. Governance and Social Development Resource Centre, University of Birmingham, Birmingham.

<sup>11</sup> K.P. Clements (2014) 'What is legitimacy and why does it matter for peace?', *Accord: An International Review of Peace Initiatives*, 25:13-17.



## 2.1 The dynamic, contextual nature of legitimacy

To start with, **the acceptance of public authority may build on a diversity of sources, and may develop rather differently in different socio-cultural, historical environments.** Legitimacy relates to social norms, and practices of decision taking prevailing in a particular setting, and is often strongly embedded in particular history and institutional legacies. What some consider legitimate may not be legitimate in the eyes of others.

Development organizations often assume legitimacy to result from the democratic nature of institutions, and effective and equal provision of services. In various places around the world, however, the competitive nature of multiparty elections does not conform to conventions about how leaders come into power, while those in power may gain local legitimacy through effective patronage, the use of violence, or the exclusion of presumed 'outsiders' from access to services in their communities.

To better understand legitimate authority in particular settings, it thus makes sense to empirically explore how legitimacy actually evolves: how do perceptions of legitimate authority and criteria to assess it develop locally at the interface of citizens and their leaders and institutions. This means exploring different ways in which authorities acquire legitimacy, studying the expectations about the relation between those governing and those being governed, and the different practices of legitimation that develop in particular settings.

In many countries where a 'western' state bureaucracy has been introduced, customary or traditional understandings of legitimate authority and norms may remain very influential.

After a civil war, violence perpetrated by the state against its own citizens might leave long legacies in terms of limited trust in the state, or low expectations that the state regards the interests of all citizens equally.

This may require exploring citizens' past experiences with and trust in their authorities and how this affects current legitimacy assessments. It may require an understanding of what citizens expect of their authorities, including historically grown understandings of who are citizens, what rights and obligations they have towards their authorities, and what authorities may expect of them.<sup>12</sup>

This includes for instance exploring convictions about the division of roles between state and customary authorities; or expectations about the extent to which people are entitled to participate in decision-making.

Legitimacy judgements may rapidly change through particular events, or through citizens' daily experiences with those in power. Interestingly, the effective delivery of development services, or democratization of institutions might have unexpected outcomes in terms of legitimacy.

Citizens may progressively develop higher expectations of their authorities, and be disappointed when the state fails to respond to these new expectations. Sometimes, people simply do not see, and thus not appreciate, the efforts of those in power.<sup>13</sup>

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<sup>12</sup> T.B. Hansen & F. Stepputat (2001, eds.) *States of imagination: Ethnographic explorations of the postcolonial State*. Durham, NC, Duke University Press; L. Buur (2006) 'Reordering society: Vigilantism and expressions of sovereignty in Port Elizabeth's townships', *Development & Change*, 37(4):735-757.

<sup>13</sup> C. McLoughlin (2015) 'When does service delivery improve the legitimacy of a fragile or conflict-affected state?', *Governance*, 28(3):341-356.

## 2.2 The interactive nature of legitimacy

The legitimacy of a public institution is the outcome of an interactive process, involving both actions and perceptions of those governed and those in power. People's perceptions of legitimacy may result from rationales provided by powerholders themselves, while powerholders may strategically respond to changing expectations. The very act of consenting to decisions taken reinforces their justification, irrespective of whether people consider them correct or not. Beetham<sup>14</sup> highlights therefore three dimensions upon which legitimacy rests, that show this interaction:

- Public authorities gain legitimacy by conforming to certain sets of norms/rules shared or conventions/practices endorsed by those being governed. These may include, for instance, norms about gender, or expectations of leaders in relationships of patronage.
- These rules/norms and practices need to be considered as 'appropriate' by those being governed. For instance, people may take account of procedures such as: do authorities collaborate, listen and take them seriously? Do they use force and violence in proportion to the seriousness of insecurity and crime? Are they honest?
- Moreover, in addition to what people say about how they assess the legitimacy and performance of authorities, legitimacy relies on the actual practices of those being governed, and the extent to which they act in accordance with these assessments of their leaders and actually demonstrate consent.

E.g. do people say they highly value tradition, but in practice ignore their customary authorities? Do they underscore the legitimacy of the state, but refuse to pay taxes? Do they underscore women land rights, but in their practices –e.g. when overseeing the division of the inheritance- continue to ignore these rights?

Furthermore, it is important to consider that **legitimacy assessments might substantially differ among different stakeholders**. Therefore, when conducting a legitimacy assessment, one needs always to explore not only the legitimacy of whom and of what, but also legitimacy *according to whom*, and legitimacy *by what criteria* (Lamb 2014). Citizens and their authorities might not only differ on what legitimacy means, but may also differently assess the extent to which those in power conform to these criteria.



The legitimacy of a development intervention might be assessed differently by interveners themselves and their funders, the government partnering with the intervening organization, and local citizens.

In our own fieldwork in northern Uganda, people generally appreciated efforts by a development organization to strengthen decentralized land governance, and promote government transparency. In some surrounding communities, however, there were misconceptions about the reasons why they had not been included. Some people believed this was because they had not voted for the ruling party. This may negatively affected the reputation of the development organization.

Even within groups of citizens, different people may make different judgements of legitimacy. Expectations about the relationship between a state and its citizens may enormously differ between individuals, age groups, men and women, (ethnic) communities or different socio-economic classes, and parts of a country. People might have different expectations about the responsibilities of their

<sup>14</sup> D. Beetham (2013, 2nd edition) *The Legitimation of Power*. London, New York, Palgrave Macmillan.

authorities, and any involvement of authorities in issues that people consider not to be part of their mandate may harm their legitimacy.

Legitimacy assessments are often a bilateral exercise. Not only are people assessing the legitimacy of their leaders; their leaders also judge those people they lead, considering for instance whether they are 'worthy' to be governed, or to be taken seriously in decision making.

Development organisations have their own assumptions or convictions over who they consider as legitimate beneficiaries of their assistance, and this may differ from what communities or their leaders consider as rightful recipients.

## 2.3 The contested nature of legitimacy

Finally, legitimate authority is not just the outcome of bilateral interactions between citizens and their public authorities; **legitimacy is often contested between different authorities**. In practice, in many settings, there are different leaders and institutions that play complementary, and sometimes parallel roles in the lives of citizens. For instance, in addition to the state, non-state institutions like customary or religious leaders may play important roles in citizen's lives, e.g. for marriage and inheritance, resolution of disputes, or management of property. Each of these institutions brings along their own norms and rules about how to organize social life, and may be 'legitimate' for different reasons.

Frequently, such authorities are in competition with each other about who is in charge of what and what rules apply. In this competition, different authorities not only try to gain legitimacy among citizens, but also try to delegitimize others.

Development organizations may be important actors in this institutional landscape, and often actively engage in this institutional competition. By intervening, they may position themselves as an alternative provider for development services, or propel the relevancy of their partners. In their interventions, they often try to promote their own norms, conventions, and practices of power. Finally, they try to gain legitimacy for themselves and their interventions

Therefore, we assume that the legitimacy of particular public authorities cannot be studied in isolation, as it often evolves through the interaction between diverse state and non-state authorities. Each of these promotes or reinforces different ideas about what are legitimate norms/rules, and practices/procedures of governance, and by their performance try to convince citizens of their legitimate authority on certain issues.<sup>15</sup> Likewise, in this institutional competition, or negotiation, citizens play a vital role in endorsing certain norms and practices, as well as in supporting certain authorities.

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<sup>15</sup> T. Hagmann & D. Péclard (2010) 'Negotiating statehood: Dynamics of power and domination in Africa', *Development & Change*, 41(4):539-562.

### 3 Sensitivity to legitimacy in land-related interventions

This training programme starts from the notion that it is urgent for development organizations to become more sensitive to legitimacy when working on land and its governance. In many settings of development, land is a critical issue for the development of legitimacy of public institutions. This is often a local process, involving everyday interactions between people and different state and non-state authorities involved in decision making, administering, and resolving disputes about land.<sup>16</sup>

As discussed in the preceding sections, legitimacy is a dynamic process, involving ongoing reassessment of who and what is legitimate, often involving competition between different institutions vying for authority. Often unwittingly, interventions by (inter)national development organizations impinge on processes of legitimation and contestation around legitimacy in land governance in different ways. Interveners might deliberately want to enhance the legitimacy of certain authorities and practices which they consider worthwhile themselves. Assistance might also unintentionally (de)legitimize certain authorities, governance practices, and norms/values; or effectively support or undercut efforts by different public authorities to convince people of their legitimacy. Moreover, interventions themselves might not be considered as legitimate by some stakeholders, and meet tacit or open resistance.

For these reasons, it is important for development organizations to take practices of legitimation into account. However, this tends to be done implicitly only, or not at all, and is seldom explicitly discussed. Yet, we might consider sensitivity to legitimacy as an important component of 'conflict-sensitivity', which has been mainstreamed in many humanitarian and development organizations.

#### 3.1 Legitimacy as component of conflict-sensitivity....

Experience has shown that if no proper care is taken, humanitarian and development interventions may actually increase insecurity and conflict. Conflict-sensitive programme planning at least tries to minimize such negative impacts, by carefully considering the types of assistance provided and procedures through which this is done ('Do-No-Harm'). Ideally, conflict-sensitivity induces behaviour that has positive effects on the larger context of conflict, or even contributes to peace. The provision of humanitarian and development aid might be organized in such a way that it helps bridge divides, supports peace-minded individuals and institutions, enhances collaboration and mutual support, nurtures inclusive and participatory decision taking, and promotes peaceful ethics and behaviour.

Most conflict-sensitivity trainings consider the importance of taking legitimacy into account. They point out that aid and development cooperation in conflict-affected settings may legitimize violent or unjust government, leaders or institutions; or may instead uplift the role and standing of peace-minded individuals and organizations, and nurture legitimate practices of governance, including transparency and accountability. Re-establishing legitimate authorities may be stimulated as a positive side effect of aid. It would make the provision of aid easier and more effective. Moreover, legitimate authority may also be considered as valuable in itself, as it enables a transition to peace and sustainable development, and thus become an explicit aim of intervention.

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<sup>16</sup> C. Lund & C. Boone, C. (2013) 'Land politics in Africa: Constituting authority over territory, property and persons Africa', *Journal of the International African Institute*, 83(1):1–13.

## 3.2 ...and development

From such an understanding, development organizations might conclude that the further society moves away from violent episodes, the less attention is needed for legitimacy. Yet, this training starts from the assumption that legitimacy should also be a core concern of organizations that consider themselves to work in settings of 'regular' development, in particular those organizations involved in institutional strengthening.<sup>17</sup> After all, legitimacy of public institutions can never be taken for granted, also in settings that are not labelled as 'conflict-affected' or where conflict is long over. In contrast, legitimacy is never static but continues to be redefined and contested. This counts not only for so-called 'developing countries', but for any state. In a globalized world, where ongoing debate and renegotiation over the precise relations between people and their leaders are permanent features, sensitivity to legitimacy in development interventions is highly relevant.

For instance, in the north of Uganda, state legitimacy continues to be contested, and there is significant distrust of government land policies. To an extent, this should be understood as a legacy of a North-South divide originating in colonial times and the LRA war, but is also due to contemporary dynamics such as Uganda's political governance system, the continued limited presence of the state, several irregular, large-scale land acquisitions, and ongoing contestation between customary and statutory authority.

But even in many western European states, that seem strongly established, renewed debate about the social contract and the form and extent of citizen participation in decision-making by the state is ongoing. Consider for instance protests by the so-called 'yellow vests' that began in 2018, and that question the legitimacy of the French government. In a similar way, 'Brexit' highlights ongoing debate about the roles and responsibilities of states in the context of expanding powers of the European Union.



Sensitivity to legitimacy may be of particular importance in land-related interventions. Transformations in land governance frequently touch upon important questions in society, involving discussion about the meaning of 'citizenship' and who belongs where; roles of the state and other stakeholders; or public authorities' legitimate reach of power.<sup>18</sup> Societal and political debates around land often concern the division of responsibilities between customary and state institutions; the extent to which local people can manage their own resources; or to what extent the state might overrule local interests for the sake of development of the country as a whole. Aforementioned competition between different authorities about who is in charge and what rules apply is part and parcel of such debates.

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<sup>17</sup> K. Eickhoff & L.K. Mueller (2017) *Conflict Prevention and the Legitimacy of Governance Actors; Research Report*. SFB-Governance Working Paper Series, No.72. Berlin, Collaborative Research Center (SFB) 700.

<sup>18</sup> T.B. Hansen & F. Stepputat (2001, eds.) *States of Imagination: Ethnographic Explorations of the Postcolonial State*. Durham, NC, Duke University Press; L. Buur (2006) 'Reordering Society: Vigilantism and Expressions of Sovereignty in Port Elizabeth's Townships', *Development and Change*, 37(4):735-757; A.T. Hirblinger (2015) 'Land, political subjectivity and conflict in post-CPA Southern Sudan', *Journal Of Eastern African Studies*, 9(4):704-722.

## 4 Legitimation in land-related interventions

Interventions in the arena of land governance feed into local legitimation practices in diverse ways.

### 4.1 Interventions influence the division of roles & responsibilities in land governance

- Interventions may directly impact the actual roles and responsibilities of certain public authorities, or simply stated: 'who is in charge of what'. They may **enable local leaders' and institutions' functioning and execution of certain tasks**, through capacity-building, or providing offices, transport, and money.
- In contrast, by establishing new institutions and prioritizing certain stakeholders in capacity building, interveners may side-line existing institutions and stakeholders.
- Development organizations may (more or less implicitly) support or discredit certain public authorities, through **partnering** with or including them and not others, or by taking on particular roles themselves, duplicating or substituting existing institutions.
- Through **being (in)visible**, credit/blame for services and changes in the lives of people may (un)justly be attributed to interveners or other public authorities.<sup>19</sup>

Our own fieldwork in northern Uganda evidenced that projects for issuance of certificates of customary ownership (CCO) increased state presence, and enhanced the state's 'output legitimacy'. Training and facilitation enhanced implementing capacity of local government institutions. Interviewees observed that the state was more visible, with officials making regular visits to local communities. Some interviewees feared though that the projects helped the state to impose itself, and might facilitate taxation.

At the same time, interventions seemed to decrease responsibilities and legitimacy of some customary institutions in land administration. Responsibility for the procedure of registering CCOs was attributed to the state administration, while intervening organizations worked on sensitization among communities, but primarily in collaboration with statutory structures. Newly established dispute resolution committees in many instances effectively ignored and replaced customary dispute resolution structures. During registration, 'ownership' was frequently restricted to immediate family members only, thereby side-lining extended family and clan leadership, which diminished or eliminated their oversight roles in land governance.

In one case, the intervening organization transported members of local government's land demarcation teams in vehicles with its own logo. To community members this confirmed prevailing notions that this international organization was in charge of certification, rather than the Ugandan state. This was less the case in another locality, where land demarcation teams wore T-shirts with logos of both the government and of the intervening organization. Visibility is critical in attribution of responsibility and legitimacy of interventions.

In some of the communities where projects were implemented, local political leaders appeared to take credit for these, in the hope of gaining votes, at the expense of their counterparts from communities where the projects had not reached.



<sup>19</sup> C. McLoughlin (2015) 'When does service delivery improve the legitimacy of a fragile or conflict-affected state?', *Governance, An International Journal of Policy, Administration, and Institutions*, 28(3):341-356.

## 4.2 Interventions influence practices of land governance

- Interventions may **transform the ways in which institutions operate, or normalize certain practices of governance**, for instance in terms of their transparency, inclusiveness and citizen involvement. They may introduce alternative practices of dispute resolution, e.g. promoting mediation or arbitration. They may also regulate or make transparent how fees and administrative costs for land services provided by diverse authorities are paid for.
- Interveners may bring out into the open the ways in which leaders and institutions exercise their roles and relate to their citizens, and so impact their **reputation**, or push institutions to adapt their practices of 'good governance'.
- Likewise, **performance of intervening organizations and the behaviour of their staff** may demonstrate or contradict how development organizations consider that land governance should be done, and so affect their own legitimacy as aid providers.

In our own fieldwork in northern Uganda, interviewees in areas where projects for issuance of CCOs took place observed important shifts in 'institutional culture' of the state administration, noticing for instance more respect for time in appointments, or observing increasing presence of staff in government offices. The use of new technology also contributed to the legitimacy of state-led formal land administration, as a reliable and up-to-date service-provider.

Many interviewees observed and appreciated that the statutory bodies involved in demarcation and dispute resolution, as well as those set up by intervening organizations, included women, youth and people with disabilities. Local landholders experienced mapping as a participatory exercise.

## 4.3 Interventions feed into discussions on norms, values, and conventions, including ways in which legitimacy is assessed

- Interventions may **promote certain ideas about the state or non-state and customary institutions** and their roles in and responsibilities for land allocation, administration and dispute resolution. They may emphasize particular norms, values and notions of justice and (gender) equality that differ from local or customary notions, or of inclusiveness and citizen involvement in governance.
- Through their statements about or attitude towards particular authorities or land governance practices, development organizations **may generate debate on legitimacy**; and validate or disqualify the ways in which authorities are evaluated.
- Through the **behaviour of their staff**, organizations may set an example -or even standards- for how public institutions should operate, and for what could be expected of them.
- They may change the **influence** of certain stakeholders in legitimacy assessment, for instance, by providing a platform for women or elites to express themselves.

In our own fieldwork in northern Uganda, interviewees pointed out how in preceding years, due to the legacies of conflict and displacement, and their election in local councils, young men and women had gained influential roles in land governance. However, the CCOs again reinforced the notion that family heads are in charge of the land, at the cost of their sons and daughters. In some cases, women were not systematically recorded on the CCOs, thereby reaffirming prevailing notions about limited rights of women to family land.



In other cases, intervening organizations and local authorities stimulated families to subdivide land to children during demarcation, thereby increasing youth access and control over land within the family, and promoted that provisions should be made for daughters as well.

Overall, interveners tend to have their own ideas about who and what is legitimate, and their interventions feed into local competition between state and customary authorities, and may effectively legitimize or disqualify state and non-state actors and their roles in and practices of land governance and the rules applied.

## 5 Conducting a legitimacy-focused conflict-sensitivity analysis

Interventions might thus feed into **the prevailing institutional order**, and the division of power and responsibilities (who is in charge of what?); into the actual **practices** of institutions (how are things done?); and into the **norms, values and conventions** on the basis of which legitimacy assessments are being made. Key questions to pose for each of these impacts are:

- For who does this pose a problem?
- Does this challenge the objectives of the intervention?
- Or might it instead provide opportunities?

To make such an assessment, the following questions might help the exploration:

### 1. What is the impact of interventions on legitimacy of the stakeholders?

Here, one may consider the three types of impact on legitimacy identified in the previous section:

- the division of roles and responsibilities of different state and non-state actors in land governance;
- their practices of governance;
- the norms, values and conventions they adhere to, including notions of appropriate land governance among different stakeholders in the environs of an intervention.

### 2. Is this effect intended or unintended?

Intervening organizations interested in societal transformation might deliberately want to impact on the division of roles between different institutions, or promote certain norms they consider valuable. They might want to question prevailing practices and norms. They need to be aware when this is problematic or conflictive.



3. **Is the impact on legitimacy supporting the project goals/values of the intervening organisation? How?**
4. **Is the impact on legitimacy a risk for the project implementation and/or is the impact creating conflicts (tensions) beyond the scope of the project? How?**
  - How do shifts in legitimacy conform with or contrast to those of different stakeholders in and around the intervention? To what extent are these reasons for concern? Might these result in resistance or even violence?
  - Which stakeholders' perspectives are taken most into consideration if the aim is that interventions are accepted and contribute to stability and development?
  - To what extent are impacts unavoidable, or might actually enhance the positive impact of the intervention, and thus would even be sought for? Can interveners justify their (non-) conformity to local norms, values, conventions and notions of legitimacy?
5. **What are options to mitigate negative impacts and/or maximise positive impacts?**
  - What alternative intervention strategies could be considered to overcome these challenges, or to even further enhance impacts sought for? What are the opportunities and constraints for these?
  - Could one accept negative impacts as inevitable 'collateral damage' and what are the risks of doing so? What could be done to prevent harm?

The annexes include two checklists to facilitate this exercise:

- 'Analysis of risks and opportunities for land rights interventions'
- 'checklist on how land-related interventions might impact legitimacy'



# Outline of a training

In the following pages, we outline a training programme to help staff of development organizations to become more sensitive to issues of legitimacy in the field of land governance, and to analyse their interventions accordingly. The training consists of three modules.

A possible planning for such a 2 ½ -day training would be as follows:

	Day 1	Day 2	Day 3
Morning	Module 1 Exercise 1.1 – introduction of participants Exercise 1.2 – inventory of expectations Exercise 1.3 – introduction to legitimacy and its importance in development	Module 2 Exercise 2.1 – Introduction to conflict-sensitivity Exercise 2.2 – conflict-sensitivity and land governance Exercise 2.3 – legitimacy and land governance	Module 3 (continuation) Exercise 3.3 – three dimensions of legitimation Exercise 3.4 – wrapping up and going forward
Afternoon	Module 1 (continued) Exercise 1.4 – the dynamic nature of legitimation Exercise 1.5 – the notion of 'Grounded Legitimacy'	Module 3 Exercise 3.1 – stakeholder mapping in land governance Exercise 3.2 – analysing video-clips	

In case participants are already familiar with the concept of conflict-sensitivity, this training may be reduced to two days, by leaving out exercises 2.1 and 2.2.

## Module 1

This module makes the participants to the training familiar with the notion of 'legitimacy':

- Legitimacy is not an attribute of leaders and institutions, that can be assessed with reference to legislation and standard performance criteria. Instead, it is a **dynamic** process, involving progressively changing notions about what is legitimate, that is strongly dependent on context, and norms, values, and conventions prevailing in a particular setting.
- It evolves in the **interaction** between citizens and their leaders and institutions, and depends on the extent to which those in a position of leadership **conform** to expectations of those being governed, and the extent to which people **live up** to their assessments. Legitimacy assessments



might substantially differ between different stakeholders. Intervening organizations may have their own standards of what are appropriate forms of organization and leadership, and norms e.g. on gender.

- In many settings there is a multiplicity of institutions and leaders vying for legitimacy among citizens. This **competition between different institutions** and the norms and rules they propagate play an important role in who is in charge and what rules apply, and may also result in shifts in what is considered legitimacy.

## Module 2

This module makes participants aware of how interventions always influence and are influenced by societal context and conflict, and that sensitivity to legitimacy is essential in land-related interventions:

- While legitimacy-sensitivity is important in humanitarian crises and conflict-affected settings, **legitimacy of public authorities constantly evolves**, and can never be taken for granted, and should be a concern also in situations of 'regular' development.
- The module illustrates the importance for development organizations to take account of how their interventions feed into local legitimation processes, as well as of their own legitimacy, as this will impact the **support and participation** they will receive, while interventions may affect the **legitimacy of particular authorities that are important for peace and development**.

## Module 3

Finally, this module explores how development practitioners might take account of legitimacy in land-related interventions:

- The module provides the trainees with examples of how development interventions might feed into **the prevailing institutional order**, and the division of power and responsibilities (who is in charge of what?); into the actual **practices** of institutions (how are things done?); and into the **norms, values and conventions** on the basis of which legitimacy assessments are being made.
- The module then introduces a tool to assess these impacts and consider alternative strategies. This tool helps development organizations to explore the **intended and unintended effects on legitimacy** of their programmes; their **principles and assumptions** when assessing legitimacy; **how these relate to those of other stakeholders** in and around the intervention; and to what extent they want to **conform to these or intentionally not**.



# Module 1 - Legitimacy

## Exercise 1.1: Introduction of participants

### Purpose


To allow facilitators and participants to introduce themselves and get to know each other.

To make an inventory of existing expertise and knowledge on land administration/ governance in the room.

To enable a good learning environment.

### Materials

 Post its/cards, markers

 Time required: 10 minutes (estimate, based on 20-25 participants)..



1

Start by welcoming everyone and give a short introduction to the programme, its purpose and objectives.

2

Then continue by asking the participants to make a line according to the number of months/years they have been involved in land governance issues. Ask people to present themselves (name/ position/ organisation). Tell them that they may present themselves both as professionals and as private persons, if they think this is relevant: e.g. they might have a customary position or a particular land governing role within their family.

3

Round off the introduction by jointly establishing rules of good conduct (phones off or on silent, no interruptions, respect...)



### Notes for facilitators

This training aims to help development practitioners in the land sector to become more sensitive to questions of legitimacy :

- The complexity of 'legitimacy' strongly manifests itself around land governance.
- How leaders and institutions deal with land issues has important consequences for citizens' appreciation and acceptance of these leaders and institutions.
- How can interveners better take 'legitimacy' into account, and so implement their work in a more conflict-sensitive way?

## Exercise 1.1: Introduction of participants

(additional option)


### Purpose

To allow facilitators and participants to introduce themselves and get to know each other.

This option helps creating a lighter atmosphere. It requires time investment but can help a lot to create a good working environment.

### Materials

 Prepared facts by the facilitators

 Time required: 20 minutes

1

Ask each participant to share three facts about themselves: one that is true, one that is false, and one that relates to land or legitimacy. The others have to guess which one is which. It helps if the facilitator starts: this lowers the threshold for the participants, and illustrates the idea.

Example:

- 1) 'I had to travel six hours to get here'
- 2) 'I have been working on land issues for 5 years now'
- 3) 'My wife and I have three children'

The first statement is wrong, I am from close by and have a lot of local knowledge because I grew up in this area.




## Exercise 1.2: Inventory of expectations

### Purpose

To allow participants to voice their ideas and concerns, and give them the feeling that their opinions are valued.

To allow facilitators to get an overview of what participants expect, and potentially adapt the programme accordingly.

### Materials

 Post its/cards, markers, flipchart

 Time required: 15 minutes

- 1** Ask the participants to take three post-its and write down a maximum of three expectations for the training.
- 2** Collect the post-its and read them out loudly. Cluster the expectations on a flip chart to get an overview of which expectations are expressed most frequently. Explain how and when these are addressed in the programme.
- 3** Of course, some expectations might not be met during this workshop: it is good to point this out to the participants.




## Exercise 1.3: Introduction to legitimacy and its importance in development interventions

### Purpose

Break down the theoretical notion of 'legitimacy' into concrete notions that are understandable to all participants

Demonstrate the relevance of legitimacy for those in power, and for development interventions, and the risks of a lack of legitimacy.

### Materials

 Post its/cards, markers, flipchart, power point

 Time required: 60 minutes

### Part 1: Participants' own understanding of legitimacy

- 1 Ask the participants to form groups of 4-5 people. Each group receives a series of post-its, markers and a flipchart. Ask these groups to write down their own definition of legitimacy: one that they all can agree upon.
- 2 Collect/present the different definitions in the plenary. Discuss the different definitions:
  - What are common points? Where do the definitions complement each other? Is there something missing?
- 3 Provide the definition of legitimacy that we will use in this training:

#### SLIDE – 'What is legitimacy?'

'Legitimacy' = the acceptance of authority

'authority' = any institution or person in a position of power over others. E.g. the government and its representatives, traditional or religious leadership, notables of a community, family-heads.

- 4 Discuss the definition, and ask participants to rephrase it in their own words. You might then want to show the second part of the slide and discuss.

'acceptance' conventionally understood as voluntary; based on a sense among people of rightness of leadership

'Legitimacy' = worthiness of loyalty/support



## Notes for facilitators

Point out that legitimacy can be seen from a top-down perspective: an authority may be legally appointed to govern, to make decisions, and enforce them. An authority may also be legitimate, because it acts in compliance with the law.

Legitimacy can also be seen from a bottom up perspective. Legitimacy is then about the acceptance or support of those that are governed; legitimacy means that people obey/listen to those that lead. This acceptance is voluntary, and based on a sense among people of rightness of leadership. Hence, another definition that is used frequently is: 'legitimacy = worthiness of loyalty/support'

### SLIDE – Dimensions of legitimacy

Statutory legitimacy ◀ ▶ Acceptance

To better understand legitimate authority in particular settings, it makes sense to empirically explore how legitimacy actually evolves. How do perceptions of legitimate authority and criteria to assess it develop locally at the interface of citizens and their authorities? This means exploring not only different sources of legitimacy, but also how expectations change, and how different stakeholders assess legitimacy in different ways.

## Part 2: The importance of legitimacy in development, and the consequences of limited or lacking legitimacy

1

Ask the participants to return to their previous groups and write down:

- why legitimacy is important in development more in general, and in the specific context where they, themselves operate;
- what are the consequences if some stakeholders lack legitimacy.

### SLIDE – Questions for discussion

- Why is legitimacy important?
- What are implications of lack of legitimacy or illegitimacy?

Underline that they might consider both a lack of legitimacy of their own work, and a lack of legitimacy of other key stakeholders in their work.

2

Discuss the answers in the plenary. Make a list of key points on a flipchart. Complete the list by using the overview in the power point presentation.

### SLIDE - The Importance of legitimacy

- Ensures compliance with decisions by authorities
- Encourages participation in the execution of public action
- Reduces costs of action for the benefit of the community
- Contributes to the stability and sustainability





### **A lack of legitimacy**

may result in ineffective governance.

Illegitimacy may nurture resistance or even violence


## Exercise 1.4: The dynamic nature of legitimacy

### Purpose

Help participants understand that legitimacy is dynamic and based on different sources.

Help participants link the concepts of legitimacy and legitimation to their own contexts.

### Materials

 Post its/cards, markers, ball, power point

 Time required: 120 minutes

### Part 1: Different understandings of legitimacy

- 1 Start from the questions in the power-point presentation to facilitate a discussion. Take about 5-8 minutes per slide and make sure to discuss some examples that illustrate your conclusions.
- 2 To make the exercise a bit lively, you may use a ball and throw it to one of the participants to invite her/him to give a first response. In turn, this participant then may nominate/chose someone else to react to the question. This method helps to get the discussion started if people are reluctant to engage since there are not necessarily clear answers to the questions.
- 3 Give feedback to the reactions of the participants (see notes below).

#### SLIDES – The dynamic nature of legitimacy

1. Is legitimacy (acceptance of authority)
  - a) an attribute of those in power?
  - b) something granted by those that are governed?
  - c) an outcome of interaction between both?
- a) A leader may be considered legitimate because (s)he is legally appointed, but may be considered even more legitimate if elected.
- b) People who are governed can grant legitimacy or not, depending on many reasons, for instance on how people in power perform.
- c) Legitimacy is thus better considered as an outcome of the interaction between both a and b.



2. Is legitimacy (respect/acceptance of authority)

- a) the consequence of having been put in charge?
- b) about what those in charge do?
- c) about the way in which they exercise their power?

- a) Again, the way in which leaders are put in charge might be questioned: through elections? But does everybody accept the results and feel represented? And if a leader is appointed: by whom?
- b) Legitimacy may indeed be about how leaders perform (b), what they achieve and do for their citizens ('output legitimacy')
- c) Leaders may need to enforce rules and regulations, but it matters how this is done. For instance, land might need to be expropriated for road construction, and people might thus lose their land. In such cases, is there any compensation payment? Is the process perceived as being transparent and fair? Power can be exercised in different ways: with knowledge, wisdom, excessive violence or coercion.

3. Do leaders become legitimate when they:

- a) Follow the laws of a country?
- b) When they live up to certain moral/social norms?

- a) Not all the laws are being understood or accepted by the communities. So to understand legitimacy, you have to contextualise the law, and ask how communities/individuals in specific contexts look at specific laws
- b) Traditional leaders might be seen as legitimate not because they follow the law, but because they live up to certain cultural norms.

The important question here is: who is conferring legitimacy? An insider or an outsider? And what are the criteria that you are using to assess legitimacy, what is your reference? Statutory laws or cultural/traditional laws?

For instance, in case of women's access to land, land laws may be clear, but sometimes they are not known, or they are not accepted. Laws may have gaps: customary rules might deny women access to land, but might also address issues that are left out in statutory laws.

There are different ways to convince people: through laws or awareness/dialogue.

4. Do people

- a) Always agree about the legitimacy of leadership?
- b) Often/sometimes disagree about the legitimacy of leadership?

People can have different opinions on the legitimacy of their leaders. There are often difference between men and women, youth and adults, different ethnic groups, poor and rich. Don't assume that the community is homogenous and that all community members do assess legitimacy of leaders in the same way.

## Part 2: Different sources of legitimacy

- 1 Divide the participants into small groups. Ask them to write different sources of legitimacy on a flipchart.

### SLIDE – How is legitimacy obtained?

Question for discussion

- What might be the different sources of legitimacy?
- What might make leaders or institutions legitimate?

In the discussion, raise the following points

- how do perceptions of legitimate authority and criteria to assess it **develop** locally at the interface of citizens and their authorities?
- **who** are actually making judgements about legitimate authority?

- 2 Ask the groups to report in the plenary which sources of legitimacy they have identified. Complement their lists with the input from the power point

### SLIDE – How is legitimacy obtained?

Legality - Legitimacy as a result of legislation that puts certain people and rules in charge.

Tradition – Legitimacy as a result of a belief of the intrinsic rightness/sanctity of those exercising power and the traditions they promote since time immemorial.

Charisma - Legitimacy as result of the esteem that leaders have due to their exceptional behaviour, or achievements, which bestow power to the norms they reveal or ordain.

Expertise - Legitimacy as result from leaders' claims or provision of specialized knowledge.

Input legitimacy - Legitimacy as result from satisfaction with the ways leaders are selected or decisions are being taken

Exemplary behaviour – Legitimacy as result from the ways in which those in power operate, and the extent to which their behaviour is just, fair, and transparent.

Effectiveness – legitimacy as result from the 'output' of leaders or their provision of services, e.g. security, rule of law, and development.

Social trust and belonging – legitimacy as result of personal ties that authorities have with communities or their belonging to the same (ethnic) group



### Notes for facilitators

The key point to be discussed here is that legitimacy is not an attribute of authorities, that can be assessed with reference to standard performance criteria. Instead:

- Legitimacy involves as a relationship between authorities and those they govern,
- this includes ongoing re-assessments of this relationship,
- as well as ongoing re-definition of the criteria to assess legitimacy.

### Part 3: Institutional multiplicity and competition

- 1 The last part of this exercise discusses the concept and reality of institutional multiplicity. Introduce the questions for discussion:

#### SLIDES – Questions for discussion

At community level, what other authorities might exercise power over land in addition to the state administration?

What other norms and conventions play a role, next to state legislation?

Do you know situations where these authorities, norms and conventions contradict each other?

How does your organization deal with such institutional multiplicity?

- 2 Collect a round of answers and discuss.



#### Notes for facilitators

The idea to introduce is that in many contexts there are multiple institutions that claim legitimacy in land governance, which even compete among each other about who is in charge and what rules should apply. Many of these have some legitimacy, and in various contexts, their claims are (to some degree) legally recognized.


Interventions might play an important role in such local competition for legitimacy, as interveners might accept the claims of some authorities and not those of others.


## Exercise 1.5: The notion of Grounded Legitimacy

### Purpose

Energize the group through an activity and provide two definitions of 'Grounded legitimacy' that both underline the dynamic and interactive nature of legitimacy.

### Materials

 2 definitions of Grounded Legitimacy, written on a number of cards/large post-its.

 Prizes for the winning team (e.g. sweets)

 Time required: 15 minutes

1

Start by dividing the participants into two groups.

2

Stick the cards that contain the definition of grounded legitimacy on the backs of the group members (2-3 words per card, one definition per group, for instance:

- Grounded legitimacy | is dynamic and | is influenced | by diverse values | beliefs, practices | and experiences
- Grounded | legitimacy is | a relationship that | is shaped through | the interactions | between citizens | and their authorities

3

Ask the groups to make a line in the right order to build a coherent definition of grounded legitimacy. Make a challenge of it; this will wake up sleepy group members.

If you don't have enough cards for each member that is not a problem, as those without cards can still help in lining up the definitions.

4

Take a few minutes to present and discuss the definitions: does everyone agree? Is there something missing?

#### SLIDE – 'Grounded Legitimacy'

Grounded legitimacy is dynamic and is influenced by diverse values, beliefs, practices and experiences

Grounded legitimacy is a relationship that is shaped through the interactions between citizens and their authorities



### Notes for facilitators

The central aim is to have everyone understand that 'Grounded Legitimacy' is different from statutory legitimacy (legitimacy derived from the law), and that to some extent, legitimacy is always subjective and dynamic. In different situations people will attribute different weight to aspects of legitimacy.

For instance, when leaders listen to citizens and provide development services ('output legitimacy'), the not-so-democratic ways in which they have been selected or take decisions ('input legitimacy') might be deemed less of an issue.

In contrast, when leaders fail to perform, the procedures for assuming a position of authority and to arrive at decisions might become more important in how their legitimacy is assessed.




# Module 2 – Legitimacy sensitivity


## Exercise 2.1: Introduction to conflict sensitivity

### Purpose

Help participants understand that we need to look at and beyond the local context to understand the relevance and effects of interventions: interventions affect the context and vice versa.

### Materials

 Flipchart, markers, flipchart with definition of CS

 Time required: 30 minutes

1

Divide the participants in groups of 4-5 people. Ask them to write down their own definition of conflict sensitivity. Guiding questions:

- What does it mean to work in a conflict sensitive way? Which factors can lead to conflict? What is your definition of conflict sensitivity?

2

Present the definitions in the plenary. Give feedback on the definitions and ensure that all elements of the standard definition of conflict sensitivity used for the training are included. Show a standard definition as guidance for further discussions.

#### **SLIDE - Being conflict sensitive means:**

To understand the context in which one is operating.

To understand the interactions between one's interventions and the context.

To act upon the understanding of these interactions, in order to avoid negative impacts and maximise positive impacts on conflict.

3

Ask the participants for examples:

- Can you imagine how an intervention in the context that you work in might have a negative impact on conflicts because of a lacking understanding of the context?

4

Assure to provide some examples yourself, e.g.:

Providing statutory land titles to protect land rights in a given context might create conflict with customary leaders because it undermines their authority.



Not working with state agencies in a setting where customary ownership prevails might create a backlash by the state against the leaders that you work with.

5

Discuss the link with Do-No-Harm, if this has not already been mentioned: Do No Harm is the minimum requirement of working in a conflict sensitive way. Intervening organizations should minimize the negative effects ('Do-No-Harm') on conflicts and social relations. Conflict sensitivity also requires intervening organizations to try and maximize the peacebuilding potential of their work (maximize positive impact on conflict).

### SLIDE - Aid interventions & potential effects

- Theft
- Market effects
- Distribution effects
- Substitution effects
- Legitimation effects
  
- Ethics and behaviour

#### Examples

**Theft** Aid goods and money may be diverted or stolen and even be used by fighting forces

**Market effects** interventions may reinforce the war economy by pushing people out of their jobs and markets, e.g. by distributing goods for free that are also locally produced

**Distribution effects** aid may be unevenly distributed along conflict lines

**Substitution effects** interventions may liberate government from its task to cater for the development of its own citizens

**Legitimation effects** intervention may unintentionally bestow legitimacy on a government, institution or leader by giving them roles in aid distribution, while this leader may be responsible for violence

**Ethics and behaviour** Furthermore, how staff behave and interact with each other, with local people and authorities- may have an impact. Intervention may normalize and legitimize particular practices and modalities of governance. For instance, armed escorts in the delivery of humanitarian aid may contribute to a normalization of arms in the public arena, and may harm a spirit of nonviolence. The way in which aid is provided may send out messages about acceptable ethical behaviour, and a lack of trust in local people or their authorities, or be seen as disrespectful, discriminating or patronizing.<sup>20</sup>



<sup>20</sup> Examples taken from: CDA (2016) *Do No Harm Workshop Participant's Manual*. Cambridge, Massachusetts, Collaborative Learning Projects.



### Notes for facilitators

Common definitions of conflict-sensitivity are the following:



“Conflict sensitivity refers to the practice of understanding how aid interacts with conflict in a particular context, to mitigate unintended negative effects, and to influence conflict positively wherever possible, through humanitarian, development and/or peacebuilding interventions”.<sup>21</sup>

“A conflict sensitive approach requires gaining a sound understanding of the two-way interaction between activities and context, and acting to minimise negative impacts and maximise positive impacts of intervention on conflict, within an organisation’s given priorities, objectives (mandate)”.<sup>22</sup>

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<sup>21</sup> Definition of Conflict Sensitivity as formulated by the CDA Collaborative Learning Projects (CDA), Cambridge, Massachusetts. See: <https://www.cdacollaborative.org/what-we-do/conflict-sensitivity/>




<sup>22</sup> Definition of Conflict Sensitivity as formulated by the Global Conflict Sensitivity Community Hub. See: [http://conflictsensitivity.org/wp-content/uploads/2015/04/6602\\_HowToGuide\\_CSF\\_WEB\\_3.pdf](http://conflictsensitivity.org/wp-content/uploads/2015/04/6602_HowToGuide_CSF_WEB_3.pdf)

## Exercise 2.2: Conflict sensitivity and land governance

### Purpose

Create an awareness of the potential negative effects of land governance interventions and of the opportunities to have a positive impact on societal relations and conflict

### Materials

-  Flipcharts, markers
-  Video clip
-  Time required: 15 minutes

In this exercise, the participants will draw on their own work and experiences.

1

Give a short general introduction of the potential for positive and negative effects of land governance interventions:

- Positive, conflict sensitive effects will lead to greater social cohesion and increase stability and positive peace.
- Negative effects create tensions and conflicts and usually put medium- and long-term objectives of interventions at risk. Usually, negative effects are related to unintended effects of interventions.

2

Divide the participants into small groups of 4-5 people. Select one of the video clips to illustrate a case of negative effects (see 'Overview of video-clips' at the end of the manual; 'The widow and the army captain' would be a good example). Briefly discuss the case to prepare the group work. Guiding question:

- How might the outcomes in the video be unintended effects of an intervention?
- To what extent is the development organization responsible for what happens?
- Could these outcomes have been prevented?

3

Ask the groups to take 15 minutes to discuss (potential) negative effects of land governance work and collect them on a flipchart. Ask the groups to present their ideas in the plenary. Guide the discussion in such a way that understanding is created that many of the negative effects are difficult to foresee and/or unintended. Guiding questions:

- Which changes in context can bring about/increase negative effects?
- How might our interventions themselves bring about negative changes in context?
- Is it possible to foresee and prevent all negative effects?





### Notes for facilitators

Refer to the handout on conflict sensitivity in the annex. You can use this handout during the session depending on your own assessment if people need a little support in their discussions.

We do not necessarily aim at a comprehensive or academic understanding of what conflict sensitivity is; but rather at an understanding that we need to monitor not only the impact of context on our interventions, but that our interventions can have unintended negative effects as well.

This also requires looking beyond the direct local context in which an intervention might take place.

Explain that the upcoming sessions will provide a stronger and more in-depth focus on the relationship between conflict sensitivity and legitimacy.



## Exercise 2.3: Legitimacy and land governance

### Purpose

Enable a deeper understanding of the inherent link between working in a conflict sensitive way and paying attention to legitimacy issues.

### Materials



Flipcharts, markers



Time required: 30 minutes

- 1 Ask the participants to explain how they see the link between legitimacy and conflict sensitivity. You might refer back and show the slides of exercise 2.1
- 2 Ask the participants to define stakeholders whose legitimacy is potentially affected by land governance interventions and through which actions (make a list on the flipchart).

#### Examples

**Local customary authority** may be legitimized by giving them a role in land demarcation; may be delegitimized by depicting them as 'backward'

**Local peace committees** may be enhanced by giving them a role in land conflict resolution; may lose legitimacy by underscoring the need for state justice

**Local cadastre** may be legitimized by capacity building and greater mobility; may be delegitimized by showing how expensive and inaccessible it is

**Male heads of household** interventions may challenge their position by focusing on women's land rights, and by propagating the role of young men and women in decision taking within the family

- 3 Make sure to mention that changes in legitimacy can be positive as well as negative. Changes in legitimacy can also not be prevented. However, intervening organisations need to monitor such effects and react to them to avoid negative consequences where possible.

#### Examples

When we work/fund a stakeholder we increase their legitimacy. When we decide not to work with a specific stakeholder, then this will also influence (decrease) their legitimacy.

The point is that changes in legitimacy of specific stakeholders are influenced by our interventions and therefore we need to be aware and take wise decisions.



### Notes for facilitators

- The question of 'legitimacy' strongly manifests itself around land governance.
- How authorities deal with land issues has important consequences for citizens' appreciation and acceptance of these authority. The question is thus: 'How can interveners better take 'legitimacy' into account, and so implement their work in a more conflict-sensitive way?'




# Module 3 – Taking account of legitimacy in land interventions

## Exercise 3.1: Stakeholder mapping & legitimacy in land governance

### Purpose

Ensure that participants consciously link their own work to legitimacy and conflict issues and learn to identify the more hidden, unintended effects that can result from interventions.

### Materials

 Flipchart, large post-its, markers, video clips, handout stakeholder analysis

 Time required: 120 minutes

- 1 Give a short recap of the results and discussions so far. Make a slide of this, if possible.
- 2 Highlight the point that in land governance there is a multiplicity of actors that claim legitimacy and the assessment of who is legitimate and who is not might not be so straightforward. For this reason, stakeholder analysis is essential for any intervention.
- 3 Explain how to do a stakeholder mapping for land interventions (see handout in annex). For each of the stakeholders, explain that a series of questions will be discussed:

#### SLIDE – Stakeholder mapping

What are **roles and responsibilities** of these stakeholders in managing land?

Assessment of their **level of legitimacy** with a score of 1-5 (1=low, 5=high)

Is there **agreement about the legitimacy** of these stakeholders? Are there differences in legitimacy assessments among participants, or among the population?

What are the **sources of legitimacy** of these stakeholders?

Evolution of legitimacy: is their legitimacy (already) **increasing or decreasing**?

- 4 Ask participants to make a list of stakeholders in the specific context where they work. If participants work in different settings, they might have to do this individually. For the sake of the exercise it is wise to select a few that feature in all inventories.

5

Divide the participants into small groups and give each group 3 of the identified stakeholders to discuss and analyse. Provide them with large post-its, to write down the answers for the different analytical categories.

6

Have a presentation in the plenary, make a list of all stakeholders, categories and answers on the wall. Guiding questions:

- What was difficult about this exercise?
- Which points did you discuss most?
- Whose legitimacy is low and why? Whose legitimacy is decreasing and why? Does everyone agree?
- Did you consider women and youth as stakeholders?






## Exercise 3.2: Analysing video-clips

### Purpose

Ensure that participants consciously link their own work to legitimacy and conflict issues and learn to identify the more hidden, unintended effects that can result from interventions.

### Materials

 Flipchart, large post-its, markers, video clips, handout stakeholder analysis

 Time required: 120 minutes

**1** Select 2-3 video clips to watch (see 'Overview of video-clips' at the end of the manual). After each clip have a short recap of what happened in the clip, which actors were involved. Make a list of the stakeholders on post-its.

**2** Select one or two of these clips watched for a stakeholder analysis and discuss:

- how the legitimacy of the stakeholders was affected;
- To what extent this could be attributed to policy changes or interventions by development organizations.

**3** Proceed in the plenary in a similar way as you did in the previous exercise on stakeholder mapping.

Make sure to highlight differences in the assessments of the levels of legitimacy of stakeholders among the participants. It is important that participants become aware that assessments of legitimacy may be subjective, and are in the eyes of the beholder. It matters a lot by what and whose criteria legitimacy is assessed.



### Notes for facilitators

The annex provides summaries of the video-clips, including some questions to help facilitate the discussion.

The video clips are fictitious: they paint a dramatized, yet simplified picture, and do not provide an accurate level of detail. Their purpose is to highlight some of the pitfalls and enable a discussion of cases on a more abstract level to which everyone can contribute. Don't get lost in small details or particularities of the stories depicted.


### Exercise 3.3: Three dimensions of legitimation

#### Purpose

To discuss different ways in which land interventions affect legitimacy

To help participants explore how these different processes play a role in their own work

#### Materials

 Flipchart, large post-its, markers, video clips, handout stakeholder analysis

 Time required: 120 minutes

1

Identify with the participants different ways in which land related interventions could affect the legitimacy of different stakeholders. Guiding questions:

- How might land governance interventions affect what actors do and how they do it?
- What effects can interventions have on the expectations that people have towards authorities, e.g. what kind of responsibilities the state has for development; the impact of interventions taking over state roles in development
- How would a conflict sensitive actor react to these effects?
- What kind of analysis is needed to become aware of these effects?

2

Show the slide with different ways in which interventions affect legitimacy

#### SLIDE – How interventions impact legitimacy

- Division of roles and responsibilities, the capacities of actors; 'who is in charge of what'
- Practices of governance
- Norms, values, conventions, and how legitimacy is assessed

Be sure to provide concrete examples of each!



#### Notes for facilitators

This part of the programme presents a concrete tool to use for increasing legitimacy-sensitivity, and for increasing awareness on the connections between legitimacy and conflict: see the handouts 'Analysis of risks and opportunities for land rights interventions' and the 'checklist on how land-related interventions might impact legitimacy' in the annex.

Make sure you have enough time for this part and build in sufficient breaks!

## Exercise 3.4: Wrapping up and going forward

### Purpose

Ensure that participants take concrete actions to increase their conflict sensitivity and take legitimacy into account in their future work.

### Materials

 Flipchart, markers, large post-its

 Time required: 45 minutes

1

Give a short recap of the results and discussions so far.

- Highlight the point that interventions will have an impact on the legitimacy of different actors, intended and unintended.
- Ask the participants to describe the links between legitimacy, changes in legitimacy, conflict sensitivity and interventions in their own words.
- Underline that effects on legitimacy are inevitable but that being aware of these is the responsibility of any conflict sensitive organization and actor.

2

This may also be done in a more interactive way: give 4 cards (legitimacy, changes in legitimacy, conflict sensitivity, interventions) to small groups of participants, and ask them to explain to other groups these concepts using the cards.

3

Plenary discussion:

SLIDE – Going forward

How can sensitivity to legitimacy be integrated into the project cycle of land-related interventions?

What kind of organizational culture is needed to stimulate sensitivity to legitimacy?

- On the first question: Such an analysis can be part of different stages of the cycle: project formulation, annual or midterm review, end-evaluation or periodic monitoring.
- On the second question: Staff need to feel able and safe to share insights or assumptions regarding potential (unintended) negative effects of the work. Self-critical reflection needs to be encouraged.

4

Ask people to individually write down action points for their own work and organisation.



5

Ask them to share one of these action points in the plenary, try to add new points to the list. Collect all action points on a flipchart or large post-its.



### Notes for facilitators

This final step can be expanded if needed and there is adequate time. You can integrate an analysis of risks and opportunities for land rights interventions (see annex). This can be done individually or in groups.

When working with members of the same organization or consortium a concrete plan of action can be developed.

If the participants represent stakeholders from the same context, they can also develop an action plan that specifies their different roles.

# Overview of the video-clips

## Video clip – ‘Failed elections’

This clip illustrates how ambiguity about the ambitions of land-related interventions and failure to take account of local power dynamics may disempower existing land governing capacity, and decrease the legitimacy of customary institutions in land governance.

As part of a land certification programme, a civil society organization oversees the election of a Village Dispute Resolution Team (VDRT), but fails to properly explain its functions and responsibilities. This raises all kinds of misconceptions about the nature of the project, and the local council chairman interferes with the election of the committee by appointing people of his choice. This puts the legitimacy of the committee and the project into question, and side-lines customary institutions.

Possible questions for discussion:

- How might the civil society organization have prevented that the election was hijacked by the local council chairman?
- As a result of the procedure, the clan land committee -which plays an important role in resolving land disputes- is side-lined. Could and should this have been prevented?
- What kind of practices of governance would you like to demonstrate in your work?

## Video clip – ‘From the waters’

This clip illustrates the influence of local beliefs on the legitimacy of land-related interventions.

Superstition and false religious beliefs prevent Iderepu, an old lady from participating in a land demarcation project, and as a result she may fail to secure her land rights. Her resistance makes it difficult for the Area Land Committee to demarcate the land of her neighbour Mr Obatal. Eventually, Iderepu’s son intervenes and represents his mother in the demarcation exercise.

Possible questions for discussion:

- Could you imagine other ways in which the project could have taken local beliefs into account? [*hint: think about the role of the priest*]
- Eventually, the son overrules his mother. Could the outcome –continuation of demarcation- have been achieved in another way, without circumventing the mother?

## Video clip – ‘The widow and the army captain’

This clip illustrates how corruption by powerful actors may decrease the legitimacy of local structures established as part of land-related interventions, as a result of which vulnerable groups are denied rights.

Army Captain Obatal returns home from Somalia, to retire and ready to demarcate his land. He finds out there is a widow living on a piece of land, which was given to her late husband by the captain’s late father. The captain then uses his money, power and influence in the community to kick the widow off her land.

Possible questions for discussion:

- How could a development organization working on land governance prevent such manipulation of local powerholders?
- What are the principles and practices of land governance that your organization would like to propagate?

## Video clip – ‘Deviations in land demarcation’

This clip illustrates how failure to settle disputes before demarcation takes place and results in problems later on, and may compromise the legitimacy of the intervention as a whole.

A couple encroaches on the land of their neighbours, but nonetheless gets the new boundaries acknowledged in a land demarcation exercise, which takes place in the absence of their neighbours, who fail to turn up because of a funeral. When these neighbours also engage in a land demarcation exercise, the irregular demarcation is revealed, and violence erupts between the two families.

Possible questions for discussion:

- To what extent a proper following of procedures might have prevented the process from taking a negative turn? [*hint: the presence of all the neighbours during the first demarcation would not necessarily have helped, as long as the dispute was not yet resolved*].
- What are the principles and practices of land governance that your organization would like to propagate?



## Video clip – ‘Denial of a widow’s land rights’

This clip illustrates how women might lose their land rights when they are not explicitly taken into account in land tenure interventions.

A woman who just lost her husband refuses to marry his brother. The brother in law then registers her land in his name, with reference to customary practices, and sells the land to a rich man, leaving his sister in law landless.

Possible questions for discussion:

- To what extent is the land registration exercise to blame for the denial of the land rights of the woman? To what extent is ‘custom’ to blame? [*hint: though custom may indeed be unfavourable to women land rights, in this case, the brother also conveniently uses custom and state convention to his advantage*]
- How can land-related interventions protect land rights of widows and divorced women? How may women’s land rights be promoted through recourse to state and customary norms and conventions?
- To what extent should interveners in land governance try to change norms and conventions? And if they do so, how might tensions be mitigated?

## Video clip – ‘Useless youth’

This clip illustrates ongoing competition between elders and young people about who is in charge of land governance, and how interventions might reinforce land governing authority of the elder generation.

In a land demarcation exercise, youth are not included on the certificate, as they are considered not responsible enough by their fathers. As a consequence, they are not motivated to cultivate land and engage in activities like gambling and consuming alcohol, which then affirm the perception of their fathers about their lack of responsibility.

Possible questions for discussion:

- Whose legitimacy is at stake in this video clip? [*hint: consider not only the youth, but also the male heads, and the intervening organizations*]
- To what extent should interveners in land governance try to change norms and conventions? And if they do so, how might tensions be mitigated?



# Handouts



## Conflict Sensitivity



Conflict sensitivity means:

- Understand the context in which one is operating,
- Understand the interactions between one's interventions and the context or social relations and conflict
- Act upon the understanding of these interactions, in order to avoid negative impacts (**Do No Harm**) and maximise positive impacts (**Do Some Good**) on the context of conflicts and social relations

Necessary actions:

- Analyse the **context** in which you work: existing and potential conflicts and their causes, connectors and dividers between actors, stakeholders and their roles.
- Analyse your **intervention**: Where do you work and why there? What is your approach and what are your activities? With whom do you work and whom do you leave out? How are you perceived by stakeholders?
- Identify the **effect of your project decisions, actions and behaviour on the context**. Does the project implementation lead to (potential) negative effects and risks? Are these effects a risk for project implementation? For the sustainability beyond the project? Do they risk to create or enlarge conflicts at the local level or beyond? Is there a risk that the project unintentionally supports negative developments? Are these effects unintended positive effects, that support the achievement of the project goals? Do they contribute to a more peaceful and just society?
- What are options to prevent/reduce the negative effects (Do-No -arm) or, alternatively, to maximise the positive effects?



### Please, note:

Humanitarian and development organisations can have very good intentions, but still create harmful effects.

We cannot always prevent all harmful effects, but at least we need to be aware of the consequences of our work, and take well-informed decisions.

This handout was compiled by Corita Corbijn, peacebuilding advisor of ZOA Netherlands, and is inspired by the work of the CDA Collaborative Learning Projects (CDA), Cambridge, Massachusetts. See: <https://www.cdacollaborative.org/what-we-do/conflict-sensitivity/>

# Stakeholder mapping tool



Stakeholder	Roles and functions	Level of legitimacy (1-5)	Agreement about level of legitimacy (Yes/no)	Sources of legitimacy	Evolution of legitimacy (increasing/decreasing)

# Analysis of risks and opportunities for land rights interventions



Name/type of stakeholder: .....

1. Impact of interventions on the legitimacy of the stakeholder	2. Is this effect intended or unintended?	3. Is the impact on legitimacy supporting the project goals/values of the intervening organisation? How?	4. Is the impact on legitimacy a risk for the project implementation and/or is the impact creating conflicts (tensions) beyond the scope of the project? How?	5. What options are available to mitigate negative impacts and/or maximise positive impacts?



## Checklist on how land-related interventions might impact legitimacy



Which different stakeholders play a role in land governance? How do interventions impact the **division of roles and responsibilities, and capacities** of different authorities?

- Which stakeholders are prioritized (or excluded) as partners in implementation and on what grounds?
- How are they involved and what roles are they given or able to play? What support do they receive?
- To what extent are these partners allowed front or backstage roles? To what extent do interveners take over particular roles themselves?
- Are existing institutions taken into account/included when establishing new ones, and in what ways? And if not, what are the rationales for establishing new, parallel institutions?
- How might interventions be seen as supporting particular stakeholders, e.g. through partnering and systematically taking them along, or through explicit reference to partners in interventions (on T-shirts, posters)
- How might capacitating partners weaken the position of others? Which and whose land services are paid for? How does this affect the revenue of other institutions?

What **practices and modes of governing** prevail among different stakeholders and how are they affected by interventions?

- What ways of conflict-resolution prevail in the communities –mediation, arbitration– and which of these are promoted by interveners?
- When and where do these interventions take place? Are some communities or groups (strategically) prioritized?
- What financial procedures and modalities of participatory decision taking do they promote among their partners? How do they operate themselves?
- How are these practices also taken on board by staff of organizations themselves? To what extent are staff of intervening organizations representing diversity in terms of gender, regional or ethnic background, age, social class, etc.?
- Do interventions provide space for certain stakeholders or disadvantaged groups to be more visible, and evaluate their authorities?

What **norms, values, conventions and notions of legitimacy** are (un)consciously promoted by interveners and their interventions?

- What principles do interveners promote on including gender, youth, the environment; but also on transparency, inclusiveness and citizen involvement?
- What ideas about the state and its role in land services provision do interveners promote?
- To what extent are these alien/new concepts/ideas/practices, or instead locally conceived? To what extent do they resonate with prevailing practices?

- In what ways do interventions validate or disqualify prevailing rules/norms/conventions and practices of those exercising authority as well as of citizens?
- Do interveners live up to these principles themselves, and display those in their own work, and how does this contribute to their promotion?
- Whose legitimacy assessments do they take mostly into account?
- Do interventions implicitly or explicitly take a position vis-à-vis the normative and moral behaviour of stakeholders involved?
- How do interventions contribute to or obstruct debate on legitimacy among citizens and authorities?

