Conflict and Fragility

The State's Legitimacy in Fragile Situations

UNPACKING COMPLEXITY



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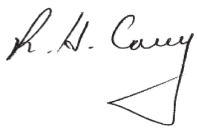
Foreword

State legitimacy matters because it provides the basis for rule by consent rather than by coercion. Lack of legitimacy is a major contributor to state fragility, because it undermines the processes of state-society bargaining that are central to building state capacity.

This publication makes an important contribution to ongoing work within the Development Assistance Committee of the OECD to improve understanding of statebuilding processes, and of how donors might work more effectively in fragile situations. It builds on and synthesises work commissioned by the governments of France, Norway and Germany.

The State's Legitimacy in Fragile Situations explains why people's ideas about what constitutes legitimate political authority are fundamentally different in formal, rules-based Western states and in non-Western states. It highlights the problems that arise when different concepts of legitimacy coexist and compete, and discusses ways in which it might be possible to reduce people's sense of alienation from the formal state.

The publication argues that donors need to pay much more attention to aspects of legitimacy that derive from people's shared beliefs and traditions, and how these play out in a specific political and social context. This is challenging, because legitimacy is extremely complex and changes over time. Moreover, donors can face difficult trade-offs and choices when local perceptions of legitimacy conflict with international norms. *The State's Legitimacy in Fragile Situations* shows how external interventions can undermine state legitimacy in unforeseen ways, but it also points to some very practical steps that donors can take to increase the likelihood of constructive relations between state and society in fragile situations.



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Executive Summary

State legitimacy matters because it provides the basis for rule by consent rather than by coercion.

Donors working in fragile environments have paid relatively little attention to legitimacy, assuming that legitimacy would automatically result from improved state performance. This report argues that *donors need to pay much more attention to legitimacy; to broaden their understanding to encompass aspects of legitimacy that derive from people's shared beliefs and traditions,* not just from a Western state model; *and to focus on the processes of state-society interaction* that underpin the development of state capacity and legitimacy.

Basic concepts

A political order, institution or actor is legitimate to the extent that people regard it as satisfactory and believe that no available alternative would be vastly superior. Lack of legitimacy is a major contributor to state fragility because it undermines state authority, and therefore capacity.

Donors tend to think about the state and state legitimacy in terms of a Western, modern state model. They take for granted a central concept underpinning the Western idea of statehood, namely the clear distinction between public and private spheres, and the fact that competition between holders of political and economic power takes place within widely accepted formal rules and impersonal relationships, so that institutions of market capitalism and liberal democracy are mutually reinforcing. These *formal institutions of the Western state derive their capacity and legitimacy from a long history of interaction between state and society, and cannot be reproduced simply by transferring the same institutional models into different social and political contexts.*

In non-Western states (although there is huge diversity among them) state-society relations are more likely to be based on personal ties of kin and community; public goods are provided to one's own social reference group or

supporters rather than on the basis of universal rights; and access to resources depends on exclusive personal ties, not on open economic and political competition. Distinctions between public and private spheres are blurred. It follows that *people's ideas about what constitutes legitimate political authority are fundamentally different in Western and non-Western states.*

In practice the majority of states in the global South are "hybrid" political orders. Nominally many are liberal democracies operating according to formal rules (rational-legal political orders). But they coexist with other, competing forms of socio-political order that have their roots in non-state, indigenous social structures ("traditional" political orders, although these are being constantly reinvented and influenced by Western ideas).

There is clearly potential for conflict and tension in hybrid states between the expectations and demands implied by the formal state and those implied by more "traditional" forms of public authority. "Traditional" forms of authority are not necessarily inimical to the development of more rules-based political systems, and they remain very influential in shaping how formal authority works, particularly in fragile situations. The challenge is to understand how the two interact, and to look for ways of constructively combining them.

The starting point should be to focus on the actual processes of state-society interaction in a specific context. This is crucial to understanding how state capacity emerges, and how ideas of legitimacy influence people's willingness to engage with the state. At very early stages of statebuilding, perceptions of legitimacy can support or inhibit the negotiation of a political settlement. At later stages of building state capacity, legitimacy is also central to the establishment of constructive state-society bargaining to achieve positive sum outcomes based on mutual interests, and institutionalised arrangements for managing conflict, negotiating access to resources and producing and distributing public goods. Capacity and legitimacy are distinct but interdependent. In fragile situations a lack of legitimacy undermines the creation of state capacity; and a lack of capacity in turn undermines legitimacy.

Sources of legitimacy

The report identifies *four main sources of legitimacy: input* or *process* legitimacy, which is tied to agreed rules of procedure; *output* or *performance* legitimacy, defined in relation to the effectiveness and quality of public goods and services (in fragile situations, security will play a central role); *shared beliefs*, including a sense of political community, and beliefs shaped by religion, traditions and "charismatic" leaders; and *international legitimacy*, *i.e.* recognition of the state's external sovereignty and legitimacy.

These sources of legitimacy play out differently in different social and political contexts. For example, patronage in the Western state model is viewed as corruption that undermines both process and performance legitimacy. However, in hybrid political orders, patronage can provide sources of both input and output legitimacy; and in fragile situations it can provide the main means of managing violence, creating political alliances and maintaining social stability. *Different sources of legitimacy interact,* and while some are mutually reinforcing, others are contradictory. For example, religious or "traditional" beliefs may be at odds with international pressure for reform of family law or reproductive health practices. Conferring external legitimacy will be ineffective unless it resonates with internal dynamics.

No state relies on a single source of legitimacy: thus, for example, improving the quality of public services is unlikely on its own to lead to increased legitimacy; nor will providing security necessarily directly bolster state legitimacy if people have previously experienced the state as oppressive or violent, or if non-state groups enjoy legitimacy and are able to provide security (for example, warlords in Afghanistan).

The report distinguishes between the legitimacy of the state itself, and the legitimacy of a particular regime or leader. Legitimacy in fragile states is likely to vary significantly in different areas and among different communities. What may bolster state legitimacy with one group in one area may undermine it in another.

Interaction between different sources of legitimacy

Different sources of legitimacy interact, ranging from harmonious coexistence (for example, of formal and informal banking systems in Senegal), to uneasy coexistence (for example, of different systems of property rights in Africa), to competing and conflicting sources of legitimacy. In fragile situations, non-state actors may take advantage of the state's lack of capacity and legitimacy to offer alternative sources of government (for example, Hezbollah in Lebanon).

Legitimacy in fragile situations is thus very complex, with different sources of legitimacy co-existing and interacting. The question is how to manage this diversity without weakening state authority, and how to break the vicious circle in which political survival depends on ever more destructive use of patronage. "*Grounded legitimacy*" may offer a way forward, by incorporating traditional authorities and practices within the formal state: examples include the Kgotala in Botswana, and the combination of customary councils of the elders with modern state institutions in Somaliland. Very local, non-state institutions in rural areas (for example, customary village councils in Karnataka) can also provide a constructive mediating

role between rural communities and formal state institutions. However, it is important to note that *(a)* all these successful examples of (re)-connecting state and society were led by domestic actors with little or no participation by external players; and *(b)* grounded legitimacy does not involve merely the injection of elements of traditional practice into formal institutions: diverse sources of legitimacy must be negotiated and re-shaped through a political process of state-society bargaining.

Interaction between interests and legitimacy

A core argument of this report is that legitimacy depends on constructive relations between state and society. One aspect is to look for ways of reducing people's sense of alienation from the formal state (for example, through grounded legitimacy). But another is *to consider how people's perceptions of what is "right" or legitimate interact with their material interests; and how common interests can provide the basis for negotiating positive sum outcomes between state and society*. For example, work by the OECD Development Assistance Committee (DAC) on accountability and taxation shows how bargaining over revenue and public expenditure management can strengthen simultaneously state capacity, accountability and legitimacy. The state's need for revenue gives rulers an interest in nurturing the economy, and therefore in bargaining with potential investors over economic rights and public policy to support investment, thus creating a virtuous circle of interests.

However, *a fundamental problem in many fragile states is that political and economic elites may have very little interest in strengthening state capacity or in constructive engagement with their own citizens*, because they do not depend on them for revenue. Changes in the global economy from the 1970s onwards have given elites in poor countries unprecedented opportunities for personal enrichment from the export to much richer countries of oil, minerals and natural gas; smuggling of diamonds and other mining products; and illegal trade in narcotics. Key issues for policy makers concerned with reconnecting state and society include *(a)* the scope for shifting elite interests; for instance, by limiting their ability to benefit from externally generated rents; and *(b)* the circumstances in which very informal relations built around common interests (for example, between politicians and investors) could result in positive sum outcomes (for example, constructive investment in both public and private goods, not just "crony capitalism"), and in the longer term stimulate interest in more rules-based arrangements.

Implications and recommendations for donors

All donor interventions have an impact (often unintended) on local power relations and political processes, and therefore on state capacity and legitimacy. Providing financial and other resources can increase output legitimacy, but also feed corruption and undermine domestic accountability. Attempts to impose normative values rooted in a Western state model can add to tensions between different, competing sources of domestic legitimacy. Pressure for results within donor-driven timescales can disrupt internal political processes. Most importantly, donors often fail to take account of local perceptions of their own legitimacy – or lack of it.

Donors need to recognise that trying to strengthen state capacity and legitimacy in very fragile environments by imposing or supporting the creation of rational-legal political institutions will not work. They should take much more account of local perceptions and beliefs about what constitutes legitimate political authority and practice. Accepting this is challenging, not least because it involves confronting the difficult reality that local perceptions of legitimacy may well not be aligned with a donor agenda of promoting democratic governance, the rule of law and universal rights. Donors need to start with a detailed, empirical understanding of how multiple and conflicting sources of legitimacy play out in a given context; consider in the light of that how best to support more constructive state-society engagement; and confront explicitly any tensions and trade-offs between that and other, conflicting objectives.

It is extraordinarily challenging for outsiders to understand exactly what constitutes legitimacy and how it works in fragile situations, thus donors should be modest about their ability to influence this directly. Nevertheless, there are some practical steps that can be taken. Donors should:

- Start by seeking a much better understanding of local people's (diverse) perceptions and beliefs about what constitutes legitimate political authority.
- Pay much more attention to their own sources of legitimacy, and to how local perceptions affect their influence and ability to operate effectively.
- Be aware that how they confer or withhold international legitimacy, channel resources, demand accountability or impose conditionality also affects internal sources of legitimacy.
- Review current strategies of support to civil society, which can exclude a wide range of groups that could have both capacity and interests to engage politically, albeit on the basis of different perceptions of legitimacy.

- Facilitate debate and interaction between groups representing different interests and perceptions of legitimacy.
- Focus on the ways in which the global environment (which donors can influence) affects the incentives of political and economic elites to engage in statebuilding; and prioritise action to regulate access to externally generated sources of finance by elites.
- Take much more account of the ways in which aid modalities impinge on local state–society relations, including public financial management systems and project design.
- Be much more open to unorthodox political arrangements that encompass traditional aspects of legitimacy, and be prepared to "work with the grain" of existing interests.
- Finally, have a much more honest debate about the difficulty of reducing, much less eliminating, corruption in political systems that offer no clear boundaries between the public and private spheres. The starting point for thinking about corruption should be an empirical investigation of local perceptions, not a Western state model.

1. Introduction

This report is intended as a contribution to International Network on Conflict and Fragility (INCAF) debates about state fragility, with a specific focus on the role of legitimacy in statebuilding processes in fragile situations. In the main, donors working in fragile environments have tended to concentrate their efforts on capacity development and institution building as a way of strengthening state effectiveness. They have paid relatively little attention to the issue of legitimacy, assuming that this would result automatically from improved state performance. Moreover, insofar as they have thought about legitimacy, their implicit model of the state has been a Western, rational-legal, Weberian state in which sources of legitimacy derive primarily from observance of formal rules (democratic governance, human rights), and fulfilment of key functions including the provision of security, justice, services and support for economic growth. *This report argues that donors need to pay much more attention to legitimacy; to broaden their understanding to encompass aspects of legitimacy that derive from people's shared beliefs and traditions, not just from a Western state model; and to focus on the processes of state-society interaction that underpin the process of creating capable and legitimate states.*

The report therefore shifts the focus from an ideal, Western model of the state towards actual practice, looking at the way in which people's perceptions and beliefs about what constitutes legitimate authority can either contribute to or undermine constructive engagement between state and society, and hence statebuilding processes.

This approach confronts donors with some significant challenges. First, legitimacy is extremely complex because it has multiple sources, and changes over time (OECD, 2008c). Second, donors face difficult trade-offs and choices when local perceptions of legitimacy conflict with international norms. They need to be realistic about their limited ability to understand, much less to shape, local patterns of legitimacy. But at the same time – adopting the "Do no harm" principle – they need to give these issues more attention because their interventions can affect state legitimacy in many different and unforeseen ways (OECD, 2010). This report offers guidance on how to start unpacking the very complex phenomenon of state legitimacy in fragile situations, on the basis of which donors can make better informed, more explicit choices and trade-offs.

2. Basic concepts

Legitimacy

The report takes an empirical approach to legitimacy. It is concerned with people's perceptions and beliefs, rather than with observance of normative rules: whether, how and why people accept a particular form of rule as being legitimate. A political order, institution or actor is legitimate to the extent that people regard it as satisfactory and believe that no available alternative would be vastly superior (Bonnell and Breslauer, 2001). Power or dominion that is seen as legitimate by those subject to it constitutes *authority* (Weber, 1947): this provides the basis for rule by primarily non-coercive means. A lack of legitimacy is a major contributor to state fragility because it undermines state authority, and therefore capacity.

State fragility

The concept of state fragility is often defined in different ways in both the academic and practitioner literature.[1] State fragility is here defined as a lack of capacity to perform basic state functions, where "capacity" encompasses *(a)* organisational, institutional and financial capacity to carry out basic functions of governing a population and territory, and *(b)* the state's ability to develop mutually constructive and reinforcing relations with society. As explained in more detail in Section 2 below, state capacity is achieved through political processes of constructive state-society bargaining, which in turn require legitimacy; capacity and legitimacy can then become mutually reinforcing, and contribute to state resilience. The dynamic can also be negative if a lack of capacity undermines legitimacy and vice versa, contributing to state fragility.

The Western (Weberian) state

Donors tend to think about the state and state legitimacy in terms of a Western, modern state – and often in terms of an ideal Weberian model. Such a state successfully claims a monopoly over the means of what is considered legitimate violence; has control over a territory and population; has responsibility for providing services (directly or indirectly); and is recognised by other states (Soerensen, 2001). Donors often focus their attention on the formal state institutions needed to carry out these functions: an army and police force, a bureaucracy, a judiciary, a set of representative institutions. They take for granted a central concept underpinning the Western idea of statehood, namely the clear distinction between public and private spheres.

This distinction is the product of a very long history of intense interaction, bargaining, tension and conflict between and among different state and societal actors that resulted in people coming to accept the state as the highest authority, able to make and enforce binding decisions for society as a whole. The process involved, broadly in sequence: the creation of institutional arrangements to secure territorial control; rule that relies on legitimacy and consent, not just coercion; institutionalised co-operation between the state and organised groups in society to produce mutual benefits including a range of public goods; the gradual institutionalisation of constraints on state power; and strong citizen commitment to their mode of governance through direct engagement in policy making and implementation.

A central aspect of this bargaining process was the relationship between those who controlled political/military power and those who controlled capital (Bates, 2001). A state needs private capital to generate revenue, finance political activity and create prosperity that sustains public order. Private capital needs public authority to provide order and infrastructure. Each stands to benefit from co-operation, but runs risks in doing so: the state has the capacity to exploit private capital; holders of capital have the capacity to convert their economic power into political power by "buying up" government. In OECD countries, while personal relations of course remain an important aspect of public life, this competition takes place within widely accepted formal rules and impersonal relationships, and the institutions of market capitalism and liberal democracy are mutually reinforcing (Moore and Schmitz, 2008). An important aspect of the story of how these institutional arrangements were created is captured by state-society bargaining over taxation, which simultaneously strengthened state capacity and made it more accountable, responsive and legitimate.

A fuller account of the history of state formation is beyond the scope of this report. The important point here is that formal institutions of the Western state derive their capacity and legitimacy from a long history of interaction

between state and society, and cannot be reproduced simply by transferring those same institutional models into different social, cultural, historical and political contexts. The Western model of statehood presupposes that state and society are linked yet separated in specific ways. States are embedded in society and can shape social relations in ways that are supportive of state rule. But they are separated through a relatively clear differentiation between the public domain of the state and the private domain of the market, family and civil society, with different rules applying to each. In the public sphere, private interests of actors are subordinated to the public interest: so, for example, state resources are not to be used for private purposes.

However, state and society may be linked and separated in many different ways. The Western state is, relatively speaking, a recent and exceptional development. Different and varied patterns of state-society relations prevail in non-Western states, underpinned by different social and economic structures. These relations are based on – and in turn shape – different ideas about what constitutes legitimate public authority.

Non-Western (hybrid) political orders

There is vast diversity among and within non-Western states. Nor, of course, does any OECD state entirely conform to the formal Western state model: informal networks and personal relations still influence how power is distributed and used, and there are mechanisms (albeit to some extent formalised) for rewarding one's own supporters.[2] But there is a clear distinction between Western states in which impersonal relations support non-violent competition within the polity and economy, and non-Western states where potential violence is managed primarily through the creation of economic rents. The two systems obey a "different political and social logic" (North *et al.*, 2009). At a broad level of generalisation, state-society relations in non-Western states, compared with those of Western states, are more likely to be influenced by informal, unwritten rules (rooted in custom and traditional social practice) as opposed to formal, written, legal rules. Personal relations and ties of kin and community often provide the basis of trust between social actors and between state and societal actors, rather than impersonal, "arms-length" relations rooted in formal rules and institutions (including groups, parties and organisations). Public goods and services are provided to one's own social reference group or supporters, rather than on the basis of universal rights enjoyed by all citizens. Access to political and economic rights and resources similarly often depends on more exclusive, personal ties, in place of more open economic and political competition. Distinctions between public and private spheres are likely to be much more blurred. It follows that people's expectations of the state, and their ideas about what constitutes

legitimate political authority and acceptable behaviour by state officials, will differ fundamentally in Western and non-Western states.

In practice the majority of states in the global South are "hybrid" political orders.[3] Nominally many are constitutional liberal democracies that operate according to formal, legally enforceable rules (henceforth also referred to as rational-legal political orders). But they coexist with other, competing forms of socio-political orders that have their roots in non-state, indigenous societal structures and rely on a web of social relations and mutual obligations to establish trust and reciprocity ("traditional" political order).[4, 5] For outsiders, it can be very difficult to disentangle the two. For example, MPs and other officials may derive their power and legitimacy not only by virtue of being elected or appointed and operating according to formal rules, but also because they were nominated on the basis of kin affiliation and patronage, and are therefore supported by traditional, non-state sources of legitimacy.

There is clearly potential for conflict and tension in hybrid states between the expectations and demands implied by the formal state and those implied by more "traditional" forms of public authority. The history of state formation plays a critical role in determining what sort of connection formal states have to the societies and peoples they are intended to serve. Many so-called fragile states were built on the destruction of pre-colonial states or other political entities together with the diverse traditional social systems that existed alongside them. Sometimes these post-colonial states were built where there were no pre-existing states. Research suggests that post-colonial states that build on pre-colonial state formations (for example, Tonga) or well-established informal institutions (for example, Botswana) are likely to be more robust than those that were carved out of a collection of societal entities such as clans, tribes and ethnicities (Clapham, 2000; Clements, 2008). Conversely, states without a pre-colonial history of statehood are much more in danger of fragility (for example, Papua New Guinea, which has fragmented customary traditions). Many African states are artificial constructs where pre-existing social structures were undermined by colonisation, and authoritarian, rational-legal bureaucratic structures were imposed on societies with no legitimising social contract. These states therefore lack the legitimacy that comes from "evolving endogenously to [their] own society" (Englebert, 2000).

Traditional forms of authority are not necessarily inimical to the development of more rules-based political systems. The challenge is to understand how the two interact, and to look for ways of constructively combining them. Section 5 below discusses in more detail how a large diversity of political systems based on different sources of legitimacy in practice coexist and compete in ways that can either support or destroy attempts to create effective public authority and state capacity. Two points to note are:

i) Contrary to assumptions by Max Weber and others that formal, legal political authority would inevitably supersede informal, traditional forms of authority, the evidence suggests that "traditional" authority (however modernised or re-invented it may be) remains strong, diverse and very influential in shaping how formal authority is perceived and works. This is particularly the case in fragile situations where states are unable to provide basic security and services, or in remote, rural areas where local, customary practices and relationships continue to shape everyday social reality and provide vital support for basic livelihoods.

ii) It is important to distinguish between ideal (Western) models of the state and actual practice: in fragile situations, the gap is often very wide. The focus should be on relations between state and society in a specific context, and the actual processes through which states emerge in relation to societies and develop capacity to carry out state functions. A distinguishing feature of states in fragile situations is their lack of constructive relations with society. This is explored further below.

State-society relations, capacity and legitimacy

Understanding the actual practices of state-society interaction at work within a given context is fundamental for grasping how state capacity emerges, and how issues of legitimacy affect capacity, fragility and resilience. People's perceptions of legitimacy are central to their willingness to engage with the state, and can be manipulated by different actors. Perceptions of legitimacy are also intertwined with other factors that influence the willingness to engage in constructive bargaining: elite interests, the global and regional environment and deeply embedded economic and social structures (including sources of state revenue) all play their part. At very early stages of state building, perceptions of legitimacy can support or inhibit the negotiation of a political settlement. That settlement provides the basis for a shift from purely coercive state power to the creation of political authority: *i.e.* acceptance of the state as the highest (legitimate) authority in society, entitled to make and enforce binding decisions for society as a whole. Historically, new groups contesting state power have repeatedly sought to appropriate existing sources of legitimacy to shore up their claims. At later stages of building state capacity, perceptions of legitimacy are also central to the establishment of constructive relationships, *i.e.* state-society relations that support bargaining to achieve positive sum outcomes based on mutual interests and benefits, and institutionalised arrangements for managing conflict, negotiating access to resources and producing and distributing public goods.

State formation is not only about the creation of an efficient public sector, however. It is also about society being encompassed by the state, and the state penetrating and structuring social relations. To a significant degree, this occurs at an implicit level. Citizens come to take the presence of the state and its rules for granted, and while they may reject or endorse a given policy or government, they do not question the state's position as the highest political authority. The state needs to be both closely linked to and embedded in society, while at the same time maintaining sufficient autonomy to allow it to operate as the overarching authority responsible for making decisions that are binding on society as a whole. In fragile situations states are separate from society in the sense that they are often unable to establish themselves as the highest political authority and to penetrate and shape society; but linked in the sense that the boundaries between public and private spheres are in practice very blurred.

Capacity and legitimacy are distinct but interdependent. Legitimacy strengthens capacity because the state can rely mainly on non-coercive authority: citizens contribute willingly and actively, and are motivated to mobilise and engage in collective action *vis-à-vis* the state. This in turn allows states to better manage competing interests and to design and implement policies that are responsive to citizens' needs. Capacity is likely to improve legitimacy and further stimulate collective action that effectively aggregates and channels citizen demands. So capacity and legitimacy are mutually reinforcing, and can create virtuous or (in fragile situations) vicious circles (where lack of capacity undermines legitimacy).

Notes

1. State fragility is defined sometimes in terms of the probability of a major political crisis or conflict (with the emphasis on resilience/instability), and sometimes in terms of a lack of capacity. For example, the 2008 paper "Concepts and Dilemmas of State Building in Fragile Situations" (OECD, 2008) focuses on resilience/instability, and defines fragility as the state's inability to meet people's expectations.

2. The practice of "earmarking" in the United States as a means to secure congressional support for the passage of legislation is one such example, and OECD governments exercise extensive (legal) patronage over public appointments.

3. While there are hybrid elements in OECD states, the formal rules clearly trump the informal ones.

4. The paper puts quotation marks around "traditional" political orders to emphasise that, in the contemporary world, traditions are themselves constantly re-invented and deeply influenced by Western ideas.

5. These two different kinds of political order (rational-legal and "traditional") correspond broadly to Max Weber's distinction between ideal types of legitimacy based respectively on a) rational grounds – "resting on a belief in the 'legality' of patterns of normative rules and the right of those elevated to authority under such rules to issue commands (rational-legal authority)"; and b) traditional grounds – "resting on an established belief in the sanctity of immemorial traditions and the legitimacy of the status of those exercising authority under them (traditional authority)".

3. Unpacking sources of legitimacy

Overview

This section discusses four main sources of legitimacy.* It is important to bear in mind the broad distinctions sketched in Section 2 above between Western and non-Western states, and between formal, legal forms of political authority and more informal, "traditional" and charismatic political authority (with a mixture in hybrid states). This is because the four sources of legitimacy, while all relevant, play out differently in different social and political contexts. The sources include:

i) ***Input*** or ***process*** legitimacy: when the legitimacy of the state is tied to agreed rules of procedure through which the state takes binding decisions and organises people's participation. In Western states these rules will be mainly formal (usually enshrined in the constitution). In "traditional" political orders, process legitimacy will be based on customary law or practice. In both cases, observing these rules of procedure can strengthen mutually constructive relations linking state and society.

ii) ***Output*** or ***performance*** legitimacy: defined in relation to the performance, effectiveness and quality of services and goods that the state delivers.

iii) ***Shared beliefs:*** including a sense of political community, and beliefs shaped by social practices and structures, political ideologies, religion and tradition that allow people to see the state or other form of public authority as the overarching, rightful authority. Charismatic legitimacy (resting on the capacity of a leader to claim legitimacy by virtue of alleged divine or magical powers, or personal actions or attributes) is considered under this heading.

* This typology may be found in other OECD-DAC reports, including OECD, 2008a; OECD, 2008c; and OECD, 2010.

iv) ***International legitimacy:*** recognition of the state's sovereignty and legitimacy by external actors, which in turn has an impact on its internal legitimacy.

In thinking about these different sources of legitimacy, it will be useful to bear in mind that:

i) This report is concerned with what people actually believe, not just with formal mechanisms: elections, for example, are nothing more than a tool to collect opinions. They take on a distinct meaning only when people share the common belief that the collective will of the nation is thereby expressed.

ii) Shared beliefs can evolve from accustomed practice. For example, tools such as elections can contribute (over time) to building shared social beliefs. The more people become used to such common procedures, and see them as offering benefits, the more they see them as part of a legitimate way of participating in, regulating and transferring power. Thus elections that may initially have been seen as nothing more than formal procedure can slowly come to be seen as a right and as the only way to designate a legitimate government. But there is nothing inevitable about this. Elections may not contribute to building shared social beliefs – for example, if a "winner takes all" system undermines a fragile political settlement. Shared beliefs can change the meaning of formal processes and how they work: elections play out differently in different social and political contexts, and can be manipulated by non-state actors or can reinforce patronage-based competition.

iii) None of the sources of legitimacy listed above exists in isolation, and no state relies solely on one of them. So, for example, improving the quality of services will not necessarily increase state legitimacy. Moreover, different sources of legitimacy interact and while some are mutually reinforcing, others are contradictory. This interaction is critical to how state-society relations play out in a particular context and affect fragility. It is discussed at more length in Section 5 below.

iv) There is good evidence of a broad correlation between higher levels of income and democratic political systems in which input legitimacy rests mainly on observance of formal rules (although the causal links between income levels and democracy are unclear and contested). But it should not be assumed that there is any clear or inevitable process whereby sources of legitimacy evolve in a particular direction, or that contemporary developing countries will follow the same broad trajectory as OECD countries. The circumstances they face are very different. The core message of this report is that policy makers

should look, without preconceptions, at how different sources of legitimacy play out in a specific context.

Input legitimacy

Input legitimacy refers to the process whereby the state emerges as legitimate because of the procedures and mechanisms through which it governs, notably the mechanisms by which those who appropriate and use public power are held ***accountable*** by their constituencies. In Western, rational-legal states the legitimacy of those processes and mechanisms rests primarily on a perception that they accord with a set of publicly agreed and legally enforceable formal rules. Mechanisms of accountability feature particularly prominently in Western states, including transparency, checks and balances, legal procedural norms and auditing of public funds, media coverage and public debate. These also constitute a source of input legitimacy since they provide a channel for citizens to ***participate*** in how the state governs beyond elections. In Western states, impartiality, rule-following and expertise are key features of legitimacy. The distinction between private and public is fundamental: the state is perceived as legitimate because those who hold power diligently put public purpose ahead of private gain, adhering strictly to rules and using their professional judgement to advance public goals.

While input legitimacy is most apparent in (Western) rational-legal states, customary law and practice and relations of mutual accountability between rulers and subjects also provide mechanisms for participation and accountability – and thus input or process legitimacy – in non-Western political orders. In pre-colonial societies in sub-Saharan Africa, for example, legitimacy rested on continuous communication and consultation with the (eligible) members of the community (often excluding youth and women), and with perceived supernatural powers; and traditional leaders could be delegitimised if they failed to observe these practices (Clements, 2008). Rulers' authority was subject to constraints: people could withhold tribute from an unpopular chief, or disgruntled subjects could simply move away. These realities were reflected in investiture ceremonies: on Mount Meru in Tanzania, for example, the *mangi* or chief would sit on a stool before a large audience that included clan elders who presented him with gifts, at the same time saying, "We have given you this throne, sit on it, and rule over us". Chiefs could be removed if they failed to use their wisdom and power for the entire society (Puritt, 1970:111 in Kelsall, 2008).

As explained in Section 2 above, whether public goods and services and access to economic and political resources are provided on the basis of universal rights or more exclusive personal relations is a defining line between Western and non-Western states. ***Patronage*** is an issue that straddles input

and output sources of legitimacy. Elements of patronage are found in all political systems. But in rational-legal states, patronage is mainly viewed as nepotism or corruption that undermines both process and performance legitimacy. In non-Western, hybrid political orders, however, patronage can provide sources of both input and output legitimacy. It is particularly pervasive in fragile situations where state capacity is weak, and can constitute the main means of managing violence, creating political alliances and maintaining social stability. In a system of patronage, legitimacy is linked to the rewards that accrue from exchange, and to the fact that the processes of exchange pervade large parts of society, so that all but those at the very top or bottom are simultaneously both a patron and client of some other person. Yet patronage also weakens state performance and can undermine regime legitimacy if it comes to be seen as excessive or unfair (for example, if it benefits one group at the expense of others, and thus reinforces perceived or actual horizontal inequality; see Section 5 below).

Output legitimacy

Security is not just a service provided by the state as a public good, but a defining feature of (modern) statehood. The provision of security is a *raison d'être* of the state, and providing security is central to establishing or re-establishing an entity as a *de facto* state. That said, how far providing security directly bolsters state legitimacy depends to a large extent on the experience of different groups with the state (whether repressive, violent, positive, etc.), and on the legitimacy and capacity of non-state groups, including rebels and warlords, to provide security.

Box 3.1. **Security in Central Asia**

Warlords are key sub-state actors in Afghanistan and in the recent history of Tajikistan. Uncontrolled by the central government, they are able to guarantee security, impose their own rules, and strengthen socio-economic mechanisms of survival within the territory they control. Thereby they gain political legitimacy and authority over locally ruled populations. They tend to create a "state within a state" and enter into competition with the central government. Their relations with the state can be diverse and vary over time, from armed confrontation to active partnership. So warlords can destabilise the state or, if successfully co-opted, can participate in its consolidation. The second option has worked in Tajikistan. But ultimately statebuilding implies warlords' recognition of the state and full integration into it, or their neutralisation.

Source: Nourzhanov, 2005.

Security is also central to state legitimacy because it makes possible the production of other sources of legitimacy including ensuring basic health and education services, sustaining livelihoods and economic activity, and establishing democratic elections and the rule of law. Like other state services, it can be exclusive or inclusive: the state can take sides.

The provision of ***social services*** (health, education) and of infrastructure and a macro-economic framework to support ***economic activity*** is central to statehood but not as intimately tied to the state as the provision of security. The state need not be directly involved in providing all services, but the idea of the state as an agent of progress and development is a central aspect of legitimacy, so the state needs to be seen as ultimately responsible for services and for organising the contributions of other actors (including NGOs, philanthropic organisations, aid agencies, etc.). In this sense the provision of social and other services is therefore a central source of (output) legitimacy, but it needs to be understood in the context of locally prevailing ideas about the proper role of the state. Non-state actors (including non-profit and for-profit) will generally be seen as supporting state legitimacy if they operate within a framework defined by the state. But in fragile situations this is often not the case, and non-state service providers may replace or compete with rather than supplement the state.

Shared beliefs as a source of legitimacy

One of the most fundamental aspects of state formation is the importance of a ***collective identity***. The construction of a nation as an "imagined community" (Anderson, 1983), bounded by a territorial border, is a central resource for state legitimacy. A strong sense of community attached to the state may act as a bridge between other, conflicting sources of legitimacy such as religious beliefs, "tradition", language or ethnicity, creating a politically united people around a common acceptance of the state and their mutual recognition as citizens despite their differences.

Religious beliefs and religious institutions play a central role in defining what is considered morally right, appropriate, sinful, wrong, etc. in a society and in shaping people's political expectations and ideas about authority. Religious beliefs may be incorporated into and made part of state institutions and policies, thus actively promoting state legitimacy (Rae 2002). For example, the history of state formation in the West saw the state emerge by first using religion and then replacing it as a source of legitimacy. Many states have the difficult task of trying to balance different and competing sources of legitimacy: religious beliefs may be at odds with modern liberal ideas of the state or demands and pressures from the international community on issues such as family law and reproductive health. In other contexts, religion may

be used as a basis for contesting regime legitimacy (as in Myanmar) or for contesting the very foundations of the state and presenting alternative models (as in Iran, Hezbollah in Lebanon, Pakistan).

"Tradition" is a very important source of state legitimacy, but difficult for external actors to understand or influence. Tradition is defined by material and nonmaterial rituals and symbols whose invocation reminds people of their identity, sense of belonging, role and place in a particular community. Through extended practices, tradition comes to be seen as the habitual, natural, routine way of doing things (Giddens, 1985). But traditions are not static – the state can play a role in identifying and defining some institutions and customs (including religious practices and beliefs) as traditions, and not others (Hobsbawm and Ranger, 1983). Tradition and traditional leaders can also be created by the state, in which case tradition is transformed from being something taken for granted to something consciously articulated (for example, liberation struggles that provide those who hold state power with a "grand saga" that gives them legitimacy). States in fragile situations often face strong traditional sources of legitimacy linked to non-state institutions and practices, so that people's allegiance, trust and identity are not tied only to the state. In such contexts modern states generally borrow items of traditional legitimacy and incorporate them into their own systems.

Charismatic legitimacy was seen by Max Weber as an innovative and revolutionary force capable of challenging and disrupting the established normative order (Weber, 1947). Charismatic legitimacy rests on the capacity of a leader to claim authority by virtue of supposed magical powers, divine revelation, or heroic action or persuasive abilities. People who obey charismatic leaders are thought of as disciples or followers rather than rules-based actors, or actors accepting the power of custom and tradition. By no means do all leaders or "reform champions" enjoy charismatic legitimacy. Charismatic leaders are most likely to emerge when traditional leaders or rational-legal systems are failing, or in crisis. In recent decades charismatic religious and political leaders have appeared in response and resistance to colonialism, globalisation, failed and failing state systems, economic stress and collapse, and the inability of the modern state to deliver real security to citizens.

International legitimacy

A state's external sovereignty is dependent upon international recognition. Such recognition is also a source of legitimacy, not only externally but sometimes also internally. Regional and international organisations, including donors, play a critical role in determining the extent to which particular states perceive themselves and are perceived by others as legitimate and operating within accepted international rules (including human rights). These

external sources of legitimacy can modify behaviour in negative or positive directions.

To be effective and positive, external legitimation has to resonate with internal legitimating dynamics. When external and internal sources of legitimacy are deeply contradictory, the gap between them can have destabilising impacts on the state. In general, states which enjoy external legitimacy but lack internal legitimacy tend to be fragile (for example, Afghanistan), whereas political entities that are seen as legitimate by major parts of their population but lack external legitimacy can be quite stable (for example, Somaliland). In many cases (for example, in Central Asia and Africa south of the Sahara) financial, political, and military support from external actors can undermine political legitimacy; and in aid-dependent countries the requirement for governments to be accountable to international donors can weaken their relationship with domestic constituencies, thus undermining constructive state-society relations.

International ***human rights*** norms constitute a source of state legitimacy in two ways:

i) They are hailed as a universal framework enshrined in the UN Declaration on Human Rights, within which all states should operate. The significance of human rights as a source of state legitimacy became more pronounced during the 1990s as the principle of state sovereignty became increasingly conditional upon respect for fundamental human rights.

ii) They represent a source of domestic legitimacy to the extent that they provide a "moral purpose for the state" (Reus-Smit, 1999) and establish a link between the state and its subjects in such a way that the latter become recognised as citizens with rights that the state will defend and uphold. Observance of human rights norms does not automatically increase state legitimacy, however: examples include family law reforms covering women's rights and inheritance laws in Morocco, Senegal, Afghanistan and Yemen. The impact on state legitimacy depends on how well international human rights norms resonate with groups whose trust, allegiance and support is needed to strengthen state capacity. Equally, states (and regimes) can enjoy internal legitimacy while failing to conform with human rights norms.

It is therefore important for donors not to assume that promotion of, or support for, reform that is aligned with international norms will necessarily increase internal legitimacy. This issue is discussed further in Section 8 below.

4. Mapping legitimacy

Legitimacy of states, regimes and leaders

It is important to distinguish between state legitimacy and the legitimacy of regimes and political leaders. In some cases the very existence of a given state may be contested. Thus, the majority population in Kosovo, South Ossetians or Abkhazians in Georgia or tribal populations in parts of Afghanistan may reject the very existence of their respective states, and may seek either to establish a new state (as in Kosovo), to join a neighbouring state (as in South Ossetia) or simply reject being governed by a state at all (as in tribal areas of Afghanistan).

In other cases, state legitimacy may be high while the legitimacy of a particular regime, government or leader comes under challenge. So people do not seek to form new states, join a different state or avoid being ruled by a state at all, but instead reject an existing regime (or government or policy) that does not meet their expectations, and demand that the existing state be reformed (as in the case of the "colour revolutions" in Georgia, Ukraine and Kyrgyzstan). People can distinguish between the legitimacy of an institution and the individual who occupies it: for example, in Nepal some groups continued to support the monarchy while perceiving that the King himself had lost legitimacy, while for others both the King and the institution of monarchy had lost legitimacy.

In theory the distinction between state and regime legitimacy is clear, but in practice there is often confusion about what legitimacy resides in the state (as an "imagined community" or a set of institutions), and what legitimacy resides in particular governments or regimes. Legitimate states can support the emergence of legitimate regimes, and vice versa. But regimes that enjoy little legitimacy can be found in legitimate states, and states that lack legitimacy can host regimes that enjoy some legitimacy. This raises difficult issues for donors, including concerns that channelling assistance through state institutions with a view to strengthening them may shore up a regime that lacks either international or internal legitimacy – or both. This is discussed further in Section 8.

People's views about the legitimacy of a particular regime or leader can be ambivalent: they may see them as crooked (for example, if an election has been rigged), while also according them legitimacy (in the sense of believing that they represent the best available alternative) if they deliver economic growth or other public goods. Ideas about the legitimacy of a particular regime or leader can fluctuate strongly over short periods of time – for example, if a leader seen as politically illegitimate loses economic legitimacy (such as Suharto in Indonesia).

A political leader with strong legitimacy may contribute to strengthening the legitimacy of a given political order (as Nelson Mandela in South Africa infused the post-apartheid state with legitimacy by virtue of people's affection and respect for him). While leaders make a difference, however, they cannot substitute for a lack of strong constructive linkages between the state and society. The focus of this report is on the wide range of interactions at work in a given society at many different levels, and in daily practice, rather than on the role of individual leaders.

Ruling elites and state legitimacy

The legitimacy of a state or regime can be strong in some parts of society and weak in others. It is likely to be strong among a small, influential ruling elite of elected and non-elected officials whose power, status and personal wealth depend on their position in the bureaucracy or executive, and on their ability to access state resources that can be redistributed through patrimonial networks. They thus have strong vested interests in maintaining a particular type of state or regime. By contrast, the same state or regime may lack legitimacy among the population at large. In situations of fragility, the state is often socially highly differentiated from the rest of society. This can present development agencies with difficult trade-offs since their relationships and interventions often revolve around ruling elites who formally represent the state.

Territorial and social variations in legitimacy

Legitimacy in fragile situations is likely to vary significantly in different areas and among different communities. Within the same state territory, the level of confidence and trust that different communities are willing to extend to the state is likely to vary considerably. This reflects numerous factors, including people's past relations with the state, historical experience, the compatibility of local organisations with state institutions, the strength and legitimacy of local leaders and their relation with state leaders, geographical proximity to state institutions, and political or ideological factors. In certain areas, the state may virtually have given up trying to exercise control or

struggle to gain acceptance by groups used to relying on non-state actors for welfare, security and identity. This can be exacerbated by statebuilding efforts of international donors: by providing the regime with international legitimacy as well as resources, they can weaken incentives of political elites to negotiate, compromise and integrate more peripheral areas and groups. In short, the perception of the state and people's readiness to accept state laws, regulations and actions may vary widely. What may bolster state legitimacy with one group in one area may undermine it in another.

Box 4.1. **The strength and reach of the state**

States in situations of fragility not only lack strength, they also lack reach. A nation state may be comprised of different communities that lack a sense of shared identities and interests or political community. This may lead to rebellion, tension or civil war. In Bolivia, for example, political opposition to the policies of President Evo Morales has given rise to a split between rich lowland areas and the poorest Indian Andean regions. In Niger and Mali the Tuareg population is in a minority in the northern parts of the two countries, and feels alien to the southerners' way of life, while wanting to get the largest share of royalties paid by multinational companies for exploiting minerals in their part of the country. Both countries have had to cope with successive rebellions and civil wars. In other contexts, for example Fiji or Malaysia, community divisions are not territorially based. Strong communities coexist in a state of uneasiness or a sense of reciprocal deprivation.

There are various ways of dealing with this diversity, including different systems of organisation and laws for diverse groups, using either geography or community as the basis of implementation. For example, considerable differences are found between Nigerian states enforcing sharia and those sharing civil law; between local governments in northern and southern Niger; or between various provinces in Ethiopia. Malaysia grants different rights and obligations to people according to their community of belonging, within the general framework of an affirmative-action policy.

5. Interaction between different sources of legitimacy

Co-existence of different forms of legitimacy

In any state, diverse sources of legitimacy co-exist and interact. State legitimacy depends on a stable and resilient web of different and multifaceted sources of legitimacy: no one source can itself legitimise political power, and no particular hierarchy is involved. Fostering state legitimacy requires a comprehensive approach that addresses different sources of legitimacy, and also the way they interact. The issue is not simply how to reconcile Western rational-legal with "traditional" sources of legitimacy: the reality is much more complex (and captured in the term "normative pluralism"). This makes it very difficult for external actors to understand and contribute to the process. In hybrid states, very different normative systems and sources of legitimacy

Box 5.1. **Harmonious co-existence: the Murid informal banking system in Senegal**

Senegal has a modern banking system established by the colonial powers that operates according to international rules and regulations. But these are alien and inappropriate to many small economic operators, who rely instead on unofficial, informal channels organised by the Muslim community (the Murid brotherhood). This allows people to get credit and make international transfers, and works through social pressure and trust, based on strong social and religious links between members of the brotherhood and the legitimacy that the leaders enjoy with their followers, thus supporting quasi-contractual relationships. This is a parallel system closely related to yet distinct from the official economy, and leaders of the brotherhood act in close connection with the Senegalese state. Similar forms of coexistence are found in the "tontine" system in West and Central Africa, and in the hawala system used by labour migrants (an informal value-transfer system that rests on trust between members of the extended family and regional networks). All these are examples of coexisting systems of norms with positive outcomes.

Sources: Economie des filières en régions chaudes : Formation des prix et échanges agricoles, séminaire d'économie et de sociologie, Editions Quae, 1990. Pierre Kipre, Leonhard Harding, Boubacar Barry (1990) *Commerce et commerçants en Afrique de l'Ouest, Le Sénégal,* L'Harmattan. Mughal, Abdul-Ghaffar (2006) *Migration, Remittances and Living Standards in Tajikistan*.

(rational-legal, "traditional", religious, etc.) coexist and compete, and shape existing practices and institutions. In some cases they coexist harmoniously, partly reinforcing and supplementing each other. An example is the Senegalese banking system described in Box 5.1.

In other cases, there are tensions between a wide range of pre-existing customary practices and new, liberally oriented laws. In many parts of Africa, for example, Western principles of land ownership based on individual property rights are at variance with traditional ideas about land ownership that enshrine property rights in the community. This places potentially conflicting demands on people, out of which new practices and norms may emerge, resulting in hybrid rules and practices.

Box 5.2. **Uneasy co-existence of different systems of property rights**

Under traditional land ownership practices in Africa, an individualist conception of property rights does not exist. Property rights are enshrined in the community, which can delegate the use and fruits to individuals acting as trustees. Conflict is regulated by traditional authorities. In Senegal, the relationship of marabouts to talibes (disciples) provides the basis for a system of informal land distribution through which young disciples are rewarded by informal property rights on plots of land that can be passed from father to son (and so are in that sense inalienable). However, these are not property rights as defined by Senegalese state law. In practice, securing access to land may require seeking both formal property rights and traditional acceptance of land use.

Source: Emile Le Bris, Etienne Le Roy, Paul Mathieu (1999): *L'Appropriation de la Terre en Afrique noire: manuel d'analyse, de décision et de gestion foncières.* Paris: Khartala.

In other cases coexistence is even less harmonious, and a large gap can emerge between the rules enshrined in the formal legal system, and what is seen as legitimate practice by a large part of the population. An example is given in Box 5.3.

Box 5.3. **Ignoring legal diversity**

The major body of present Ethiopian law was enacted between 1957 and 1965. The principal aim was to achieve the modernisation of the legal system. Although there was a great variety of pre-existing local legal traditions, the new legislation was almost exclusively inspired by Western conceptions of law. Rather than reflect social realities, the codes were intended to become a model for society. As a result, large parts of legal practices today are not recognised by the formal laws. Many African countries today are facing the same problem.

Source: Kohlhagen, 2008.

The very diversity of legal and normative orders found in many fragile states poses a particular challenge for policy makers. They cannot deal with this diversity merely by trying to integrate a codification of customary practice into formal state law; nor by trying to anchor new rules in "traditional" practice. Constructive interaction between different sources of legitimacy has to be negotiated through a political process of bargaining between the state and different groups in society, through which institutions and norms can be reshaped. External actors are likely at best to have a role in helping to create spaces for this interaction to take place.

Competing sources of legitimacy in fragile situations

In fragile situations the various sources and forms of state legitimacy are unlikely to reinforce each other and may compete or conflict. Moreover, they may be drawn on by domestic actors seeking to enhance their own material power and legitimacy. A major feature of states in situations of fragility is that they are faced with conflicting and alternative models of social and political organisation and legitimacy without being able to sideline them or incorporate them in the state project. They are thus unable to impose the ultimate rules of the game, and to structure society in such a way as to provide the social and cultural framework within which people think and act (Eberhard, 1997). In such situations actors may "jump" from one source of legitimacy to another, and so-called "informal" or "non-state" institutions, rules and processes may enjoy considerable legitimacy and trust. The existence of such alternative orders presents the state with a challenge because they provide people with viable options that allow them to disengage with the state ("exit options", Hirschmann, 1970).

In situations of fragility, non-state actors may take advantage of the state's lack of capacity and legitimacy to offer alternative systems of government: for example, Hezbollah in Lebanon, Islamist movements in several

Box 5.4. **Capturing legitimacy to build alternative models of state and society: Hezbollah and the Lebanese state**

Hezbollah has challenged state legitimacy in Lebanon through a strong presence in public service delivery (health care, education and rubbish collection), especially in an area of South Beirut virtually abandoned by the state. Hezbollah-related associations and NGOs aim to foster a form of self-sufficiency which goes hand in hand with building a "society of resistance" (*i.e.* an alternative society) based on the rejection of state authority and legitimacy. Hezbollah is thus drawing on and linking two major sources of legitimacy: "output" and shared beliefs.

Arab countries, the FARC in Colombia in the 1980s and 1990s. They show that if the state fails to incorporate other types of legitimacy that people consider to be essential, it will be open to challenge.

Leaders enjoying ***charismatic legitimacy*** pose a challenge to both rational-legal and "traditional" authority. Violent conflict in developing countries has seen the emergence of warlord-type leaders, often members of the younger generation with limited prior status. In some instances, state institutions fight warlords and deny their legitimacy; in others, they utilise warlords against other warlords and, in doing so, legitimise them. Afghanistan and Somalia are prominent examples. Often charismatic warlords are co-opted into the rational-legal system of governance, particularly in post-conflict situations. Warlord-type charismatic leadership can be both relatively enduring, as for example in the Horn of Africa, or relatively short-lived – as for example in most Pacific conflict situations.

Another type of charismatic leadership is claimed by leaders of Pentecostal churches (for example in the Pacific, Latin America and sub-Saharan Africa) and by indigenous religious movements (often labelled "cargo cults"). They pose a serious challenge to traditional legitimacy, and their relationship with rational-legal authorities is uneasy.

It is likely to be much more difficult to find ways of accommodating charismatic leadership of this type with rational-legal legitimacy than it is to accommodate traditional and rational-legal legitimacy.

Elsewhere charismatic/fundamentalist religious leaders form uneasy alliances with traditional authorities. The combination of traditional tribal sources of legitimacy (*e.g.* the Pashtunwali, the customary law of the Pashtuns) and religious Islamic sources of legitimacy in Afghanistan, Pakistan and other parts of Central Asia is a case in point. The Taliban, for example, can be seen as a movement that gains its legitimacy from these various sources. This is a reason for both its (potential) strength and (potential) weakness. Movements of this kind can be de-legitimised if traditional legitimacy is brought into conflict with fundamentalist charismatic legitimacy, and the other way round.

Patronage represents another critical site of competition between rational-legal and "traditional" sources of authority. In non-Western (hybrid) political orders, legitimacy derives to a greater or lesser extent from the ability to provide resources to one's followers (often within a relatively resource-poor environment, and often moderated by informal rules of accountability). However this system operates in contradiction to, and undermines, input and output legitimacy in rational-legal orders. Patronage exercised by state actors involves providing state services and other benefits to some groups in preference to others in return for political support. This runs counter to the universal provision of public goods to citizens, and can result in inequalities between culturally defined groups that contribute to political instability (Stewart, 2003). State

positions can be offered to be used as sources of personal enrichment to followers, thus undermining the meritocratic and honest functioning of the bureaucracy. Business licences and other sources of economic rents can be granted to supporters, thus undermining effective competition and efficient investment. These practices can evoke popular opposition if the behaviour of political elites is seen as leading to excessive personal enrichment/favouritism and therefore corrupt. But often people have contradictory expectations, wanting state officials both to distribute resources to their clients and to provide better services.

Box 5.5. **Competing demands between patronage and services**

In the 1960s and 1970s some African countries (for example, Kenya and Cote d'Ivoire) managed to juggle competing/conflicting demands for both personalised patronage benefits and public services. But using state resources to deliver benefits to clients in return for political support was ultimately incompatible with the ability to invest in promoting self-sustaining economic growth, and also with donor demands for good governance. When state resources declined in the early 1990s and political competition increased with the move to multi-party systems, informal neo-patrimonial politics became dominant, leading to a self-reinforcing spiral of state decay as the quality of governance eroded, leaving patronage as the principal (and diminishing) means of sustaining legitimacy.

Source: Chabal, 2009.

Zimbabwe provides an extreme example of this phenomenon. In situations of fragility, where the state faces potentially violent opposition, the need for political survival will trump statebuilding.

Box 5.6. **The politics of regime survival in Zimbabwe**

A clear example of the contradiction between statebuilding and regime interests is found in Zimbabwe's policies of land reform. By the 1990s, the position of the ruling regime had become increasingly fragile. The economic situation had deteriorated, political support for the regime was eroding and a new, strong opposition movement had emerged. In the effort to revive its legitimacy in the countryside, the government made the crucial decision to carry out large-scale land reform, by taking over the majority of the white-owned commercial farms – without ensuring that those who took them over had sufficient financial, technical and institutional support to maintain effective production. Faced by a situation where its own position was under threat, the regime chose to embark on policies that could strengthen its legitimacy, despite the fact that these also undermined economic growth and the economic basis of the state itself.

Legitimacy in fragile situations is therefore very complex, with different sources of legitimacy coexisting, competing and conflicting – and interacting with other sources of power and interest. These are very difficult issues for outsiders to grasp, much less influence constructively. What is clear, however, is that the diverse sources of legitimacy that compete with rational-legal political authority remain powerful, especially in fragile contexts, and cannot simply be ignored or overridden. The question is therefore how to manage this diversity without weakening state authority, and how to break the vicious circle in which political survival depends on ever more destructive use of patronage.

6. (Re)connecting state and society

Current debates

There is growing recognition among development practitioners that "good governance" cannot be created merely by transferring institutional models from Western to non-Western states (the current INCAF work on state legitimacy is one indication of this). But if one accepts the argument of this report that people's perceptions and shared beliefs about what constitutes legitimate political authority matter critically for statebuilding, the question is how to connect/re-connect state and society.

There is an extensive literature and different perceptions between scholars about the significance of conflicts between rational-legal and more "traditional" political authority. Some emphasise that these are central to current governance problems in Africa and elsewhere, while others see them as less important from the point of view of policy makers (for a short discussion, see Booth, 2008). While it may be increasingly clear that it is not possible to "skip straight to Weber" (Lant Pritchett's telling phrase), it is less clear whether it should be a direct objective of policy makers to search for more constructive and harmonious accommodation between different kinds of political order: should they, for example, emphasise "working with the grain" of "traditional" institutions and, if so what would that mean in practice? These questions are the subject of ongoing research*, and there little definitive guidance on offer. A common starting point could be to investigate empirically the reality of existing patterns of public authority and state – society relations in any particular context, and (as this report argues) to think about how people's shared beliefs and perceptions about legitimacy influence those relationships. Given the huge diversity of factors at play in shaping perceptions of legitimacy, and the way they interact and change over time, it is unsurprising that there are no easy solutions.

* For example, by the Africa Power and Politics Programme; see Booth, 2008.

The following sections consider a number of ideas about how to go about re-connecting state and society, looking first at the scope for doing so in more or less deliberate ways; and second at the potential for very informal institutions at a local level to play a role in connecting rural communities with elected bodies, or (in other cases) in undermining formal authority. Section 7 below considers the interaction between interests and legitimacy, and the scope for more indirect approaches to re-connecting state and society by looking for ways of shifting elite interests, and the scope for negotiating common interests across the public/private, formal/informal divide.

Grounded legitimacy

There is increasing interest among development practitioners in more deliberate strategies for marrying indigenous, customary and communal institutions of governance with introduced, Western state and civil society institutions, with a view to creating constructive interaction and positive mutual accommodation. Clements (2008) advocates what he terms "grounded legitimacy" that looks for positive ways of connecting the formal system

Box 6.1. **Grounded legitimacy in the Pacific**

In ***Papua New Guinea***, in the autonomous region of Bougainville, a process of post-conflict state formation aims to combine traditional and legal-rational legitimacy. Direct democratic elements stemming from the customary sphere are incorporated into the formal processes of liberal democracy (*e.g.* voter-initiated legislation and plebiscites or the recall of members of parliament), which enhances the legitimacy of these processes. The Council of Elders, which provide the mainstay of political order, are legal institutions but allow for local variations in the election/selection of members, and include traditional chiefs and elders together with representatives of societal groups (women, youth, the churches). They thus combine traditional and legal-rational authority.

Tonga's constitutional monarchy combines the traditional legitimacy of the kings and nobles with their legal-rational legitimacy as heads of state and members of parliament.

In ***Vanuatu***, the National Council of Chiefs (the Malvatumauri) is a highly legitimate institution of governance, and so are the chiefs at the various levels of socio-political life. State institutions such as the police force and courts often can only operate effectively and legitimately if they co-operate with the chiefs and elders in the communities. These traditional authorities are situated outside the state structures and hence are not endowed with legal rational legitimacy, but collaboration is necessary in order to affirm and strengthen the legitimacy of state institutions. This collaboration is usually *ad hoc* and informal.

Source: Clements, 2008.

of governance with local realities, and of tapping into the resilience and problem-solving capacities of local communities. The Boxes in this Section provide some examples. Grounded legitimacy is not residual, but is a way of incorporating traditional authorities and practices within the formal state in order to provide the belief systems within which to enhance the capacity and effectiveness of new forms of statehood. It is important to emphasise that the objective is constructive relations between the state and (a very diverse) society: grounded legitimacy is not just an attempt to inject an element of "tradition" into Western state models, but to create legitimacy anchored in the reality of people's beliefs and behaviour.

It should also be noted from the outset that all the (successful) examples given in the Boxes in this Section were led by domestic actors with little or no participation by donors or other external actors.

In ***Botswana***, customary institutions and traditional leaders provide a mediating role between the state and local people, within a context of diminishing traditional power.

Box 6.2. **Grounded legitimacy in Botswana: The Kgotala**

In Botswana, the Kgotla, a former customary court of law and public forum supported by the local chief system, provides a forum in which effective discussions over leaders' choices and policies can take place. This form of public debate allows for more transparency and accountability of leaders' practices, supporting what is now known as the *Tswana democracy*. This does not mean that traditional authorities prevent the modern state from spreading among local people. Since 1993, chiefs have lost their land-distribution power to the benefit of the newly created Tribal Land Boards, while their judicial power at the local level is contested. However, the local chiefs continue to make it easier for state power and decisions to reach ordinary people, interpreting state policies (top down), and channelling people's choices and preferences (bottom up). The Kgotla has been extended and modernised to include the participation of women, settling disputes and promoting tolerance and accommodation. The chiefs have thus played an essential part in intensifying and legitimising the formal democratic system.

Sources: Holm and Molutsi, 1989; Brothers *et al*., 1994.

In other cases, "traditional" institutions have been resurrected as a way of supporting government policy. In ***Burundi*** in 1988, the government revived the *Bashingantahe* (meaning, a group of wise and honest men) as a way of contributing to national unity after years of ethnic conflict. This modern revamping of an old institution may be nothing more than a political game, and does not constitute grounded legitimacy as defined above. The government has been blamed by the *Bashingantahe* council for appointing as members individuals

who already hold positions in the state territorial administration as local party committee chiefs.

It is also debatable how far the establishment of *Gacaca* courts in ***Rwanda*** in 2001 provides an example of grounded legitimacy, although they did offer a practical solution to a pressing problem. The courts were inspired by formerly existing traditional dispute-resolution mechanisms. While in some respects contentious, they have provided a far more efficient way of seeking reconciliation following the genocide that involved much of the population than any type of state and official law could have done.

Box 6.3. **Grounded legitimacy in Somaliland**

Somaliland is a success story of post-conflict peace building. It combines customary institutions – in particular councils of elders (guurti) – and modern state institutions based on free and fair elections, such as a parliament and President. The success of peace building and statebuilding in Somaliland was to a large extent due to the involvement of traditional actors and customary institutions that are rooted in the traditional clan-based Somali society. They enjoy a high degree of legitimacy, based on the customary law and values of Somali clans (the xeer), and on their capacities to secure the social cohesion, well-being and safety of clan members. The councils of elders were also entrusted with important roles in the successive process of building political order, which was principally a bottom-up process; and they are constitutionally embedded in the political system of Somaliland, in which state institutions and customary institutions play complementary roles. The Somaliland Parliament is comprised of both the House of Representatives (elected) and a House of Elders (selected and appointed by the clans). The legitimacy of state institutions is, however, limited: the government does not hold a monopoly over the legitimate use of violence, and security is dealt with in a decentralised manner, largely guaranteed by local politicians and elders.

The global and regional environment, historical experience and economic interests all shaped the context within which it was possible to establish security and create a nascent political system. Contributing factors (which differentiate the experience of Somaliland from that of Somalia) include:

- A sense of political community (deriving from "benign neglect" of the British colonial administration, and common experience of the Somali National Movement during the war of 1988-92;
- Common interests between Somaliland's political and business classes in reviving the pastoral economy and livestock exports (the Isaaq diaspora was of particular importance);
- Limited flow of foreign assistance and international engagement, which meant that a resource-poor environment reduced the potential for conflict and allowed local political processes to take their course.

Sources: Bradbury 2003, 2008; Hagmann and Hoehne, 2007; Englebert and Tull, 2008.

A better example of grounded legitimacy is provided by ***Somaliland,*** which has successfully re-established political order and basic state capacity, in contrast to the continuing conflict in southern Somalia.

Non-state networks and institutions

Networks of local, non-state actors and institutions often enjoy considerable legitimacy and are enduring, especially in fragile situations and remote rural areas, where they remain important in providing security, resolving disputes, supporting livelihoods and mediating interaction with the formal state. They may include customary law, traditional societal structures (extended families, clans, tribes, village communities) and traditional authorities that shape everyday social reality for large parts of the population (Scheye, 2009). They can penetrate and distort or change formal institutions in ways that are either positive or negative for building capable, legitimate states. Such institutions can be exclusionary and repressive, but they may also provide a bridge to the formal state, and in the longer term support the development of more rules-based, formal political systems.

An example is provided by customary village councils in Karnataka, India (Ananth Pur and Moore, 2009). Although unrecognised by the state, these councils have found a new role in mediating relations between villagers and the formally elected village level "panchayats", becoming less hierarchical and exclusive in the process. They are valued – especially by women and poorer people – for their role in resolving local disputes, organising religious festivals, and (increasingly) gaining access to state funding for development projects. By contrast, informal village institutions in Punjab, Pakistan remain hierarchical, with authority concentrated in landowning families and kinship groups. They have contributed to undermining the effectiveness of local government reform, as universal services (for example, health care and education) have been neglected in favour of targeted benefits channelled by village leaders to their own supporters.

Donors have recognised in particular the role played by non-state/local justice and security networks. In fragile situations these networks can compensate for the inability of the formal state to provide essential services, and can offer more effective, accountable, accessible and legitimate ways of delivering justice and personal safety. The networks through which these services are provided represent an alternative and often competing source of power and authority to the formal state, and engage in continuous negotiation and re-negotiation of the social contract between and among national elites, civil society organisations comprising networks of non-state actors, and local leaders (Scheye, 2009). It can be very challenging for donors to disentangle these relationships of power, especially as they operate at a very local level, and to

understand the political risks and likely impact of offering direct engagement and support.

The broad point to note is that very local, informal networks and institutions can provide ways of re-connecting state and society, or can compete or interact negatively with the formal state. It is important to avoid preconceptions, and to research this empirically. It is also important for donors to avoid jumping to the conclusion that they might have a role in strengthening or supporting such institutions – experience suggests that external resources and practices could have the effect of de-legitimising or undermining the very features of such organisations that make them effective (Kelsall 2008). Donors might, however, have a valuable role in sponsoring and disseminating research into such institutions, so that local policy makers can frame policy (for example, local government reform) in more appropriate ways.

7. Legitimacy, interests and statebuilding

Interaction between interests and legitimacy

"Grounded legitimacy" or other deliberate strategies for promoting negotiation/accommodation between different sources of legitimacy is one way of helping to create more constructive relations between state and society – not least if it helps to reduce people's sense of alienation from the formal state. But it is only part of the story. Constructive links between state and society also depend on the nature of domestic power relations and the structure of interests within a specific global and regional context. It is therefore important to understand the way people's perceptions of what is right and their material interests interact; and also the way in which deeply embedded social and economic structures and "rules of the game" shape people's perceptions of their interests.

Elite interests and statebuilding

A fundamental problem in many weak states is that political and economic elites may have very little interest in building more effective and legitimate state capacity, and indeed have strong personal interests in undermining it. A distinctive feature of many states in fragile situations is that weak governance and continuous internal conflict have become routine. Actual power has shifted to unofficial, non-state actors, often financed by criminal and resource-extraction activities, and reliant on non-official armed force. No single party is able to emerge as dominant.

There are historical, structural causes of this, which include the undermining of political community by colonial rule; the protection given to weak states by the international consensus to uphold existing boundaries; and the difficulty of extending the reach of the state into sparsely populated, remote areas. But another, more contemporary explanation of weak states is the impact of globalisation processes on incentives of political and economic elites (see Box 7.1).

Box 7.1. **Global drivers of elite interests**

Changes in the global economy from the 1970s onwards, driven by the reduction in costs of long-distance transport and communications, have given elites unprecedented opportunities for personal enrichment, from the export to much richer countries of oil, minerals and natural gas; smuggling of diamonds and other mining products; and illegal trade in narcotics. Global financial liberalisation has made it increasingly easy to transfer the proceeds abroad, while at home elites can protect themselves by hiring military force on global commercial markets. All this has undermined elite incentives to foster effective public authority and to bargain with citizens.

Source: Moore *et al*., 2009.

A fuller discussion of the underlying causes of state fragility is beyond the scope of this report. What is important in relation to its central theme – the need for constructive interaction between state and society – is that a major part of the problem may be that there are very limited incentives on the part of either party to engage at all. Moreover, people's perceptions of what constitutes legitimate public authority are often closely linked to their perceptions of individual material interests (see, for example, Box 4.1). The propensity to follow a given rule is likely to be strongest when norms and interests coincide. Opposition to state power that is grounded in traditional beliefs can

Box 7.2. **Aid, taxation and legitimacy***

If states are forced to rely on domestic taxation, such as personal-income tax, property tax and taxes on corporate profits, they are compelled to develop their administrative capacity including capacity for tax collection. This in turn leads to enhanced government penetration of the territory, bureaucratic reform and institutionalised bargaining with citizens over the conditions of taxation and the government budget, and more broadly over the type of state they may accept. By contrast, states that have access to unearned income, or rents (mineral exports, oil and gas, customs duties) are less compelled to create strong institutions for the purposes of taxation. Access to rents does not depend on the state's actual ability to control its territory or to be supported by its people. For many states, foreign aid is a source of rents. Aid dependency can be problematic for statebuilding if it weakens the need for states to bargain with citizens over taxation and develop the state's reach and administrative capacity. A narrow domestic tax base and weak public expenditure management contribute to weak state capacity and to perceptions of unfairness, which can in turn undermine legitimacy and the willingness to pay tax.

Sources: Hobson, 1997; Moore, 2004; Doner *et al*., 2005; Tilly, 1992.

* These issues are discussed at length in OECD, 2008b.

become so powerfully overlaid by power politics and economic rivalries that the two become very hard to disentangle (Munkler, 2005).

The good news is that it may be possible to shift people's perceptions of their interests by changing the opportunities and incentives that they face. Particularly damaging to prospects for constructive state-society engagement is the ability of political leaders to obtain revenue from unearned sources (including aid), thus freeing them from reliance on domestic taxation; and the ability of opposition groups to acquire financial and military resources from criminal activity, including capturing humanitarian aid. So action to limit access by key actors to such sources of revenue is fundamental to changing their interests. In particular, if political elites relied on taxation as a major source of state revenue, this could fundamentally change their relationship with citizens.

While dependence on rents (see Boxes 7.2 and 7.3) may make statebuilding difficult, the establishment of a strong state is not impossible when the state depends on rents, if elite interests coincide with strengthening state capacity and there are strong state-society linkages. One example of successful statebuilding in such conditions is Botswana.

Box 7.3. **Successful statebuilding under conditions of rent dependence**

At independence in 1966, ***Botswana*** was heavily dependent on aid. Later, from the mid-1970s, aid dependence was replaced by dependence on the export of diamonds. Thus, Botswana has gone from dependence on strategic rent (aid) to dependence on rents from the export of natural resources (diamonds). Yet the country has become one of the most effective states in the developing world. A key contributory factor was the survival of effective customary institutions (Box 6.2). But also important was the fact that one of the main groups in the country's ruling regime, the cattle farmers, had economic interests that were best served by the establishment of an effective state. For the cattle farmers, positions in the state were not their main source of income, and economic interests were linked to the development of the cattle sector, not solely to state positions. An effective state was seen as a condition for economic development, so it became a priority.

Sources: Acemoglu, Johnson and Robinson, 2003; Samatar, 1999.

Negotiating common interests

Historically in Western Europe, state-society bargaining over taxation contributed to building capable and legitimate states. An important aspect of the story was that state and society actors had interests in common, around which constructive engagement could take place. The state's need for revenue gave rulers an interest in nurturing the economy, and therefore in bargaining

with potential investors over economic rights and public policies to support investment. This produced positive sum outcomes and created a virtuous circle of interests that continues to underpin rational-legal political systems today.

Experience suggests that more rules-based systems cannot be transferred or imposed, but have to be locally negotiated and socially embedded if they are not to end up as sham institutions that lack both capacity and legitimacy. For example, attempts to improve the investment climate by introducing legal reforms to protect property rights and support enforcement of contracts have had limited success. However, experience in China and elsewhere suggests that very informal (but institutionalised) relations between investors and politicians, and informal relationships of trust within the business community itself, can compensate – at least for a transitional period – for the absence of formal institutions, and provide sufficient confidence for investment to take place. Historical experience from Mexico, where some sectors of the economy thrived despite years of political instability and civil war, shows the potential for productive bargaining around common interests even in very fragile situations (Qian, 2003; Haber *et al.*, 2003).

Informal relationships between state and non-state actors (for example, business) are by no means always productive. But if building best-practice institutions in a fragile situation is not a viable short-term option, the question becomes: in what circumstances might more informal arrangements based on close social relationships lead to productive investment rather than crony capitalism (Moore and Schmitz, 2008)? And could this provide a basis for transition over the longer term to more rules-based systems, as those who have accumulated capital start to see their interests in more effective legal protection of property rights?

The broad point here is that it may be possible to find unorthodox ways of supporting more constructive relations between state and society that build on existing sources of trust and legitimacy and the identification of common, negotiable interests. This may mean working with the grain of those processes and interests rather than against them.

8. Implications and recommendations for donors

Impact of donors on state legitimacy

All donor interventions have an impact on local power relations and political processes, and therefore potentially on state capacity and legitimacy. Whatever they do or fund, donors are likely to open up new opportunities for some actors and contribute to changing social practice, positively or negatively. Donors have an impact on capacity and legitimacy because:

i) ***They come with financial and other resources***. This can be positive or negative for legitimacy. Resources can contribute to increasing output legitimacy. Alternatively, they can create new opportunities for corruption and personal enrichment (which if perceived as excessive can undermine legitimacy). They can provide (often unintentionally) support for non-state actors in competition with the central state. They can skew demands for government accountability from domestic actors to donors, and reduce the need for governments to negotiate over taxation with their own citizens. They can create parallel administrative and budgetary structures.

ii) ***Donors come with normative values rooted in a Western state model.*** They therefore run a high risk of adding to tensions and conflict between different sources of domestic legitimacy, particularly if they engage on the basis of pre-defined templates and limited knowledge of the beliefs of different groups and their historical relationship with the state. A common example is rule-of-law reform, which takes no account of existing customary law or traditional practice, especially in areas such as land management, property law, family law and criminal law. Land management, for example, is not only a legal or economic problem but also a social, cultural and religious one, and ignoring customary practices or integrating them within existing state law without taking account of the values underpinning them risks creating shallow institutions. Pushing for constitutional change, competitive elections or political devolution without sufficient awareness of the impact on a political settlement or state-society relations

can be very harmful. Anti-corruption initiatives rooted in a Western state model can have unintended negative effects on legitimacy and stability, including anti-corruption commissions used to silence political opponents, and overly ambitious anti-corruption initiatives that generate cynicism when they fail to deliver (Tisne *et al*., 2009).

iii) ***Donors and donor governments have the ability to confer or withhold international legitimacy*** for states or political settlements, and to back this with military force. In so doing they may be pursuing geopolitical objectives that are at variance with endogenous statebuilding processes and the search for a local political settlement (for example, support for the Transitional Federal Government in Somalia).

iv) ***Donors are under pressure to show results***, to find solutions, to spend money and account for it to their own taxpayers, all within relatively short time scales that are often at odds with internal dynamics (for example, the internally driven process of political settlement in Somaliland was a very protracted affair: had it been donor-led or funded, it seems likely that there would have been pressure to meet deadlines that were externally driven and that this could have undermined the process).

v) Finally, ***donors have*** often not only failed to think about local sources of legitimacy – they have also ***failed to take account of local perceptions of their own legitimacy***. This has weakened their ability to have a positive impact on statebuilding.

Challenges for donors

For donors who aspire to strengthen state capacity and legitimacy in very fragile environments primarily by trying to impose or support the creation of rational-legal political institutions, the analysis in this report is bad news. It explains why such efforts have had very limited success in the past, and indeed have, in many cases, proved counter-productive. ***Effective political authority that is seen as legitimate cannot be created merely by trying to strengthen input sources of legitimacy (formal rules), or output sources (improved performance). If donors fail to engage with people's perceptions of what is right and acceptable, and with the interests of powerful actors in both state and society, these efforts will be sidelined.***

However, for the growing number of donors who recognise the need for a change of direction, this report offers an analytical approach to promote better understanding of the complex reality with which they are seeking to engage. This provides the basis for some practical suggestions of ways in which they might support more constructive relations between state and society in very fragile situations.

Of course, acting on this involves confronting some very difficult challenges:

i) ***The interests of "development partners" may not be well aligned with a donor agenda*** of promoting democratic governance, human rights and inclusive economic and social development. There is a fundamental contradiction between such aspirations and the political realities in many fragile, hybrid states where political survival may depend on reaching an accommodation with very "uncivil" actors, and satisfying people's expectations that state resources will be used to feed highly personalised patronage networks.

ii) ***Local perceptions of legitimacy may diverge fundamentally from international human-rights norms*** (for example, in relation to rights of women and minorities).

iii) Given high levels of competition for power and legitimacy in many fragile situations, ***donor interventions are almost bound to enhance the position of one group of actors in relation to others: how should donors make these choices?***

The concepts of "national ownership" and country-led approaches that underpin the Paris Declaration largely wish away these problems, and take little account of the reality that there are often multiple and conflicting ideas about what constitutes legitimate public authority and what it could be expected to deliver.

This gap cannot be bridged simply by well-intentioned aspirations for partnership, or by more old-fashioned conditionality attached to financial aid.

Moreover, the capacity of donors to understand the complex social and political reality in a given context, and to influence it, is severely limited. Coming to terms with this, and gaining understanding and acceptance of it from the constituencies that have traditionally supported development assistance, is also very challenging, and should not be underestimated. Finally, donors face the challenge that their own legitimacy is often compromised by people's perceptions that they are driven by a range of interests, including national security and economic interests, and not just by more altruistic concerns for development.

So what should donors do?

All studies that apply a political lens to development practice tend to come up with the same list of broad recommendations. They call for donors to be much more sensitive to the diversity and specificity of local context; to be more realistic about their ability as outsiders to understand and influence events; to be more flexible and pragmatic; to avoid one-size-fits-all

approaches; to be more consistent and transparent; to move out of the driver's seat and instead use their convening power to encourage local debate and negotiation; to empower local institutions with research and build their capacity for policy analysis; and – especially in fragile contexts – to "do no harm".

All of this high-level advice applies in thinking about how to engage with issues of state legitimacy. Moreover, given the close links between state capacity, accountability and legitimacy, virtually all the findings and recommendations of papers recently commissioned by INCAF are relevant to thinking about the impact of donors on legitimacy. For example recommendations in *Do No Harm* (OECD, 2010) on the need to prioritise security, to think about the impact of service delivery on state-society relations, to understand local perceptions of corruption, to recognise the fundamental importance of agriculture and rural livelihoods for output legitimacy, to avoid setting up competing budget and implementation systems, and to recognise the importance of taxation in creating a social contract are relevant for thinking about the impact of donor interventions in relation to state legitimacy.

This report suggests some additional implications for donors that flow from its central recommendations, namely that donors should *(a)* pay much more attention to state legitimacy, especially in fragile situations, and to aspects of legitimacy that derive from people's beliefs and perceptions, not just from a Western state model; *(b)* focus on relations between state and society in a given context, and the scope for making these more constructive; and *(c)* recognise the diversity of interests, perceptions, shared beliefs and political orders in play in any given context.

The most important implication for donors is to make the country context their starting point, not the promotion of a particular donor-led agenda. Donors should not start with an assumption that there is some natural trajectory whereby local, "traditional" sources of legitimacy evolve in the direction of a rational-legal political order. While there may be a long-term correlation between higher incomes and more rules-based democratic governance, there is increasing evidence that this is not a good guide to effective action in the short to medium term (Scheye, 2009). Donors should not set out to advance a state-building agenda based on a Western state model. Nor should they rely excessively on local "champions" of a rational-legal approach to reform. (While such individuals can play a useful role in brokering relations between donors and local social and political power-holders, donors need to engage with a much broader range of stakeholders). This does not mean losing sight of the long-term aspiration of moving towards more rules-based systems of governance. It does mean that strategies and policies must be tailored specifically for each situation. Moreover, it may not be possible to reach the same end result in all circumstances.

In making the country context their starting point, ***donors should aim to gain the best possible understanding of the multiple, conflicting perceptions of what constitutes legitimate authority in a specific context.*** They should consider interventions in this light, taking much more explicit account of their likely impact on local sources of legitimacy, competition for power and on prospects for supporting more constructive state-society relations. Donors may, of course, have objectives that are in tension or conflict with trying to strengthen legitimate public authority in very fragile situations. These could include their own national security or economic objectives, or the promotion of particular aspects of a normative human-rights agenda. The point (made at much greater length in OECD, 2010) is that the dilemmas that result from incompatible objectives, or the trade-offs always faced by donors (*e.g.* between short- and longer-term objectives) should be much more explicitly identified and managed.

For reasons explained in the report, it is extraordinarily challenging for outsiders to understand exactly what constitutes legitimacy and how it works in fragile situations, and donors should be exceedingly cautious about trying to design intervention strategies directly to support higher levels of political legitimacy, or to change deeply entrenched values and beliefs. It is no accident that the examples of grounded legitimacy given in Section 6 above were all locally led. It should, however, be possible for donors to *(a)* increase their understanding of legitimacy so as to better apply do-no-harm principles; and *(b)* act in ways that provide a better enabling environment for constructive state-society interaction, and thus for strengthening state capacity and legitimacy. More specifically:

Donors should seek a much better understanding – through perception surveys, research and local networking – of local people's perceptions and beliefs about what constitutes legitimate political authority and acceptable behaviour.

Donors need to pay more attention to their own sources of legitimacy, and be much more alert to how local perceptions affect their influence and ability to operate effectively. Specifically, donors should pay much more attention to effective public communication of their values, objectives and operating practices, including the way funds are managed and choices of partners are made, taking account of how they are likely to be perceived by a wide range of actors.

Donors need to be aware how their interventions affect local power relations and sources of legitimacy, often in unintended ways. In thinking about legitimacy, donors need to understand that how they confer or withhold international legitimacy, channel resources, demand accountability or impose conditionality also affects internal sources of legitimacy.

Donors need to review current strategies of support to civil society. They tend to interact with a very narrow range of individuals and groups, including a limited range of NGOs and other representatives that correspond to the OECD model of civil society, often based in capitals. These groups often share a donor agenda of improving democratic governance and human rights, and are seen as virtuous actors who need to be supported in order to hold the state to account. This reflects a rational-legal view of accountability, but it can exclude a wide range of other groups including religious organisations, business groups and more traditional grassroots organisations that could have both capacity and interests in demanding accountability, albeit on the basis of different perceptions of legitimacy.

Donors could play a greater role in facilitating debate and negotiation between groups representing different interests and perceptions of legitimacy. They might, for example, seek to encourage dialogue about the interaction between customary practice and more formal, introduced legal arrangements. They could support arenas and mechanisms that could facilitate lesson learning and ongoing dialogue between different types of actors, and disseminate relevant research findings from elsewhere.*

Donors need to focus much more attention on the ways in which their interventions and behaviour indirectly affect the incentives of political and economic elites to engage in statebuilding. In particular they should concentrate on a small number of strategic global initiatives that are central to regulating global financial flows, oil revenues and the narcotics trade, and on action to control tax evasion, money laundering, corruption, terrorist financing and flows of money relating to international criminal networks, all with a view to limiting the access of elites and opposition groups in fragile states to unearned income. Such access limits the interest of political elites in engaging with citizen-taxpayers, and provides finance that can fuel protracted internal conflict.

Donors should take much more account of the ways in which their interventions impinge on the scope for constructive engagement between state and societal actors, bearing in mind that a lack of engagement and very low expectations are often a major problem. Aid modalities (including the predictability of aid), the design of project interventions, the management of public expenditure, the nature of the tax regime and the behaviour of tax officials all have the potential to enhance or undermine the state's relations with societal groups. Moreover, aid modalities and related public financial management are areas in which donors are likely to be seen as having a legitimate interest.

* See, for example, GTZ, 2009 about how development co-operation can support spaces of interaction between state and society.

Donors need to be much more open to unorthodox political arrangements that encompass traditional aspects of legitimacy, and be prepared to work with the grain of existing interests (without unduly romanticising informal, customary practices, and without trying to orchestrate the process). They also need to be open to the potential for informal, personalised relationships (for example, between state officials and investors, or between different parts of the business community) to provide the relationships of trust needed to promote investment in the short term, and the basis for moving to more rules based arrangements in the longer term (as noted in Section 7 above, China provides a compelling example of how informal relations substituted for formal systems of property rights in early stages of capitalist development). This implies more focus by donors on common interests between state and society actors in economic growth and other public goods, and less exclusive concern with improving the investment climate through changes to formal legal institutions of property rights or contract enforcement.

Finally, and in many ways most controversially given the requirement for donors to be accountable to their own taxpayers, ***there is a need for much more honesty about the difficulty of reducing, much less eliminating, corruption in political systems that offer no clear boundaries between the public and private spheres.*** Corruption can deeply de-legitimise the state and undermine the fragile bond with citizens, but patronage can help build a political settlement and strengthen output legitimacy. Understanding which forms of corruption undermine legitimacy is very context-specific and perceptions may vary between different groups. Once again, the starting point should be an empirical investigation of local perceptions, not a Western state model (see Tisne *et al.*, 2009 for more detailed recommendations). Some ways forward might include looking to enhance traditional norms of accountability to curb the most destructive forms of patronage and taking much more rigorous action to limit the opportunities for corruption deriving from the behaviour of donors and OECD governments and businesses.

9. Conclusion

Legitimacy matters because it transforms power into authority, allowing rule by non-coercive means. In fragile situations, a lack of legitimacy undermines constructive engagement between the state and society, which weakens state capacity and thus contributes to fragility. Multiple sources of legitimacy often compete and conflict. Conflicts between external sources of legitimacy and internal sources contribute to fragility. Large variations in perceptions of legitimacy between different areas and among different communities confront governments (and donors) with difficult judgements about when to negotiate with and accommodate competing, non-state actors and when to ignore or attempt to suppress them. Conflicts between pre-existing customary practice, and "introduced" laws and institutions can also undermine the legitimacy of public institutions. Challenges from leaders with authority that derives from charismatic legitimacy pose a threat to those whose authority is based on both rational-legal and "traditional" sources of legitimacy.

All of this contributes to fragility because it impedes constructive relations between state and society, and leaves the state unable to impose the ultimate rules of the game, and to provide a shared social and cultural framework within which people think and act.

Donors working in fragile situations need to invest far more effort in gaining a detailed, empirical understanding of local sources of legitimacy – of both state and non-state actors and institutions – and in monitoring the impact of their own interventions. This report provides a starting point.

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Conflict and Fragility

The State's Legitimacy in Fragile Situations

UNPACKING COMPLEXITY

State legitimacy matters because it transforms power into authority and provides the basis for rule by consent, rather than by coercion. In fragile situations, a lack of legitimacy undermines constructive relations between the state and society, and thus compounds fragility. Multiple sources of legitimacy often compete and conflict, leaving the state unable to impose the ultimate rules of the game.

Donors working in fragile environments have paid relatively little attention to legitimacy, instead concentrating their efforts on capacity development and institution building as a way of strengthening state effectiveness. *The State's Legitimacy in Fragile Situations* urges donors to pay much more attention to legitimacy. It also invites them to broaden their understanding to encompass aspects of legitimacy that derive from people's shared beliefs and traditions, not just from western state models. Finally, it encourages donors to monitor the impact of their interventions so as to avoid undermining state legitimacy. The publication concludes with practical recommendations on how donors can support better relations between state and society in fragile situations.

The full text of this book is available on line via this link:
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