

Public authority beyond hybrid governance: creating throughput legitimacy in Northern Uganda

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ABSTRACT

Governance must be based on public authority that is considered legitimate within a society. This paper attempts to examine the process of how public authority is legitimised on the local level by looking at decision-making on the resolution of land conflict in the hybrid governance setting of Northern Uganda. It argues that public authority relies on procedural forms of legitimisation that can best be conceptualised as "throughput legitimacy" and results from repeatedly making decisions in inclusive and communally agreeable ways. Public authority is identified as simultaneously shared and contested between (and among) formal and traditional authority, continuously re-created through daily local-level interactions. The process of mediation is especially found to have a positive impact on throughput legitimacy. Going beyond the focus on local vs. international and formal vs. traditional actors in hybrid governance, this research suggests that a stronger focus on legitimising processes can lead to a better understanding of public authority.

KEYWORDS

Public authority, Hybrid governance, Throughput legitimacy, Northern Uganda

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Introduction

The concept of governance has shifted within international development agendas from normative state-centric ideals towards more practical "arrangements that work".¹ This has led to the acceptance of hybrid governance as a viable form of service provision where state capacities are limited. The shape of these arrangements varies widely but usually includes some combination of traditional and international actors along with state institutions. In such

¹ See Tom De Herdt and Jean-Pierre Olivier de Sardan, *Real governance and practical norms in Sub-Saharan Africa: The game of the rules* (Routledge, Abingdon, 2015); David Booth, 'Governance for development in Africa: building on what works', April 2011, *Africa Power and Politics*, <<http://www.institutions-africa.org/filestream/20110406-appp-policy-brief-01-governance-for-development-in-africa-building-on-what-works-by-david-booth-april-2011>> (28 June 2016).

settings, all actors claim varying degrees of public authority. Whether assuming that governance outputs serve to legitimise claims to public authority, or that all things local are inherently legitimate, the process is rarely questioned let alone analysed. Thus, there remains a considerable gap in the literature. This paper attempts to confront this and to examine how public authority is legitimised in hybrid governance arrangements.

Governance must be based on public authority that is considered legitimate within a society. In this sense, ‘public authority is as much about consent as about order’² and a persistent lack of legitimate public authority undermines the capacity to govern effectively or govern without high costs.³ The legitimate use of coercion should thus be distinguished from coercive rule that implies a continuous and costly use of violence and intimidation. In hybrid political contexts, where the state’s governance capacities are effectively reduced and where the state is seen as “absent” and is unable or unwilling to deliver, other actors can acquire public authority to organise societal relations. Hybridity – viewed as ‘a complex and dynamic process intertwining multiple actors and issues’⁴ – offers a useful epistemological framework which allows us to analyse the role of institutions beyond the state, including international institutions, development agencies, NGOs, religious leaders, elders, spirituality, and customary practices in governance.

Throughout this paper, I will attempt to shed light on forms of procedural legitimacy. The theoretical concept of throughput legitimacy is well suited for analysis in a hybrid governance context as it puts an emphasis on inclusive, transparent, and accountable decision-making.⁵ Through an exploration of location-specific governance practices, it is possible to illuminate how claims to legitimate public authority are affirmed. In this sense, I argue that an actor’s claim to public authority in the context of local hybrid governance is legitimised by their engagement in decision-making that is informed by locally accepted behaviours and norms. The resulting form of legitimate authority is inherently local, and always in the making. Outcomes produced under public authority that is achieved by throughput legitimacy can lead to more effective and efficient governance; but they may be

² Kate Meagher, Tom De Herdt and Kristof Titeca, ‘Unravelling public authority: paths of hybrid governance in Africa’ (IS Academy research brief 10, London School of Economics, 2014), p. 8.

³ Stathis N. Kalyvas, *The logic of violence in civil war* (Cambridge University Press, Cambridge, 2006).

⁴ Roger Mac Ginty, *International peacebuilding and local resistance* (Palgrave Macmillan, New York, 2011).

⁵ Vivien A. Schmidt, ‘Democracy and legitimacy in the European Union revisited: Input, output and “throughput”’, *Political Studies*, 61, 1 (2012), pp. 2–22.

potentially harmful if the societal norms and procedures that are considered legitimate reinforce existing inequalities and injustice. As such, localised forms of procedural legitimacy must always be challenged in relation to whom they benefit most.

The research for this paper is empirically grounded and describes practices of procedural legitimisation and institutionalisation in a hybrid governance context. Fieldwork was carried out within the Acholi region of Northern Uganda,⁶ which features a hybrid governance framework in which formal state authority simultaneously competes and cooperates with traditional forms of lineage-based and customs-based authority, as well as notions of spiritual authority.⁷ Emphasis is placed on the importance of daily decisions made by local leaders in their communities. Decisions that are perceived as being made “in the right way” through an inclusive and accountable process can lead to throughput legitimised outcomes. In Acholi, the issue of access to land is a very salient form of everyday conflict that provides a point of reference by which to assess the legitimising potential of local-level decision making. Evidence was gathered through semi-structured interviews with individuals across the region with diverse claims to public authority, whether formal, traditional, or spiritual.

Customary forms of mediation were found to play a key role in resolving conflict, including land disputes, and this is widely considered the customary “way of doing things”. The very inclusive nature of mediation involves broad participation and different forms of authority that intertwine to legitimise decisions arrived at through a communal process. The result is a culturally resonant hybridised justice practice characterised by throughput legitimisation. Both traditional and state institutions use mediation as a locally legitimate process to resolve conflicts and legitimise governance outcomes. By participating in mediation, they seek to strengthen their claims to public authority. A better understanding of how local practices, norms, and behaviours affect the legitimacy of governance outcomes can ultimately lead to more meaningful dialogue between local decision makers, national policy makers, and international development actors. While it is unknown if best practices

⁶ Here, I use the term Acholi to describe the Acholi region of Northern Uganda, also called Acholiland, but it is also used to refer to the Acholi people who inhabit the region, and their language.

⁷ There is significant overlap in the literature of the terms “customary” and “traditional” (anthropologists prefer the former, international development scholars the latter). Throughout the text, I will use both terms, employing customary to describe practices and processes, and traditional to describe actors and authority. Similarly, the term “formal” is used to describe institutions, actors and processes that draw on the authority of the state, use the language of representing the state, but may not necessarily be part of the Ugandan state administration.

can be replicated elsewhere, it is important to point out the existence of locally accepted procedural forms of legitimacy.

The following section presents an overview of debates on the legitimisation of public authority in hybrid political orders, and introduces the procedural form of throughput legitimacy. Then, issues of land conflict and public authority in Northern Uganda are introduced, and formal and traditional institutions and mechanisms for conflict resolution are discussed. The section that follows builds on fieldwork results and examines how different actors and institutions with claims to public authority resolve issues of land conflict in Acholi by juxtaposing mediation and adjudication while utilising the procedural concept of throughput legitimacy. The final section presents conclusions.

Legitimising public authority in hybrid political orders

The ability to rule and make binding decisions for others requires some form of authority and a publicly accepted minimum of voluntary compliance, or, alternatively, the use of force. Governing with legitimate public authority entails public faith in a given social order and in the use of coercion in line with accepted societal norms. In the long run, governance without legitimacy necessitates coercive rule, often inflicting high costs on the population and economy. A normative understanding of legitimate rule usually implies the authority of the state or of state-like actors. In countries where state institutions are not the principal providers of governance, it is necessary to broaden this actor-centred understanding of legitimate public authority to include dynamic procedural forms of legitimisation.

There are multiple ways to think about hybrid governance but most authors agree that hybridity is a long-term process resulting in a ‘composite form of social thinking and practice that emerges as the result of the interaction of different groups, practices, and worldviews.’⁸ It involves social negotiation, co-option, resistance, domination, assimilation, and co-existence. Viewed through the lens of hybridity, claims to legitimate authority are limited both in time and space, and in relation to certain governance issues. Hybridity cannot explain how public authority is created in everyday contexts, but rather offers an epistemological

⁸ Mac Ginty, *International peacebuilding and local resistance*, p. 8.

framework ‘of seeing the world and capturing change and lack of fixity between categories’ and of looking beyond institutions for explanations of power and politics.⁹ It puts a strong emphasis on local processes and claims to legitimate public authority based on accepted behaviour and norms, while focusing on local decision making as the arena in which this can be observed through daily encounters.

The concepts of input and output legitimacy refer to state actors that are legitimised through elections or endorsement prior to partaking in decision making.¹⁰ Yet, it can be difficult to explain the legitimisation of authority in hybrid governance through input and output legitimacy alone. This neglects the constant formation of legitimate authority through daily social encounters,¹¹ so that the decision-making process itself is not viewed as relevant as far as the legitimisation of authority. The concept of throughput legitimacy is more useful when dealing with multiple actors and hybrid governance.¹²

Simply put, throughput legitimacy is achieved by governing in what is considered the right way. As an ideal type, it is used to describe the legitimisation of authority by means of decision making that is inclusive, transparent, and accountable. Originating from systems theory, and elaborated within European studies and EU multilevel governance, it is described as *governance with the people*.¹³ A decision-making process that engenders throughput legitimacy fosters an inclusive and effective concept of governance – social ownership of outcomes is based on fair and representative participation, social learning is based on deliberation, and social control is based on transparent and accountable decision making. Schmidt describes it as a way of seeing into the space between political input and policy output, in an attempt to look at what goes on inside the black box of governance.¹⁴

While it can be difficult to apply ideal concepts to areas beyond their origin, this form of legitimisation resonates very much with the notion of accepted norms and behaviours in local-level decision making generally. Throughput legitimacy is inherently process oriented,

⁹ Roger Mac Ginty and Oliver Richmond, ‘The fallacy of constructing hybrid political orders: a reappraisal of the hybrid turn in peacebuilding’, *International Peacekeeping*, 23, 2 (2015), pp. 219–239, 220–221, 223.

¹⁰ Fritz W. Scharpf, *Governing in Europe* (Oxford University Press, Oxford, 1999), pp. 16–28.

¹¹ Christian Lund, ‘Twilight institutions: An introduction’, *Development and Change*, 37, 4 (2006), pp. 673–684, 675.

¹² Schmidt, ‘Democracy and legitimacy in the European Union revisited’, 2–3.

¹³ Output legitimacy is described as *governance for the people* and input legitimacy as *government by* (and of) the people. *Ibid.*, p. 3.

¹⁴ *Ibid.*, p. 5.

and is based on interactions between different authorities and with communities at large; in hybrid governance, throughput legitimacy is claimed by making decisions that align with socially accepted practices, behaviours, norms, and values that originate in local traditions, legal procedures, or cosmologies. Outcomes arrived at through community inclusiveness, mediation, and deliberation are considered legitimate, and any actors involved gain a degree of legitimate authority over the outcomes they helped shape. Governance is seen as a continuous activity and legitimate authority gained by means of throughput is contingent on ongoing engagement and community involvement. Persistent and involved actors who strongly adhere to locally accepted norms are able to claim more robust legitimate authority, while those that don't see their authority erode.

Public authority is often viewed as a commodity that is generated and experienced at the community level. Lund identifies public authority as the outcome of collective actions by multiple local institutions that adopt the language and veneer of the state, calling them twilight institutions.¹⁵ Mac Ginty identifies adherence to long-standing traditional norms and practices with cultural resonance among populations as a way to legitimise the authority of actors.¹⁶ At the same time, authors cautiously note that local forms of legitimacy can exclude parts of the population, especially women, minorities, and youth; while reinforcing the position of power holders, and competing with conflicting norms and behaviours.¹⁷ As procedural legitimacy can benefit individuals in positions of status and power who claim to interpret the very norms and practices that underscore their legitimacy, it is worth asking who benefits most in such situations.

What most approaches have in common is that they challenge the understanding of public authority as an entity retained by identifiable actors who provide public benefits. Rather, it is perceived as the outcome of perpetual interactions and mutual recognition involving multiple actors and the local population in the process of governance. Their participation in decision making that is grounded in contextual cultural understandings and traditions instead of imported notions of stateness and good governance give throughput legitimacy to these actors' claims to public authority. The local-level interactions by which

¹⁵ Lund, 'Twilight institutions: An introduction', p. 686.

¹⁶ Mac Ginty, *International peacebuilding and local resistance*, p. 49.

¹⁷ *Ibid.*, p. 52; Meagher et al, 'Unravelling public authority: paths of hybrid governance in Africa', p. 5.

land conflict in Northern Uganda was resolved serves as an example of this, and are analysed in more detail below.

Land conflict and public authority in Northern Uganda

Land conflict is considered one of the more pressing problems in Uganda, and particularly in Acholi.¹⁸ This is mostly due to years of war and displacement across this northern region of the country. Following the rise to power of Yoweri Museveni as President of Uganda, the North became embroiled in a civil war that lasted two decades. A series of short-lived, primarily Acholi opposition movements emerged, including the Uganda People's Democratic Army and the Holy Spirit Movement, which sought to fight Museveni's National Resistance Army (NRA). But it was the Lord's Resistance Army (LRA) led by Joseph Kony that came to define the North Uganda war. Military tactics employed by both the LRA and the NRA led to an escalating use of force and brutality against local, mostly Acholi civilians over time.¹⁹ In a misguided attempt to deprive the LRA of local support and to protect local residents from insurgent attacks, the national army moved almost the entire Acholi population from the countryside into "protected camps" that housed some 1.84 million people in the final years of the war, some of whom had lived as internally displaced persons (IDP) for more than 10 years by then.²⁰ Since the conflict ended in 2006, displaced persons have returned to their villages or moved on, but their complete and long-term displacement created problems as far as claims to land.

In Uganda, access to land is an important matter since it provides the basic means to make a living. Chronic underdevelopment, a lack of alternative employment opportunities, and the loss during the war of what was only ever a modest infrastructure have only made issues of land use rights more relevant. In Acholi, most land is owned under customary

¹⁸ This is true for most of Africa. See: Catherine Boone, *Property and Political Order in Africa: Land Rights and the Structure of Politics* (Cambridge University Press, Cambridge, 2014).

¹⁹ Aili Mari Tripp, *Museveni's Uganda* (Lynne Rienner Publishers, Boulder, 2010), p. 151; Adam Branch, 'The violence of peace: Ethnojustice in Northern Uganda', *Development and Change*, 45, 3 (2014), pp. 608–630, 616.

²⁰ UNHCR, 'UNHCR closes chapter on Uganda's internally displaced people', 6 January 2012, *UNHCR - The UN Refugee Agency*, <<http://www.unhcr.org/4f06e2a79.html>> (03 March 2015). This figure from 2005 includes other ethnic groups, as the total Acholi population was 1.14 million in 2002 and 1.47 million in 2014 according to: Ugandan Bureau of Statistics, *National Population and Housing Census 2014 - Main Report* (2016).

tenure, meaning that traditional rules of land use apply.²¹ Most of this land is communally owned and distributed among individuals based on their belonging in a clan, sub-clan, or family.²² The politics of land largely play out within traditional institutions, but occasionally in courts and sometimes in churches. Elders with traditional or spiritual authority are viewed as custodians of the land that is entrusted to their clan by ancestors,²³ even though displacement, modernisation, and population movements have strongly challenged such ancestral claims.

The clans (*kaka*) have been the primary ‘allocators and guarantors of their members’ land “rights” in Acholi, much more so than chiefdoms, extended families, or households.²⁴ Clans were traditionally established at the village level and include multiple families, while chiefdoms comprise numerous, territorially adjacent clans. Within a clan, land was distributed to members based on traditional norms, and considerations of individual claims, needs, and circumstances; with land use rights viewed as negotiable and based on community acceptance.²⁵ Yet, returning to their land after prolonged displacement, many Acholi found that previous, mostly oral records of land use were severely compromised when clan elders were killed or died in IDP camps. Physical land demarcations, such as trees, mounds, or shrines were destroyed or had disappeared naturally, and community cohesion and trust were shattered. With no clear physical and narrative boundaries, as well as widespread confusion concerning rights to land within and between clans, sub-clans, and families, opportunism emerged. Land grabbing gave rise to a salient form of intra-communal and inter-communal conflict in the region.²⁶ It soon became clear that there was a need to (re)establish mechanisms for settling conflict – both through customary mediation and formal justice provisions – and that legitimate forms of local public authority were needed.

²¹ The figure lies between 90–93% of usable land according to: Ker Kwaro Acholi, ‘Principles and practices of customary tenure in Acholiland’, June 2008, *The Land and Equity Movement of Uganda*, <<http://www.land-in-uganda.org/assets/Acholi-PPRR.pdf>> (21 July 2014), p. 2; and URI and ARLPI, ‘Mitigating land based conflicts in Northern Uganda’ (Resource Guide, United Religions Initiative and Acholi Religious Leaders Peace Initiative, Kampala and Gulu, 2012), p. 9.

²² About 90%, which translates to almost all of the customary land in Acholi, according to: Julian Hopwood and Ron R. Atkinson, ‘Final report: Land conflict monitoring and mapping tool for the Acholi sub-region’ (United Nations Peacebuilding Programme and Human Rights Focus, Kampala, 2013), p. i.

²³ Guy Martin, *African political thought* (Palgrave Macmillan, New York, 2012), p. 13. The notion of a “custodian of the land” is essentially also a pattern of claiming that is constantly made and remade.

²⁴ Julian Hopwood, ‘Women’s land claims in the Acholi region of Northern Uganda: What can be learned from what is contested’, *International Journal on Minority and Group Rights*, 22, 3 (2015), pp. 387–409, 391.

²⁵ Hopwood, ‘Women’s land claims in the Acholi region of Northern Uganda’, p. 394.

²⁶ Hopwood and Atkinson, ‘Final report’, p. 5; Christopher Burke and Emmanuel Omiat Egaru, ‘Identification of good practices in land conflict resolution in Acholi’ (United Nations Peacebuilding Programme, Kampala, 2011), p. 2.

Public authority in Uganda is not solely the purview of the state. Indeed, it is shared and contested between state institutions, traditional actors, local norms, and cosmologies. The political system of Uganda is highly decentralised, with a five-level governance system of Local Councils. This is ‘conceived as a forum for popular democratic participation and local governance, giving local communities greater control of their own affairs with relatively little interference from central government’.²⁷ The structure of local-level governance in the country originated in nationwide wartime village-level support for the NRA. Local Councils (LC),²⁸ established at the village (LC1) and parish levels (LC2), gradually developed robust relations with the population and have become embedded in Acholi, strongly resonating with local clan-level decision-making traditions.²⁹ Here, public authority overlaps with traditional authority and clan elders often hold public office.

Local Councils set up at the sub-county level (LC3) are headed by a directly-elected Committee, and a Chairperson. This is the lowest level of government to which a designated paid civil servant is assigned, along with various district-level staff, constituting a basic form of relationship between the state and the Ugandan population. The county-level, LC4, is largely defunct, and the district-level, LC5, represents the main point of interactions between the central government and local governance. This relationship is mostly top-down, and some leading district administrative positions are appointed or employed by the federal government and the President of Uganda.³⁰

Local governance structures often make claims to legitimate authority despite receiving little support from the state for the provision of services, justice, and security. The Ugandan state retains a centralised decision-making process, and subsidiarity tends to focus on issues irrelevant to national security, finance, electoral outcomes, and commercial interests.³¹ Central state structures only intervene when necessary, strategically and

²⁷ Tripp, *Museveni's Uganda*, p. 113.

²⁸ These were originally called Resistance Councils.

²⁹ Holly E. Porter, ‘Justice and rape on the periphery: The supremacy of social harmony in the space between local solutions and formal judicial systems in Northern Uganda’, *Journal of Eastern African Studies*, 6, 1 (2012), pp. 81–97, 85–86, 89.

³⁰ Service delivery is severely limited due to ‘minimal local tax bases and inadequate financial support from central government’. See Julian Hopwood, ‘Elephants abroad and in the room: explicit and implicit security, justice and protection issues on the Uganda/S Sudan border’ (Working Paper no. 22, Justice and Security Research Programme, London School of Economics, 2015), p. 6.

³¹ Tripp, *Museveni's Uganda*; Rebecca Tapscott, ‘Local security and the (un)making of public authority in Gulu, Northern Uganda’, *African Affairs*, 116, 462 (2017), pp. 39–59.

selectively neglecting local government and especially rural populations. Authors describe this as a ‘wilful absence’³² or acting through ‘institutionalised arbitrariness’.³³ In this sense, the authority of the state is most perceptible through its ability to intervene, and the resulting discursive weight, not its presence on the ground.

A focus on local self-governance is reflected in Uganda’s formal justice system, with local-level courts empowered to handle a range of disputes, including local land disputes.³⁴ Civilian Local Council Courts (LCC) exist at the village level (LCC1) and the parish level (LCC2), where most initial rulings are made, as well as at the sub-county level (LCC3), which features the lowest-level appeals courts. Cases seen in the LCCs are adjudicated by members of local governance executive committees or appointed individuals, who combine traditional authority with public functions. In making decisions, they explicitly incorporate customary practices, and cases usually only enter the formal justice system at centrally administered magistrates’ courts upon referral by the LCCs.³⁵ In practice, and depending on the locale, most adjudication on land issues is concluded within the LCC system.

A parallel system of traditional Acholi institutions is likewise vested with public authority.³⁶ It is largely based on belonging, heritage, and lineage structures, and to a certain extent on cosmologies. In essence, it is linked to family, clan, and elders, both living and dead. At times, it becomes difficult to distinguish traditional authority from the cosmologies, beliefs, and practices with which it is thoroughly interwoven. These norms and behaviours inform concepts of power and societal order that fuse the secular and the sacred, the world of the living and the realm of the dead.³⁷ The Acholi have remained attuned to the leadership practices and spirituality on which the authority of male elders and chiefs is based, even as

³² Ben Jones, *Beyond the state in rural Uganda* (Edinburgh University Press, Edinburgh, 2009).

³³ Rebecca Tapscott, ‘The government has long hands: Community security groups and arbitrary governance in Uganda’s Acholiland’ (Working Paper no. 24, Justice and Security Research Programme, London School of Economics, 2015).

³⁴ Parliament of Uganda, *Local Council Courts Act* (2006).

³⁵ LCC1 and LCC2 courts are composed of elected LC councillors. LCC3 courts are composed of appointed community members and represent the first separation of governance and judicial roles. The magistrates’ courts are highly professionalised but are often far removed from rural places and considered too expensive. These courts handle the main load of civil and criminal cases, but are severely backlogged.

³⁶ There is some controversy as to which institutions can be considered traditional, and whether those introduced through colonial governance or government policies have the right to act in the name of traditional authority (See Elliott Green, ‘Decentralization and development in contemporary Uganda’, *Regional and Federal Studies*, 25, 5 (2015), pp. 491–508). As this paper is analysing real-existing governance, it aims to include all institutions without fully assessing their claims to traditional credibility.

³⁷ Martin, *African political thought*, p. 12.

traditional authority structures were degraded through war and colonisation.³⁸ Yet, resistance to this patriarchal and gerontocratic power often comes from competing claims to spiritual authority by women and youth,³⁹ making spirituality a contested but ultimate form of legitimisation.

Acholi norms and behaviours are generally collective in nature. It is empirically difficult to identify traditional authority that is present throughout the region. Facilitating inclusive practices is not the sole mandate of family elders, but involves a wide range of traditional, formal, and societal actors. While acknowledging this contested nature of traditional authority, the research will primarily focus on traditional leaders who are known as *rwodi*.⁴⁰ There are different types and levels among them forming a semblance of hierarchy where two *rwodi* can be considered particularly important in settling land conflict – the *Rwot Moo* and the *Rwot Kweri*. They are introduced here as “ideal types”, although in practice their roles are vaguer. The position of *Rwot Kweri* originated as an Acholi institution during the colonial period and is not formally tied into the traditional *rwodi* system but to a certain geographical area. The *Rwodi Kweri* focus on the mobilisation of labour, especially for farming, and have detailed knowledge of land boundaries and usage. They are elected from among active and respected members of communities at the village level. A *Rwot Moo*, the head of a chiefdom, is a male hereditary position. The position can command authority that is spiritual to some degree but also output-related, as far as facilitating the resolution of disputes within the clan and among clans.⁴¹ The *Rwot Moo* consults a council of elders that represent sub-clans and/or individual families to ensure decisions are agreeable.

While the *Rwodi Kweri* are considered most appropriate to handle land conflict between individuals, the *Rwodi Moo* resolve conflicts between clans. Customary land dispute resolutions ‘usually commence with the *Rwot Kweri* and where they fail the *Rwot Kaka* intervenes before referring the case to the *Rwot Moo* if the parties to the dispute do not take

³⁸ Hopwood, ‘Elephants abroad and in the room’, p. 27.

³⁹ Branch, ‘The violence of peace’, p. 617.

⁴⁰ *Rwodi* is plural; *Rwot* is singular. I am aware that this focus can be seen as reminiscent of what Sara Berry calls the “search for local traditions”, but it serves to provide a context for juxtaposing traditional and formal claims to legitimate authority in line with the argument of the paper. Competing forms of traditional authority are recognised. Sara Berry, *No Condition Is Permanent: The Social Dynamics of Agrarian Change in Sub-Saharan Africa* (University of Wisconsin Press, Madison, 1993).

⁴¹ Historically, they also provided security and protection. For a historical reading of the origin and role of the *Rwot*, see Ronald R. Atkinson, *The roots of ethnicity: The origins of the Acholi of Uganda before 1800* (University of Pennsylvania Press, Philadelphia, 2015), pp. 78, 84–91.

it to a statutory court'.⁴² Additionally, traditional leaders sometimes follow up on the process, to ensure the land conflict remains resolved, thus ensuring accountability and further strengthening authority by throughput legitimacy.

In the early 2000s, the Ker Kwaro Acholi (KKA), a “neo-traditional” organisation, was formed under the leadership of a Paramount Chief claiming to represent all Acholi chiefdoms. In essence, the KKA is a political institution based on cultural norms, legal-bureaucratic procedures, and hereditary rights that privileges existing male authority and receives recognition and limited support from the Government of Uganda. It provides assistance to the *Rwodi Moo* to communicate, meet, and cooperate with each other, but has almost no authority of its own.⁴³

Claims to legitimate authority by traditional institutions at the local level are usually situated with the *Rwodi Kweri* and occasionally the *Rwodi Moo*. This authority is multifaceted and references hereditary forms of traditional legitimacy, output-based legitimacy related to knowledge of the land and successful dispute resolution, and charismatic and input-based legitimacy related to the election of non-hereditary chiefs. In the provision of justice, ensuring community dialogue and consensus are more important than the authority delivering justice. At the village level, individuals who are most knowledgeable about disputes and considered impartial based on previous experience, can gain communal trust and legitimacy and are thus selected as mediators. Often these individuals are not *rwodi* as the contested nature of traditional authority is open to competing forms of legitimacy, based, for example, on spirituality. Any traditional authority gained in this manner is highly respected but relies on continuous community support and pressure in order for decisions to be implemented.

The Acholi rely on both traditional and formal justice to deal with most issues, and do not draw a clear distinction between the two practices. They also view traditional chiefs and local elected officials as more similar than different, essentially as two sides of the same

⁴² Burke and Egaru, ‘Identification of good practices in land conflict resolution in Acholi’, p. 24. The *Rwot Kaka* is the chief of the sub-clan or extended family and falls below the *Rwot Moo*, but above family elders. The position of *Rwot Kaka* is less important in the context of this research.

⁴³ Hopwood, ‘Elephants abroad and in the room’, pp. 3, 9; Burke and Egaru, ‘Identification of good practices in land conflict resolution in Acholi’; Hopwood and Atkinson, ‘Final report’, p. 27; Tim Allen, ‘Bitter roots: the ‘invention’ of Acholi traditional justice’, in Tim Allen and Koen Vlassenroot (eds), *The Lord’s Resistance Army* (Zed, London, 2010), pp.242–260.

coin.⁴⁴ The distinction between traditional and formal public authority is largely irrelevant at the local level. Most dispute resolution begins with customary mediation that is performed by traditional elders but allows both formal and traditional authority to jointly take part. This fosters decision making that aligns with formal, normative, or spiritual norms and rules, and encourages community approval. Even cases that are taken to court generally include traditional authorities and chiefs as witnesses. Courts sometimes require proof of failed mediation before accepting cases, and frequently refer parties back to a mediator. In more protracted cases, formal and traditional justice work in parallel, their practices blending and their authority overlapping as cases are referred back and forth between formal and traditional justice institutions. At times, this overlap has led to ‘problems of “legal forum-shopping”, especially in customary land disputes’.⁴⁵

Both traditional and formal actors at the local level in Acholi often use the same procedurally legitimising mechanism of mediation to strengthen their claims to public authority. In hybrid systems such as in Northern Uganda, it is procedurally legitimate governance that unites diverse actors and presents a form of legitimacy that supersedes overlapping and contested claims to public authority. This emphasises basic principles of alternative dispute resolution such as deliberation and discussion, compensation, impartial mediation, and fairness, which strongly relate to the concept of throughput legitimacy. An assessment of procedural legitimisation is thus warranted; and focusing on local Acholi justice practices related to the issue of land conflict allows us to assess a governance issue, at multiple research sites, where formal and traditional authorities intersect.

Throughput legitimacy and the process of decision making on land conflict

To identify public authority we need to look at practices of procedural institutionalisation and legitimisation through daily decisions made by local leaders to resolve land conflict. We can further examine how these practices are affected by cooperation or competition between formal and traditional authority, and to what extent resulting outcomes expand or limit popular access to justice and security. Decisions made “in the right way” are key, as they

⁴⁴ Carolyn Logan, ‘Selected chiefs, elected councillors and hybrid democrats: Popular perspectives on the co-existence of democracy and traditional authority’, *The Journal of Modern African Studies*, 47, 1 (2009), pp. 101–128, 103, 122.

⁴⁵ Hopwood, ‘Elephants abroad and in the room’, p. 8.

generate throughput legitimacy. In Acholi, this can refer to re-establishing social harmony where ‘establishing the facts, and therefore the nature of the problem [is] more central than allocating culpability’.⁴⁶

Evidence for this paper was gathered in July and August 2014, through fieldwork in Northern Uganda. Semi-structured interviews were conducted with 32 individuals in eight sub-counties⁴⁷ in Northern Uganda, located within the Gulu, Lamwo, Kitgum, and Pader districts. These sub-counties were selected based on land conflict mapping conducted by Hopwood and Atkinson, where the best and worst performers were identified.⁴⁸ In each location, interviews were conducted with different types of authority figures: the LC3 Chairman, the LCC3 Court Chairperson or Court Speaker, a *Rwot Moo*, prominent female community leader, and other local leaders involved in the provision of both formal and traditional justice on issues of land conflict at the sub-county level of governance. Several interviewees in each sub-county talked about the same cases and their responses complemented each other. This resulted in a rich understanding of the simultaneously intertwined and contested nature of legitimate authority among local authority figures. Though local leaders at this level are mostly male, women were deliberately included. Respondents were asked to describe the process in cases of land conflict that they had helped resolve to favourable outcomes, and in those that were contested or ongoing.⁴⁹

While it is possible to broadly categorise actors dealing with land conflict as either traditional or formal, it is more useful to consider a distinction between mediation and adjudication (the former described by interviewees as “the customary way”, and the latter as “the juridical way”). It is this procedural distinction that interviewees perceived as best reflecting realities on the ground. Adjudication is considered the sole preserve of the formal court system, whereas “the customary way” is a compound category that includes a plethora of authorities, references to societal norms, and spirituality.

⁴⁶ Holly E. Porter, *After rape: Violence, justice and social harmony in Uganda* (Cambridge University Press, Cambridge, 2016).

⁴⁷ Acholibur, Kitgum Matidi, Koro, Labongo Amida, Paicho, Palabek Gem, Pece, and Unyama

⁴⁸ Hopwood and Atkinson, ‘Final report’.

⁴⁹ The decision to focus on individuals in positions of authority (elders, elected or appointed officials, female spiritual leaders...) across several research locations inevitably neglects parts of the actual process of legitimation, especially on part of the people directly involved in the disputes. The aim to explore common patterns of legitimisation was made at the expense of in-depth analysis of a single case.

Interviewees persistently listed land conflict as a major issue facing local communities. Nevertheless, interviewees consistently reported that the number of cases had dropped in recent years, especially compared to the immediate post-conflict period, confirming initial findings by Hopwood and Atkinson.⁵⁰ The grounds for land conflict are also perceived to have changed, so that issues of inheritance and “unruly youth” are viewed as key drivers of land disputes by elders and traditional community leaders. Still, most of these disputes do not extend beyond the family or village and are usually settled through mediation by family elders and the *Rwot Kweri*. Larger conflicts between or among clans and districts are few but carry the most potential to turn violent. It is these conflicts that exceed individual authority and worry respondents.

More complex cases of land conflict require time-consuming procedures and more resources and public authority than are found within families or villages. The respondents principally held public and community roles at the sub-county level, and so it is these complex cases they faced in their daily work. It is important to note that many of these respondents performed both formal and traditional functions, leading to an overlap of authority claims.⁵¹

One such complex case took place in the sub-county of Palabek Gem, where the district boundary between Lamwo and Kitgum districts intersects local clan boundaries. This has led to conflict among competing sub-clans that reside in different administrative units. Land belonging to the sub-clan from Palabek Gem was located in neighbouring Kitgum district, and members of the same clan (but different sub-clan) residing there claimed the land was theirs. The communal clan heritage of the land was not disputed, rather the rights to land use. The process of mediation started when the land dispute was brought to the attention of an elder within the family or the *Rwot Kweri*. While small disputes are settled in private, more complex issues, such as this one, are discussed in public and include members of both communities.

Mediation depends significantly on the person called in to mediate, especially on their authority and character. In Palabek Gem each party accepted the mediation and the mediator,

⁵⁰ Hopwood and Atkinson, ‘Final report’.

⁵¹ Such as a *Rwot Kaka* who is the LCC2 Speaker in Unyama, or a female religious leader who is a LCC3 member in Kitgum Matidi.

and a community meeting was called in, attended by the parties and the elders. Such meetings are usually held on the disputed land in the shade of trees, preferably at a location with shared spiritual significance, such as a shrine. Competing claims of both sub-clans were heard and the land under dispute was surveyed. Elders (both male and female) who are perceived to have the most authoritative knowledge on land use, boundaries, and customs play a critical role and were encouraged to speak. In addition formal institutions, such as LC land committees, may also provide information, and religious leaders may advise the parties, but this was not the case in Palabek Gem. When a chief attends a mediation, he usually speaks last and suggests a possible resolution. Complex mediation can involve from 60 to 100 participants, including elders, and can take several days or several meetings to complete. The mediation in Palabek Gem stretched out over several meetings.⁵²

There is no authority that can oblige parties to accept mediation, the mediators, or its outcomes, although community pressure is a factor. If the parties agree on a communally beneficial outcome, detailed conclusions are put into writing and the document is signed in front of all participants.⁵³ Mediation between the two sub-clans in Palabek Gem was unsuccessful and the dispute threatened to turn violent as participants brought machetes to one of the final meetings. In response the elders turned to the sub-county courts; yet, they did not request adjudication, but support for continued mediation. By taking part as participants, the court officials projected the presence of state authority onto the mediation process, calming tensions. As one LC3 Chairperson noted, it is ‘only once the court is present in “customary” mediation that people perceive the government to be looking over the process’.⁵⁴ In this case, mediation was still performed by traditional leaders but was afforded greater legitimacy due to the involvement of a formal authority. The mediation in Palabek Gem was ultimately successful, but several other land conflicts in the sub-county that cross district borders remain unresolved.

The interplay between formal and traditional justice mechanisms, such as the one described above, was seen as instrumental in reducing the number of complex cases following conflict. Formal LC structures, which come into contact with a large number of land conflict cases, are well positioned to participate in mediation. Local court (LCC)

⁵² Interview, LC3 Chairperson, Palabek Gem, 30 July 2014

⁵³ These can also include maps, reference letters, and other documents.

⁵⁴ Interview, LC3 Chairperson, Palabek Gem, 30 July 2014; Interview, Rwot Moo, Palabek Gem, 30 July 2014.

members regularly stated that they do not readily mediate, as it 'is not their function', but are invited to mediations.⁵⁵ The involvement of LC3 Chairpersons, however, depends largely on the individual, who may be very involved in mediating disputes – as illustrated by the example in the sub-county of Paicho, below – or may be totally uninvolved and even in conflict with other forms of authority. According to many interviewees, when LC/LCC actors attend customary mediation, participants perceive this government presence in mostly positive terms and view it as strengthening the aim of mediation.

In the sub-county of Paicho, land disputes involving courts are considered a waste of time and money, and court officials regularly don't show up for hearings. On the other hand it is quite common for the LC3 Chairperson or the sub-county Land Committee Secretary to take part in customary mediation. One land dispute involving a Catholic church and a Protestant school wishing to expand its premises was solved through mediation with the help of local officials. While sub-county officials almost never mediate themselves, the LC3 Chairperson of Paicho instilled the presence of formal authority to the mediation and provided information on legal matters and land rights. By demonstrating the possible pitfalls of adjudication and offering legal guidance on possible solutions, he was able to convince representatives of the church and school to accept the legitimacy of the mediation process and its' outcomes.⁵⁶

The *Rwodi Moo* are engaged in mediation when big issues are at stake or when several clans are involved. Their acceptance as mediators is not universal, but is seen as a recourse in complex conflicts when other mechanisms fail. The *Rwodi Moo* in Labongo Amida discussed one particularly bitter case that involved the re-establishment of boundaries between two clans. Attempts by lower level traditional leaders (*Rwot Kweri*) and himself had failed to resolve the issue and threats of violence got the police involved. All mediation was suspended by police officials until clan consensus to participate in mediation was re-established. The *Rwodi Moo*, unable to mediate a solution himself, called for assistance from neighbouring *Rwodi*, through the office of the Ker Kwaro Acholi (KKA) through a highly formalised, written procedure. As the sub-county's *Rwot Moo* explained:

⁵⁵ Interview, LCC3 Chairperson, Unyama, 22 July 2014.

⁵⁶ Personal observation, Paicho, 29 July 2014; Interview, LC3 Chairperson, Paicho, 29 July 2014; Interview, LC3 Land Committee Secretary, Paicho, 29 July 2014.

The KKA can mobilise many *Rwodi Moo* in cross district mediation. Invitation letters to attend mediation were sent out and transportation and accommodation for the mediators was provided. The idea is that working in teams of *Rwodi* means more authority.⁵⁷

At the KKA a *Rwot* is appointed as the focal person responsible for coordinating mediation on land conflict.⁵⁸ A team of five *rwodi* was assigned to take part in the new round of mediation in Labongo Amida. Among the *Rwodi Moo* interviewed for this research, most take part in high-level mediation teams logistically supported by the KKA and consider this as ‘the only system’ for resolving complex land disputes at this time.⁵⁹ The *Rwodi Moo* have a degree of traditional, hereditary-based authority, but must augment this to be considered legitimate mediators. Some authority may be gained through interpersonal trust, but most is achieved by mediating in the right way –by making references to norms, customary behaviour, and spirituality; being inclusive and allowing all participants to voice their opinions; and mediating in a transparent manner. If consistent, this implicitly helps generate throughput legitimacy of individual *Rwodi Moo*.

A women’s councillor from Labongo Amida noted that her main role was to host the mediating parties because both communities considered her to be impartial,⁶⁰ while a female leader of the Christian believers’ and farmers’ association provided spiritual and cultural guidance. Finally, through extensive involvement of external and impartial traditional leaders, this conflict was solved and a new inter-clan boundary was established. The practice of customary mediation is ‘built on relationships of individuals in positions of authority with community members’.⁶¹ It is a form of inclusive and community-sensitive mediating where mutual trust is required to generate throughput legitimacy.

The case of Acholibur sub-county is illustrative of the positive impact outside actors can have, although this has not been the case elsewhere. In Acholibur, a number of NGOs provided training for mediators and promote inclusive and consistent practices.⁶² They cooperated with the community to achieve more inclusive and sustainable outcomes from

⁵⁷ Interview, *Rwot Moo*, Labongo Amida, 31 July 2014.

⁵⁸ Interview, *Rwot Peter Oola Ojigi*, chief of the Alokolum clan in Amuru District.

⁵⁹ Interview, *Rwot Moo*, Labongo Amida, 31 July 2014; Interview, *Rwot Moo*, Kitgum Matidi, 31 July 2014.

⁶⁰ Interview, Women’s Councillor, Labongo Amida, 31 July 2014.

⁶¹ Interview, LC3 Chairperson, Labongo Amida, 31 July 2014.

⁶² Most notably, the local NGO Acholi Religious Leaders Peace Initiative (ARLPI).

mediation, thus creating the Peace Committee – an alternative dispute resolution mechanism on the sub-county level that handles, *inter alia*, cases of land conflict. The Committee includes community elders, selected local court members, women, and youth, who mediate collectively and offer their services for free. The Committee has resolved many small land disputes that ended up unresolved in the local courts due to ineffectiveness stemming from the fact that formal authority at the LC3 level in Acholibur was considered corrupt, ineffective, and untrustworthy,⁶³ and traditional authority was weak and contested. Interviewees stated that the Peace Committee is currently more effective and legitimate than any other local authority.⁶⁴ By utilising mediation as a legitimising procedure and by involving large parts of the community, the Committee creates social pressure and consent to outcomes; and its authority is strengthened by following up on implementation of mediated cases and ensuring accountability. Through its composition and embeddedness within the community, the Peace Committee also ensures that the concerns of women and youth are adequately represented.

Alternative structures, such as NGOs and religious institutions, can have a role in mediation. Religious leaders, while not directly involved as mediators, regularly call on parties to participate, to be moderate, and to speak the truth. They are often outspoken advocates of settling land disputes through mediation, informing their communities of this through sermons and radio shows, and strengthening the perception of mediation as a communal and desirable process. In other locations beside Acholibur interviewees noted that community assistance by a variety of local and international NGOs provided guidance and in some cases resources to strengthen mediation processes. On a cautionary note, the agendas driving some of these NGO efforts may mean they do more harm than good, especially if they undermine local customary practices. For example, NGOs previously working in Unyama sub-county focused on capacity building measures that target people holding formal office, not actual authority in the community.⁶⁵

⁶³ Interview, Roro Koro, Acholibur, 4 August 2014; Interview, Peace Committee Chair, Acholibur, 4 August 2014.

⁶⁴ Interview, LCC3 Chair, Acholibur, 4 August 2014; Interview, Roro Koro, Acholibur, 4 August 2014; Interview, Peace Committee Chair, Acholibur, 4 August 2014; Interview, Rwot Kaka and LCC3 member, Acholibur, 4 August 2014.

⁶⁵ Porter, 'Justice and rape on the periphery', p. 88.

Mediation is performed in its various forms by elders, chiefs, local councils, religious leaders, and even formal courts, but the outcome is always viewed as a collective agreement and not an individual judgment. Throughout research interviews, mediation was consistently credited with producing decisions that are better accepted by the community, with only a few LCC members favouring adjudication, probably because this strengthens their role. Mediation was described as a more inclusive process that is attuned to community concerns, and one which produces more reliable information, builds community relationships, and legitimises authority. In fact, the mediation process is so embedded in Acholi culture that even the act of mediating is seen as ‘a part of Acholi custom’.⁶⁶

Though mediation is a community-based process, it does not come for free; and the fees for mediators (called appreciations) vary depending on the individual, but can be quite high. More complex disputes require more individuals of higher authority, and thus higher fees. This can quickly put mediation out of reach for destitute individuals. Nevertheless, fees were of little concern to the interviewees, perhaps because, as mediators, they are often the ones charging them. On the other hand, compared to the costs of adjudication, the fees for mediators are considered more affordable.

While customary mediation involves everyone in the community, the mediators are usually older men. Very few examples of gender or age equality were mentioned in mediation teams, and interviewees rarely addressed issues of spiritual authority and gender roles. This is significant because an inherent bias in mediation toward the values, concerns, and interests of older men has the potential to generate mistrust among women and youth and devalue the legitimacy of traditional authority and the outcomes they mediate. Notably, female respondents perceived that while customary mediation protects certain rights of women and widows it strongly favours men in general. It is men in places of authority, whether traditional authority such as chiefs and *rwodi*, or formal officials, such as sub-county Chairmen, local court members, and police chiefs who disproportionately benefit from this inherent bias. Especially in more urbanised areas they are able to misuse mediation and wealth to establish ownership of land that is disputed.⁶⁷

⁶⁶ Interview, Rwot Ojigi, Lachor, 2 August 2014.

⁶⁷ Kandel’s work on social differentiation in the neighbouring Teso region highlights comparable issues. Matt Kandel, ‘Land conflicts and social differentiation in eastern Uganda’, *The Journal of Modern African Studies*, 55, 3 (2017), pp. 395–422.

Female interviewees who were members of mediation teams headed by male *Rwodi* considered their roles to be non-essential and advisory. This theme, of women and youth as participants and bystanders who legitimise the public authority of traditional male elders through their involvement in mediation, is prevalent. The male bias is of special concern as far as the implementation of mediation outcomes, when strong social pressure is needed. As public authority enabled by throughput legitimacy is impermanent and limited by the ability to continually recreate a process and outcomes that are widely accepted within the community, there is always a possibility for a truly inclusive form of public authority to emerge.

The legitimising role of mediation has recently been recognised in Ugandan law.⁶⁸ With a greater emphasis on customary practices, mediation was included as an obligatory mechanism preceding court procedures. These legislative changes take customary practices and the role of traditional leaders much more seriously, resulting in real hybrid governance. The effectiveness of institutionalising mediation needs to be evaluated.

Concluding remarks

Despite the need for legitimate public authority in hybrid governance contexts, there is little understanding of how such authority is obtained and retained. This paper is an attempt to shed light on procedural forms of legitimisation involving multiple actors with diverse organisational logic and claims to authority. By adopting hybridity as an epistemological framework encompassing these multiple actors and dynamic processes, we can move away from state-centric notions of legitimacy and analyse procedural components of legitimisation utilising the concept of throughput legitimacy.

The findings of this research correspond with previous findings on land conflict in Uganda, and build upon them. Porter's work on social harmony among the Acholi suggests a preference for out-of-court settlement of disputes and an overlap of traditional and formal authority.⁶⁹ Hopwood describes mediation as a pattern of dispute resolution in which the

⁶⁸ Parliament of Uganda, *Judicature (Mediation) Rules* (2013); and Parliament of Uganda, *Uganda National Land Policy* (2013).

⁶⁹ Porter, 'Justice and rape on the periphery', p. 88.

focus is on embedded community actors at the local level, both formal and traditional, and adjudication is present only at higher levels of justice.⁷⁰ Jones mentions the authority of LC structures, describing them as ‘the eye of the government’, with a role to blending formal authority and traditionally legitimate conflict resolution practices, thereby reinforcing decisions made through mediation.⁷¹ This research adds another layer of complexity by investigating the legitimisation of public authority above the most local levels of governance and with respect to more complex land conflict issues.

In the intricate process of land conflict resolution in Northern Uganda, customary mediation plays a key role in legitimising decisions. The inclusive nature of mediation involves broad community participation, including of traditional actors, along with formal, religious, and civil society institutions. Mediation is essentially considered the traditional and legitimate way of doing things; and drawing on traditional, formal, and spiritual forms of authority in the community, decisions reached through communal mediation processes are accepted as culturally resonant hybrid justice, characterised by procedural throughput legitimacy. Therefore, mediation can be considered a “legitimising procedure” that bestows legitimate authority to the actors who partake and to mediated outcomes. This legitimacy is not fully transferable, but must be regained anew for different land conflicts involving different actors. Legitimate public authority is always a potential in Acholi, and it is through the process of making decisions in a communally agreeable way that it becomes actualised.

Outside assistance can positively influence mediation, but only if local processes are respected and are not co-opted. In the sub-counties researched, it was those where NGOs had made efforts to provide resources and training in a manner respectful of local customs that local actors were more effective and inclusive in their handling of land conflict. Still, customary mediation processes can only be effective if the people involved are capable and are trusted by the community. Instead of favouring particular types of actors, assistance measures should therefore aim to strengthen legitimising processes.

There is no universal rulebook that can bring about throughput legitimacy and help create good hybrid governance regardless of location, because the legitimacy of decision-making processes is firmly grounded in localised political culture and societal norms.

⁷⁰ Hopwood, ‘Women’s land claims in the Acholi region of Northern Uganda’, p. 401.

⁷¹ Jones, *Beyond the state in rural Uganda*, pp. 65, 78, 82.

Furthermore, what is considered legitimate in some local contexts, such as Uganda, may not fully conform to liberal values, including regarding human rights and gender equality. After all, mediation practices are rooted in local tradition, and thus often serve to uphold existing social orders and existing injustices. This is especially true for the privileges of men in general and elders in particular. Practitioners and international development staff should be aware of the possible trade-offs between achieving stability through legitimate governance and fostering equality for the general population, especially women and youth.

Public authority is necessary for governance, and in hybrid political orders, claims to legitimacy are often based on making decisions in the right way. This is a procedural form of legitimisation that shifts the focus from institutions and actors and toward the legitimacy of governance processes. By harnessing the theoretical concept of throughput, we can interpret legitimacy as finite, tied to specific issues, and always in the making; and in the Ugandan context, mediation is found to be the key practice for establishing and maintaining legitimate authority. What's more, traditional, formal, spiritual, and international actors overlap in hybrid governance by engaging in mediation. By doing so, in the context of justice provision in cases of land conflict, mediation builds on the concept of throughput legitimacy to produce accepted governance outcomes as well as public authority for the actors who participate.

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