PLURAL CLAIMS TO LEGITIMACY: CONCEPTUALISING LEGITIMACY IN HYBRID POLITICAL ORDERS

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Abstract

The debate on fragile states has been criticised for being too state-centric and normative. Several authors argue in favour of looking more broadly at state-society relations, and in particular, at challenged state legitimacy. Specifically, ‘hybrid political orders’, characterised by the simultaneous and often competing presence of both formal and informal institutions, have been put forward as a concept for analysing how political power in fragile states is acquired and exercised.

Taking Burundi as a case study, this paper analyses how legitimacy crises in hybrid political orders relate to conflictive interactions between formal and informal institutions. Specifically, the paper uses David Beetham’s tripartite concept of legitimacy – composed of rule compliance, justifiability of rules and sources of authority, and expressed consent – to evaluate plural claims to legitimacy in hybrid political orders and the way they relate to state stability.

Keywords: legitimacy; hybrid political orders; fragility; statebuilding; Burundi

Paper presented at the ECPR General Conference, Montréal
27-29 August 2015
Panel P061 Concepts in Comparative Politics
Introduction

The recognition of weak or fragile states as a threat to international security in the post-2001 era heaved statebuilding into a top position of the international public policy agenda. The early focus of scholarly and policy documents on technocratic approaches to international interventions in fragile states, aiming at eradicating structural sources of fragility and violence through institutional engineering – which mainly includes increasing the capacity of state institutions and developing mechanisms of democratic accountability (Menkhaus 2010) –, has been prominently criticised for its orientation towards the western-style Weberian state model (Boege et al. 2009a). The subsequent ‘local turn’ (Leonardsson and Rudd 2015) towards the inclusion of local agency and informal institutions in statebuilding policy has given rise to a new range of concepts including e.g. ‘twilight institutions’ (Lund 2006) and ‘negotiated statehood’ (Hagmann and Péclard 2010). Boege et al. (2009a; 2009b) have conclusively termed this amalgamation of formal and informal institutions in statebuilding processes as ‘hybrid political orders’.

While these concepts have contributed to the enhanced understanding of the complex political nature of statebuilding processes, they have also been criticised for their limited analytical usefulness, such as their inability to distinguish between those hybrid political orders that are constitutive from those that are detrimental to statebuilding (Balthasar 2015; Meagher et al. 2014). Furthermore, while much of the literature on the interface of formal and informal institutions in statebuilding has been concerned with questions about how democratisation and governance are affected, questions on the effect on peace and stability remain under-researched (Goodfellow and Lindemann 2013). One such specific question concerns the relation between the legitimacy and stability of the state in hybrid political orders. While, on the one hand, state legitimacy is regarded as a key component for the stability and resilience of a state (Cook 2003; Brinkerhoff 2007), it is on the other hand the state which has to share legitimacy with informal institutions in hybrid political orders (Boege et al. 2009a). The question then is, whether the integration of informal institutions with their own claims to legitimacy necessarily challenges the legitimacy of the formal state institutions and what the corresponding consequences for the stability of the state are.
In this paper we develop a new analytical approach to plural claims to legitimacy in hybrid political orders and their likely effect on state stability. In this we follow Tom Goodfellow and Stefan Lindemann (2013) in distinguishing between different configurations of formal state and informal non-state institutions – i.e. ‘institutional multiplicity’ and ‘institutional hybridity’. As this paper aims to show, this distinction closely relates to an increased instability of state institutions due to challenges of their legitimacy.

For the assessment of the legitimacy of different formal and informal institutions, the paper applies the concept of legitimacy introduced by David Beetham (1991b; 2013). In contrast to Weberian definitions of legitimacy which are based on the sources of a belief in legitimacy (Beetham 1991a: 40-2) – i.e. in traditional, charismatic and rational-legal sources of legitimacy – the conceptualisation of legitimacy following Beetham differentiates three constituent levels of legitimacy – the legality of authority referring to whether it is exercised according to rules; the justifiability of these rules in reflecting social norms and values; and the capacity to mobilise expressed consent to the system of rule from those subordinate to it. Building on Beetham’s tripartite legitimacy concept this paper demonstrates how legitimacy, displaying crises in each of its three dimensions – defined as illegality, legitimacy deficit and delegitimation –, relates to emerging mutual challenges between formal and informal institutions and how that impacts on the stability of the state.

The framework is then discussed by analysing the developments in Burundi starting with the instalment of formal power-sharing institutions by the 2000 Arusha Peace and Reconciliation Agreement – also referred to as the Arusha Accords – up to the challenges these institutions have been facing during the 2015 pre-electoral and electoral phases.

**Stability, Legitimacy and Hybridity: Bringing it All Together**

Since the late 1990s concepts of statebuilding have arguably superseded hitherto dominant approaches in development cooperation focusing on good governance. The increasing engagement of the international community in conflict-affected states catalysed the development of strategies to deal with fragile states (Debiel and Lambach
Throughout the different approaches to statebuilding support, ensuring stability to the international system of states and providing security and development to the citizens of fragile states has been at the centre stage for a state to win external legitimacy. Vice versa, it has also been argued by influential scholars of statebuilding that weak or absent legitimacy undermines the stability of a state (Useem and Useem 1979; Rotberg 2004; François and Sud 2006).

In the statebuilding literature, there are mainly two approaches explaining the legitimacy of a state. First, a larger body of literature based on Weberian concepts of statebuilding and their technocratic focus on institutional engineering through, for example, providing infrastructure, building state capacity or initiating organisational reform, relates the legitimacy of a state to its political and institutional effectiveness. Their central claim is that legitimacy will follow somehow automatically from increased effectiveness and capacity of the state (Boege 2014: 237; McLoughlin 2015; cf. Lemay-Hébert 2012). In the words of James Putzel (2007: 1) “[i]n a basic way, legitimacy is determined by a state and institutional effectiveness. Their central claim is that legitimacy will follow somehow automatically from increased effectiveness that the relation between effectiveness and legitimacy takes the form of a virtuous circle where increasing the effectiveness of a state increases its legitimacy and where increased legitimacy improves effectiveness (Schmelzle 2011).

A second line of argument relates the legitimacy of a state not only to its institutional strength but also to “the complex nature of socio-political cohesion” (Lemay-Hébert 2009: 22). In addition to the relevance of institutions for a state’s legitimacy, here the social contract with its ideological foundations is a crucial element of a state’s legitimacy. Nicolas Lemay-Hébert (2009) has framed the inclusion of legitimacy as an additional layer of complexity to the analysis of solely institutional approaches to statebuilding in his ‘legitimacy approach’, where he argues that stability is not reducible to institutional capacity but needs to consider the complex socio-political cohesion and so “it appears crucial to understand state and society in their mutually constitutive relationship, where legitimacy conditions state strength and is, at the same time, an element of state strength” (Lemay-Hébert 2012: 10). Thereby, considering issues of legitimacy – which are linked to inherently political questions of authority and power – in statebuilding implies departing from a narrow understanding of statebuilding as a depoliticised technical and administrative process (Lemay-Hébert 2009: 27).
This critique or extension of the institutionalist approach to statebuilding is closely related to a similar critique by scholars promoting a hybridisation or hybrid conception of statebuilding. The hybridity critique of institutionalist statebuilding concepts argues that top-down interventions fail to acknowledge the potential and challenges posed by local actors and structures to statebuilding processes (MacGinty 2013). Furthermore, statebuilding is not understood as a mere process of technocratic institution building but rather represents a constant political negotiation of statehood. This conception “emphasizes the profoundly contested nature of the state and the host of conflictive interactions inherent in defining statehood” (Hagmann and Péclard 2010: 545). These interactions between different actors and institutions involved in the struggle of building a state constitute hybrid political orders. And each actor or institution refers to its own claims to legitimacy. This perception of hybrid political orders poses different challenges to the analysis of a state’s legitimacy. For one, how do the various claims to legitimacy by different actors and institutions impact the legitimacy of the state? And what are the consequences for the stability of a state if plural, conflictive claims to legitimacy emerge?

In order to facilitate a distinction between conflictive and constitutive claims to legitimacy by authorities in a hybrid political order, we apply the distinction between institutional multiplicity and institutional hybridity introduced by Goodfellow and Lindemann (2013). They argue that the concept of hybridity has been used in a conflating manner, underscoring that “in some cases there is no synthesis of state and non-state institutions; no incorporation of the structures of one into the other. This situation is better described as ‘institutional multiplicity’ than as ‘institutional hybridity’” (Goodfellow and Lindemann 2013: 7). Furthermore, the authors point out that institutional multiplicity can be either concordant or discordant, while adding that if “the interests supporting fundamentally incompatible institutions are deeply entrenched, violent conflict is more likely than under conditions of either hybridity or concordant institutional multiplicity” (Goodfellow and Lindemann 2013: 8).

Based on these propositions, we argue that both configurations have distinctly different effects on state legitimacy. While institutional hybridity – where formal and informal institutions are actively integrated into state structures – is more likely to increase the legitimacy of a state, institutional multiplicity – a situation where informal
institutions have not fully merged with formal state institutions – is more likely to negatively affect state legitimacy.

In the next section, we propose an analytical approach to legitimacy in hybrid political orders that facilitates the assessment of plural claims to legitimacy and its consequences for state legitimacy and stability.

**Conceptualising Legitimacy in Hybrid Political Orders**

In his article on the peacebuilding and statebuilding process in Bougainville, Volker Boege (2014) exemplifies how different authorities, national and local, claim legitimacy based on different sources. By sources of hybrid legitimacy Boege refers to four different types of legitimacy: performance legitimacy, which refers to “outcomes of acts of governance” such as security, health or welfare; process legitimacy referring to the procedures according to which an authority derives its right to govern, such as elections or heredity of authority; international legitimacy being the legitimacy a government or state derives from the international recognition of its sovereignty; and domestic legitimacy which equals citizens belief in a governments’ right to govern. Furthermore, process legitimacy is further differentiated according to the three types of legitimate authority proposed by Weber, i.e. rational-legal, traditional and charismatic (Boege 2014: 239-40). In stating that the legitimacy of different authorities is hybrid he asserts “that the people’s belief in their right to govern and the leader’s claim to the right to govern combine elements [of legitimacy] that stem from genuinely different but confluent societal and cultural sources” (Boege 2014: 248-49).

While we concur with the conception of hybrid legitimacy as an authority’s claim to legitimacy based on different sources, we argue that the different sources or types of legitimacy applied by Boege obfuscate the analysis of the legitimacy of authorities in hybrid political orders, because it is based on the understanding of legitimacy as “the belief of people in certain actors’ right to govern, to build peace, to take and implement political decisions, and the belief of people in the rightfulness of certain acts of governance” (Boege 2014: 239). However, as Beetham argues, “a given power relation is not legitimate because people believe in its legitimacy, but because it can be justified in terms of their beliefs” (Beetham 2013: 11). Hence, the different sources of legitimacy
by Boege rather constitute the normative justification of beliefs in legitimacy. Authorities that do not conform with a belief about a valid source of authority are thus having a legitimacy deficit (Beetham 1991a: 43). However, the conception of legitimacy based on the sources of a justification of beliefs is not exhaustive for analysing the potential of conflict arising between those sources. Whether the relation between two authorities is conflictual does not solely depend on the justifying beliefs of their authority. In other words whether two authorities are believed to be legitimate because of, for example, traditional versus rational-legal grounds is not conflictive per se. What further inherits the potential of conflict among authorities claiming legitimacy based on different justifying beliefs is the violation of the rules which are based on those same justifying beliefs. This is what David Beetham has termed the legality component of legitimacy where political power is legitimate to the extent that “it is acquired and exercised in accordance with the rules and laws” (Beetham 1991a: 42).

Furthermore, besides the legality and normative justifiability components of legitimacy, Beetham coined a third element of an authority’s legitimacy – expressed consent: “what is important for legitimacy is evidence of consent’ expressed through actions which are understood as demonstrating consent within the conventions of the particular society” (Beetham 2013: 12). Actions of consent contribute to an authority’s legitimacy by conferring legitimacy to it.

Three elements call for the application of Beetham’s concept of legitimacy in hybrid political orders. First, the framework takes a multidimensional perspective on legitimacy, which allows for a more refined analysis of plural claims to legitimacy. Second, Beetham’s dimensions of legitimacy not only allow to better capture gradual changes in legitimacy, but also – and perhaps more important in hybrid political orders – relative changes between the three dimensions. Finally, the third dimension Beetham introduces – expressed consent – seems particularly relevant in situations characterised by institutional multiplicity. In such situations it seems far less plausible to encounter some sort of ‘rule standardisation', described by Dominik Balthasar (2015: 2) as a "[process that] underlies statebuilding […] whereby a single set of ‘rules of the game’ dominance within a given society”. Rather, in situations of institutional multiplicity it is more likely that one encounters a plurality and/or instability of rule systems, which in turn may result in competing forms of expressed consent and dissent.
The application of this tripartite conceptualisation of legitimacy for the analysis of hybrid political orders is further illustrated in the next section by discussing the case of Burundi – a country categorised as a fragile, post-conflict country. In particular, based on the analysis of recent secondary data and interviews with external actors’ officials conducted in Bujumbura in March 2015, we will focus on the 2015 electoral dynamics and compare them with the previous post-transition electoral dynamics. This focus allows us to test the proposition, based on Goodfellow and Lindemann (2013), that institutional multiplicity tends to decrease the legitimacy of a state, and hence increase the risk of instability in hybrid political orders.

In what follows, we first provide a short background on the legitimacy crisis that has developed in the run-up to Burundi’s 2015 elections. Second, we apply Beetham’s concept of legitimacy to the case of Burundi, in order to provide a more refined understanding of this legitimacy crisis. Third, we describe the interaction between formal and informal institutions, starting when the Arusha Accords were signed, and we show how the progressive shift from a situation of seeming institutional hybridity towards openly discordant institutional multiplicity has contributed to the described legitimacy crisis. Throughout the Burundi section, we also draw attention to the positions and actions of external actors with regard to the legitimacy crisis, in view of drawing policy related conclusions.

**Legitimacy Dynamics in the Run-Up to Burundi’s 2015 Elections**

According to different state fragility indices used by external actors involved in statebuilding support, Burundi represents a fragile state. Considering three commonly accepted dimensions along which state fragility may occur (see for instance Grévingholt et al. 2012; Stewart and Brown 2010) – authority, capacity and legitimacy – Burundi appears to manifest substantial deficits in all three of these dimensions (Mross, 2015). A central explanation for Burundi’s categorisation as a fragile state is related to a period of violent conflict the country has experienced. This conflict initiated in the late 1980’s and culminated in 1993 in a civil war that would last for more than a decade. While a peace agreement was signed in Arusha in 2000, it would yet take until 2008 – three years after
the end of a transitional period – to implement the agreement concluded with the last armed rebel movement, the FNL (*Forces Nationales de Libération*).

After the Arusha Accords were signed, several international actors – in line with a general trend of international engagement in fragile states have remained actively involved in supporting statebuilding processes, both through political dialogue and through financial and technical aid. As a clear indication of the latter, in 2011 Burundi ranked as the 7th most aid-dependent country in the world (OECD 2014). Moreover, the country served as one of the first beneficiaries of the United Nations Peace Building Commission. Whereas this type of support mainly aims at reinforcing the authority dimension of the state as well as perceived capacity weaknesses, the legitimacy dimension of the state resonates much less in the debate. Looking at domestic legitimacy in Burundi, available indicators (e.g. Fragile States Index, Country Indicators for Foreign Policy) show an image of both weak and fluctuating domestic legitimacy. During the first term of post-transitional rule, internal legitimacy slightly improved. However, since the elections of 2010 a reversed tendency is being observed.

Despite these fluctuations in domestic legitimacy, international actors have remained largely supportive of the incumbent regime. Only in the immediate run-up to the 2015 elections, there have been clear, publicly expressed signs of external delegitimation, not only through statements about the nature of the elections – deemed as insufficiently free, fair and inclusive – but also by threats of aid suspension and targeted sanctions. These signs, given by key donors such as the European Union, Belgium, the Netherlands and the United States, have been a direct result of the 2015 Burundian electoral crisis. Starting in April 2015, when the ruling party CNDD-FDD (*Conseil National pour La Défense de la Démocratie – Forces pour La Défense de la Démocratie*), elected the seating president Pierre Nkurunziza as its official candidate to bid for a highly contested third term as president, the electoral process has progressively derailed, resulting in several deaths among mainly urban protesters and a continuous flow of refugees – with an estimated number of over 170,000 persons (in July 2015) – towards neighbouring countries.
Applying Beetham’s Concept of Legitimacy to Burundi

As we described above, Boege (2014) in his Bougainville case study conceptualises legitimacy as a hybrid form of rational-legal, traditional and charismatic legitimate authority. We argued that this particular view on legitimacy may obfuscate the analysis of legitimacy in hybrid political orders. The case of Burundi appears to support this argument. Although the main actors of Burundi’s political landscape – ranging from the ruling party CNDD-FDD on the one hand, to a fragmented cohort of extra-parliamentary political parties on the other hand – manifestly base their legitimacy claims on a combination of mainly rational-legal and charismatic elements, Beetham's concept of legitimacy in our view offers a better suited framework for analysing competing legitimacy claims. As also outlined in the paragraphs about legitimacy in hybrid political orders, three elements explain the relevance of Beetham’s framework in the context of Burundi.

First, the framework takes a multidimensional perspective on legitimacy, which allows for a more refined analysis of plural claims to legitimacy. Even though Boege's argument about hybridised legitimacy has the merit of pointing towards multiple sources of – or beliefs in – legitimacy, it does not suffice to explain the conflicts that have arisen as a result of plural claims to legitimacy. If we were to apply the Weberian sources of Legitimacy Boege refers to, then we would argue that the CNDD-FDD aims at drawing legitimacy not only from rational-legal sources – by referring to the constitutional order (e.g. regarding the validity of Nkurunziza's candidacy for a third mandate; or the constitutional limits for modifying the electoral calendar) – but also from the charisma Nkurunziza displays in the eyes of many (mainly rural) Burundians, as well as from clientelist practices at a broad scale. Nevertheless, the fact that the CNDD-FDD's legitimacy in recent months has come under increasing pressure cannot be explained in a satisfactory way by solely referring to these three sources of legitimacy. Rather, what we did observe during the pre-electoral and electoral period in 2015, is a fast growing disparity between legitimacy as a result of rule compliance on the one hand and the justifiability of rules and sources of authority on the other, as well as a persistent public expression of lack of consent. Not only from the side of political opponents, civil society and external actors, but also within the party (‘les frondeurs’) a growing number of actors have expressed strong criticism on the decision by the
CNDD-FDD to propose Nkurunziza as their official candidate for the presidential elections.

In this respect it is worth noting that the internal criticism has been expressed *despite* the knowledge that Nkurunziza's charismatic properties offered sufficiently solid chances for obtaining the ruling party a large victory, even if he wouldn’t run for a third term. One potential reason for this internal criticism is that the Constitution – leaving space for an ambiguous interpretation of the validity of a third mandate candidacy – is no longer seen by Nkurunuziza's internal opponents as a justified source of legitimacy; rather, that justification is to be sought and found within the Arusha Accords. Another potential reason – offering a less naive explanation – is that the internal criticism reflects a power based conflict within the CNDD-FDD, implying that the neo-patrimonial system, that has come under strong pressure over the last decade as a result of progressive overstretch, did not have enough on offer for the *frondeurs*.

Second, Beetham's three dimensions of legitimacy not only allow capturing gradual changes in legitimacy but also relative changes between the three dimensions. Particularly from a fragility perspective, it matters if a state becomes more fragile as a result of diverging processes of illegality, legitimacy deficit or delegitimation (to use the terms Beetham coined for losses of legitimacy along the three dimensions). The recent electoral dynamics in Burundi have been most illustrative in this regard. Whereas a strong belief among many external actors prevailed that statebuilding was gradually producing positive results, several scholars have underscored the risks related to the silent persistence, and even recurring growth, of informal neo-patrimonial institutions (see for instance Curtis 2012; Uvin & Bayer 2013; Vandeginste 2015). Even though support in the form of institution building has resulted in a seeming process of ‘rule standardisation’ based on the Arusha Accords, its legitimacy in terms of justifiability of rules and sources of authority has in recent years been the object of a growing disavowal within powerful segments of Burundi's political elites. As a reaction to that, local dissident voices as well as key external donors to Burundi have increasingly started referring to the Arusha Peace Agreement, a legal document deemed superseding the Burundian Constitution, as the basis for legitimate political power accession and exercise. In this regard, Paul Nantulya (2015) rightly observes that “[i]ndicative of the centrality of these Accords, [is the fact that] a broad-based opposition political coalition has called itself the National Council for the Restoration of the Arusha Accords” (in
Third, the dimension of expressed consent is particularly relevant in the context of Burundi, for two reasons. A first reason is that legitimacy is not just a matter of beliefs, but also of concrete legitimating or delegitimating acts. It matters to take these acts into account as well as to distinguish, as Beetham (2013: 18) proposes, between on the one hand acts that imply a commitment between ruler and subordinate (reflected for instance in the process of holding democratic elections), and on the other hand acts that have a public symbolic, declaratory dimension. Many of the recent protest activities as well as the public declarations by external actors actively engaged in Burundi should be seen under this latter angle. It also explains the importance attributed by different actors to independent broadcasting radio media, which in the wake of the failed coup of May 2015 resulted in a genuine 'war of the waves'. A second reason is that, as Beetham clarifies, rule systems have a tendency towards self-reproduction, unless examples of alternative, justifiable rule systems are available. In hybrid political orders, this is precisely one of the crucial functions of publicly expressed delegitimation: claiming legitimacy for an alternative system. That is also what is at stake in the current Burundian context: the defence and further consolidation versus the breakdown of the institutional rule system based on the Arusha Accords (Nantulya 2015; Vandeginste 2015).

Confictive Formal and Informal Institutions in Burundi

In the theoretical section of this paper we introduced the proposition that institutional multiplicity tends to decrease the legitimacy of a state, and hence increase the risk of instability in hybrid political orders. The preceding analysis of the legitimacy crisis that has been accompanying the 2015 electoral process, clearly suggests that this crisis is related to incompatible claims to legitimacy.

These claims can roughly be linked with the legitimacy of two competing rule systems that are simultaneously active in Burundi. One rule system, to a large extent characterised by informal norms and practices, refers to a mix of persistent elements such as single party rule, state centralism, militarism and neo-patrimonialism (Vandeginste 2015). The second rule system, on the other hand, based on the Arusha
Accords, represents a carefully balanced political and institutional system, built on power-sharing between ethnic groups as well as political opponents. This system has been widely praised as the successful outcome of a peace building process that took well over a decade of negotiation. Its success added to the tenets that after an initial period of political transition, and following Burundi's first post-civil war democratic elections in 2005, the country was on a secure way towards positive peace and democratic consolidation. Yet, despite this at first sight successful implementation of the Arusha Accords, not all observers of Burundian political developments have been univocally optimistic (Curtis 2012, Palmans 2013, Uvin & Bayer 2013, Vandeginste 2015). The shared observation is that there has been a gradual evolution away from democratic consolidation – a non-linear evolution which can be seen as characteristic of complex, fragile environments (Herbert 2014, OECD 2008) – accompanied by a progressive narrowing down of political and media space.

This non-linear evolution should be seen as an indication of the growing disparity between illegality on the one hand and legitimacy deficit and delegitimation on the other hand. Whereas the first post-transition elections in 2005 showed a fair degree of legitimacy, both in terms of – Arusha Accords based – rule compliance, rule justifiability and expressed consent, the subsequent elections of 2010 already started exhibiting a number of cracks. Eva Palmans (2013), for instance, describes the worrying trend towards more authoritarian rule since the 2005 elections, thus contradicting Staffan Lindberg's (2006) hypothesis that new democracies become more consolidated as a result of subsequent elections. Specifically, Palmans indicates how, already in 2010, Burundi started slipping away from a competitive electoral authoritarian regime into a more hegemonic one, implying that the regime had gained sufficient control of state resources and political space to be able to obtain a certain victory during the 2015 elections.

In 2010, expressed dissent took the form of a boycott of the presidential elections after what was deemed by a majority of the political opposition as flawed parliamentary and communal elections. This expression of dissent was not shared, however, by the international community, which during the post-electoral period contributed to a further widening and deepening of the CNDD-FDD's control of state resources and political space. Devon Curtis (2012) ascribes this external legitimating attitude to a large extent to the fact that external actors in Burundi favoured a minimal understanding of
peacebuilding, prioritising stability above other peace- and statebuilding goals, to the detriment of a further strengthening of state-society relations and domestic legitimacy.

As described above, expressions of dissent during the 2015 electoral period have not only been raised by civil society and the political opposition, but also by the international community and even by a fraction of dissident members of the CNDD-FDD. These expressions of dissent in turn point towards a growing disparity between the applicable legal framework regarding rules of power accession and exercise and the justifiability of these rules. Whereas those actors predominantly adhering to informal neo-patrimonial practices seem to progressively privilege references to the Burundi Constitution – as the hallmark of sovereignty –, defenders of the Arusha Accords based rule system have increasingly made clear in their statements on the 2015 electoral process that the legal point of reference should foremost be the Arusha Accords rather than the Constitution.

This evolution between 2005 and 2015 offers a sound illustration of how, departing from the first post-transition elections, Burundi has experienced a gradual shift from a situation of seeming institutional hybridity towards openly discordant institutional multiplicity. In this process, claims to legitimacy – associated with different norms and perspectives regarding the rules of legitimate political power in Burundi – have grown conflictive rather than hybridised. In this respect it is interesting to note how, from the very start, the CNDD-FDD has shown resistance to the Arusha peace process. As Curtis (2015: 1372) describes: “[t]he Arusha Agreement was signed by 19 parties in 2000 but the CNDD-FDD was not a signatory, as it had stayed out of the internationally and regionally brokered negotiations. Burundian transitional institutions were set up from 2001, but the CNDD-FDD continued to fight, claiming that the peace process was not legitimate. [...] In 2005 the CNDD-FDD won multiparty democratic elections by a significant margin and former rebel leader, Pierre Nkurunziza, became president. One of the reasons for the CNDD-FDD’s popularity was that it was not associated with the extended Arusha peace process, which many Burundians viewed as an elite-driven exercise that had enriched politicians in the capital Bujumbura”. Paradoxically, the latter phenomenon is exactly what the CNDD-FDD over time has become associated with by those who have been opposing Nkurunziza’s third mandate.
Given this evolution, which elements might explain the – at least until Nkurunziza’s announcement that he would run for a third term – continued legitimation of the incumbent regime by the international community?

One element of response is that external actors seem to have relied, or believed, too much on the positive outcomes of the Arusha Accords and the new institutional rule system it has come to embody. Those outcomes were in line with the two main goals of international support to fragile states: peacebuilding and statebuilding. As part of the Arusha Accords based institutional arrangements, former rebels had been successfully integrated into the army and ethnic quota had been introduced in order to avoid the risk of ethnically inspired coups as in the decades after independence (Vandeginste 2015, Wilen 2015). Furthermore, the state's institutions had been moulded applying similar principals of power-sharing and were further being reinforced by means of external institution building. An interesting reflection of the success external actors have attributed to Burundi’s institutional progress over the past decade can be found in the most recent OECD (2015) Report on fragile states. In that report Burundi is considered to be weak in a number of fragility related dimensions, with the exception though of the institutional dimension.

A second, and related element of response is that precisely by concentrating all efforts on a largely institutionalist type of statebuilding support, another yet crucial dimension of state fragility – state legitimacy – has largely remained second stage. As a consequence, external actors have disregarded exactly that dimension which within the 'legitimacy approach' (see above, Lemay Hébert 2012) is not only seen as an element of state strength, but also as an element that conditions state strength. In other words, by disregarding the dynamics of state legitimacy and the way state and society relate to each other, external actors have missed out on the opportunity of detecting important risks of increased instability. That is precisely the current state of affairs in Burundi.

Conclusions

In the first section of this paper we reviewed a number of critical perspectives on statebuilding (support) in fragile states. A particular criticism relates to the fact that statebuilding approaches tend to focus too much on the state and its institutions while neglecting socio-political cohesion and legitimacy dynamics. This criticism is also
reflected in the strand of literature that looks at hybrid political orders. While this strand offers an interesting framework to analyse the complex interaction between multiple actors and formal and informal institutions in fragile contexts, it has in turn been criticised of providing insufficient analytical leverage to distinguish hybrid political orders that are constitutive from those that are detrimental to statebuilding – and more specifically, to state stability.

Following Goodfellow and Lindemann, we advanced the proposition that in hybrid political orders institutional multiplicity, as opposed to institutional hybridity, is more likely to negatively affect state legitimacy, and hence state stability. To evaluate the nature of plural, competing claims in hybrid political orders, we furthermore proposed to use David Beetham’s multi-dimensional concept of legitimacy, allowing for a refined analysis of different complementary dimensions of legitimacy as well as of relative changes between these dimensions.

In order to test our proposition, we applied Beetham’s concept to the case of Burundi, a post-conflict country categorised as a fragile state, thereby focussing on the legitimacy dynamics between 2005 – the year in which Burundi held its first post-transition elections – and 2015 – a year characterised by mounting legitimacy related tensions in the run-up to and during the third post-transition elections. Not only does the analysis show that state legitimacy in Burundi has come under clear pressure along the three complementary dimensions described by Beetham: illegality, legitimacy deficit and delegitimation. But the analysis also suggests that Burundi has experienced a gradual shift from a situation of seeming institutional hybridity towards openly discordant institutional multiplicity. In this process, claims to legitimacy – associated with different norms and perspectives regarding the rules of legitimate political power in Burundi – have grown conflictive rather than hybridised.

Considering the above findings, what could external actors have done differently? In the case of Burundi, Boege's critique of the way in which external actors focus too one-sidedly on the rational-legal side of legitimacy appears to only be half the story. Although it is true that the reference to the constitutional framework with regards to Nkurunziza's candidacy for a third mandate has been advocated in the (recent) past by a number of external actors – with the United States as the most vocal and early adopter – a competing factor for the external legitimating behaviour of the incumbent regime has most certainly been that Nkurunziza, precisely because of his charismatic value, has for too long a period been associated with stability.
On the other hand, what should, and could, have been observed earlier was the growing disparity and competition between two competing rule systems as well as the growing legitimacy deficit with regard to both rule systems and the associated sources of authority. Furthermore, external actors may have paid insufficient attention to public signs of (de)legitimation, especially in the Burundian context, which by many observers is considered as a context in which public expression of lack of consent has been extremely rare in the decades following Burundi’s independence.

References


