

The problem of legitimacy in urban flood management redesign processes,

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Abstract

Designing flood defences in urban areas is difficult. Flood managers are increasingly dependent on the cooperation of urban planners and private property owners for the successful implementation of new flood defences. If total interdependence is assumed there is no reason to expect a solution, since no option is optimal for all actors. A solution to such coordination-like problems is a decree from 'above'. Yet for such a decree to be accepted the system through which this decree is made had to be legitimate in the eyes of the actors.

Legitimacy is a product of an evaluation of the total policy system (policy process, policy network and policy outcome). This evaluation is an assessment of the conformity of the policy system to pre-established norms.

If a policy system is not regarded as legitimate this can lead to obstructive behavior in the implementation phase. Moreover a negative legitimation of policy processes in the past can form the bases of distrustful attitudes in new policy processes. In this way a negative legitimacy cycle can develop that hampers implementation of policies.

1. Introduction

Flood management in the Netherlands is undergoing two important changes: First flood managers are broadening their focus on feasible policy options. Was the focus traditionally on technical solutions to minimize flood chances, nowadays also spatial measures and measures focusing on limiting the impact of potential flooding are increasingly taken into account.

Implementation of spatial measures and impact minimizing measures is far more dependent on the cooperation of other governmental sectors and private 'partners', than technical solutions. Thus this broadened focus has also led to a more open and pluralistic policy network than the networks in which flood management was developed in the past. This pluralistic network does not only include governmental agencies or private partners, but through increased public participation also individual citizens are getting involved earlier in the planning process. Similar changes are taking place across Europe. In Germany slowly public participation is increasing. In the EU a new flood directive is being developed which promotes a different approach to flood risk.

Changing a policy sector however is not unproblematic. One of the relevant issues for managing such changes is the possible negative effect of change on legitimacy of the policy making system. Legitimacy is an important resource for governmental agencies. It provides a power basis to develop and implement policies without the need to rely heavily on sanctions and rewards, the famous carrots and sticks. As Tyler (Tyler 2000) argues: 'It is more difficult for authorities lacking legitimacy to bridge issues and problems and gain deference to common policies.' A perception of legitimacy of the rulers by the ruled will lead to a belief in the ruled that it is its duty to comply with the rulers policies. When a policy sector changes rapidly, either in its process methods or its policies a feeling of alienation in the public can lead to a decrease in legitimacy. The water management sector is undergoing such major changes and thus faces the challenge of sustaining their legitimacy in such a difficult setting. Because of the importance of legitimacy it is of interest to policy analysts and policy makers to know how legitimacy can be increased or at least maintained during a policy (redesign) process.

This discussion paper develops an analytical way to view the concept legitimacy and its role in policy processes in multi-actor settings such as in urban flood management networks. First a urban flood management policy process is analysed with a sole focus on preferences regarding the policy outcome. Second the concept legitimacy is discussed and third the implica-

tions of legitimacy for the urban flood management policy process are explored.

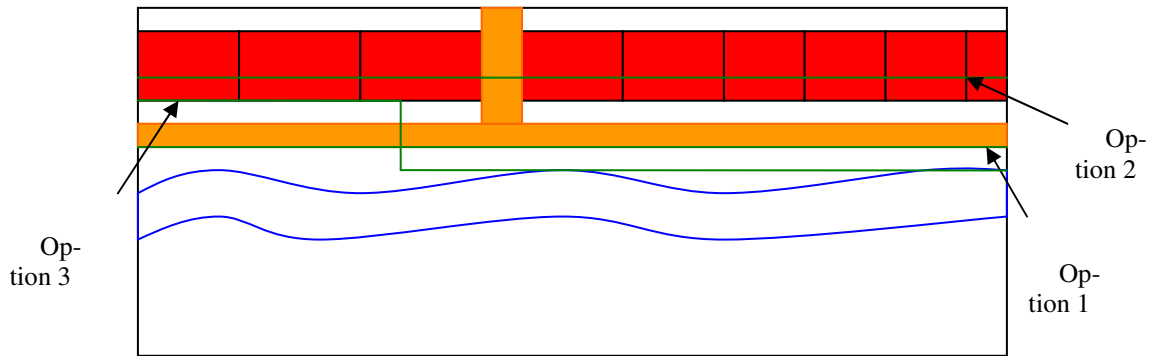
2. Urban flood management policy process

An urban flood management policy process can be initiated for two reasons. The most obvious reason is that the flood management tools in place do no longer conform to the norms set by government. In such a case the flood management governmental agency will initiate a flood management policy process to adapt the levee or other flood construction to the norms. Another reason can be that the urban waterfront is redesigned and therefore a different flood management system is desired that would better fit with the new urban waterfront. In either case an integration of urban planning and flood management is desirable. Yet the flood management constructions will always have some impact on the urban waterfront and will need some space to be placed on. Urban planning and flood management are not usually integrated policy domains.

In the Netherlands for instance flood management is the task of water boards and the ministry of transport, public works and its affiliated department of waterways and public works. City planning on the other hand is primarily the responsibility of the municipality. Thus two important actors in the flood management policy network are the flood management sector and the urban planning sector. A third group of important actors are the citizens living, working or owning property along the urban waterfront. Since a levee is only useful if it runs continuously along the river, the levee will usually have to run near or over private property. Therefore cooperation from these landowners and land users is needed in order to build a flood defense.

There are also other actors in the policy network, such as interest groups e.g. nature preservation groups and cultural historical groups. Also important are the citizens living in the floodable area, since they are the beneficiaries of the flood defense. For simplicity reasons these other actors are not taken into account in the following policy process model.

Imagine an urban riverfront X where the levee has to be adapted to reach the new flood chance norm. (see figure 1)

Figure 1. Urban riverfront X

There are three options to adapt the flood defense. The first option is that the flood defense is constructed on public property (owned by the municipality). The second option is that the flood defense is built (almost) entirely on private property. The third option is that part of the flood defense is integrated in the housing, so on private property and part is built along the river on public property. Let us assume that the three options all assure the same safety level against flooding. Therefore the water board does not prefer either option over the other. However if option 2 is chosen the private property owners have to be compensated for the reduction in value for their houses. If option 1 is chosen the municipality wants the water board to cooperate and co-finance a redesign of the riverfront. If option 3 is chosen the water board will have to compensate some private property owners and will be pressured to partly co-finance the redesign of the riverfront. If the flood managers can make a deal with the other actors they might be able to negotiate partial instead of complete compensation.

Now the private owners want a working flood defense, but they prefer the flood defense not running through their property. The municipality wants a flood defense, but preferably through the private property to protect the view on the city from the other side of the river. If no deal can be made a flood defense will not be built.

Table 1 shows the preferences of each of the actors for the different options.

Table 1 Actor preference table for building flood defenses in urban river-fronts

	No levee	Levee			Expected Utility private property owner Expected Utility water board <u>Expected Utility municipality</u>
	0,0,0	Compensation	Partial compensation	No compensation	
1. Public property	-	5,2,3	5,3,2	5,5,1	
2. Part public/part private property	-	4,1,5	3,2,3	1,5,1	
3. Private property	-	3,2,4	2,3,2	1,5,4	

If

there are no other considerations than selfish monetary gain, there is no reason to assume that a satisfactory solution can be reached. Only full compensation will be an option to the municipality and the private owners, which is the minimal option for the water board. Moreover the optimal solution for the municipality is the minimal solution for the private property owner and vice versa. The municipality and the citizen know that the other party wants a levee and that if the other party cooperates, he doesn't have to cooperate. A typical deadlock situation arises.

Ullman-Margalit argued that in the case of pure coordination problems a decree from above could solve the dilemma. (Ullman-Margalit 1977:90) However the problem presented here is not a pure coordination problem in the sense that the actors do prefer a certain outcome over another. In game theoretical terms the structure of this policy process could be described as a mixed-motive game, a levee is desired, but how this levee should be constructed is disputed. Moreover in a multi-actor system such as urban flood management it is not precisely clear what 'from above' is.

Another source for making such a decision acceptable is whether it is the product of a system that is perceived as legitimate. This frequently used concept however is rather unwieldy; when is a system perceived as legitimate? In the following sections of this paper this topic will be discussed and a first illustration will be given of how legitimacy perceptions influence the behavior of actors in an urban flood management system and thus the policy processes.

3. Defining legitimacy

Legitimacy is claimed to be one of the most difficult to define concepts in political science. A number of attempts have been made. However at least as many studies have left the issue of defining legitimacy up to others and went straight to conceptualizing legitimacy or an aspect of legitimacy. A short literature review provided the following definitions: Lipset defined legitimacy in 1959 as follows: ‘Legitimacy involves the capacity of a political system to engender and maintain the belief that existing political institutions are the most appropriate or proper ones for the society.’ (Lipset 1959:86) Scholten, said: Legitimacy is the conviction that authorities should be obeyed (within a certain context), founded on the perception involved actors have of the authority, their conduct, the situation and an evaluation of this perception in view of the norms and values of the involved actor. (Scholten 1975:18)¹

The definition of Suchman (1995:574) is: Legitimacy is a generalized perception or assumption that actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms values, beliefs and definitions. Schmitter defined legitimacy as a shared expectation among actors in an arrangement of asymmetric power, such that the actions of those who rule are accepted voluntarily by those who are ruled because the latter are convinced that the actions of the former conform to pre-established norms. Put simply, legitimacy converts power into authority- *Macht* into *Herrschaft*- and thereby, simultaneously establishes an obligation to obey and a right to rule. (Schmitter 2001) Sunshine and Tyler (2003:514) wrote: Legitimacy is a property of an authority or institution that leads people to feel that that authority or institution is entitled to be deferred to and obeyed. It represents an “acceptance by people of the need to bring their behavior into line with dictates of an external authority” Skogstad (2003:321) thought of legitimacy as (brackets added): the (EU-) decision-makers ability to make legally binding decisions, and the willingness of (member states and) citizens to obey their commands.

¹ Translation from Dutch, the literal text is: [Legitimiteit is] De overtuiging dat men de gezagsdragers (binnen bepaalde kaders) behoort te gehoorzamen. Het gaat hier om een overtuiging (opvatting zo men wil) die berust op een perceptie van gezagsdragers en hun optreden en van de situatie en van een evaluatie daarvan in het licht van de waarden en normen van de betrokkenen. Text in [brackets] added.

Though these authors all use slightly different definitions of legitimacy a few common elements can be found. First of all legitimacy is an evaluation of an entity operating as an authority in a power relationship. Second the evaluation of the entity is based on its actions within a certain context. It is a highly normative evaluation, not merely instrumental. Third the result of a positive evaluation is a given *right to act* to the evaluated entity and a *duty to comply* to the evaluating entity.

Many of the authors mentioned focus on the legitimacy of one actor. Yet Lipset focused on the legitimacy of a system. Both perspectives are possible. Yet the legitimacy of the whole urban flood management system is interesting precisely because this system is changing from a system with one dominant actor towards a more egalitarian multi-actor system. More actors are becoming involved and the (relative) authority of the actors is also changing. Thus it is important to look at the legitimacy of the whole system. The definition of legitimacy used in this paper will be: *Legitimacy is an attributed characteristic of a policy system, based on the perception that certain relevant properties of this policy system are according to pre-established norms and that therefore the substantive outcomes from the network are appropriate and should be deferred to.*

The legitimacy of the separate actors is assumed to be a property of a policy system. This working definition raises the question what properties of a policy system are relevant for an actor to label the policy system legitimate. It is hypothesized that 6 elements are important, some refer to the actors some to the policy network as a whole.

The first property a policy system is the manner in which actors receive their position in the policy network. This can either be given to him on basis of democratic rules, on basis of expertise, on basis of essential resources the actor possesses, or on basis of having a stake in the outcome of the policy. A second property is the relative power position an actor has in a network. Dependent on the composition of a network every actor has certain action options, can make certain decisions. The extent to which such decisions include directive decisions is important for legitimacy perceptions. Legitimacy types such as systemic legitimacy, order-based legitimacy, deliberative legitimacy, influence legitimacy, structural legitimacy all relate to this property of a policy system.

A third aspect that is important is the perceived attitude of the actor towards other (usually less powerful) actors in this network. This attitude is described in this research as the responsiveness of an actor. Tyler mentions that an important aspect of procedural justice is that people feel they are treated with respect. (Tyler 2000:122) This aspect of feeling treated with respect is part of this third aspect of a policy system.

An aspect that is not mentioned explicitly in the legitimacy debate, but is central to the political cynicism debate is the perceived motivations of the evaluated actors. Cynicism from citizens towards the policy making authorities concentrates particularly on perceptions that these authorities are not interested in looking out for the interests of the citizens, but only in money, big interests and their own job. Policy making authorities can be cynical towards the motivation of citizens. They accuse these citizens of not looking at the common good, but only at their own interests. This perceived characteristic of citizens is called NIMBY.

A fifth aspect is what Suchman calls procedural legitimacy. An actor can find the procedures followed in a policy process not conform to the norms, or he can perceive the actions of other actors not conform the procedures that should be followed.

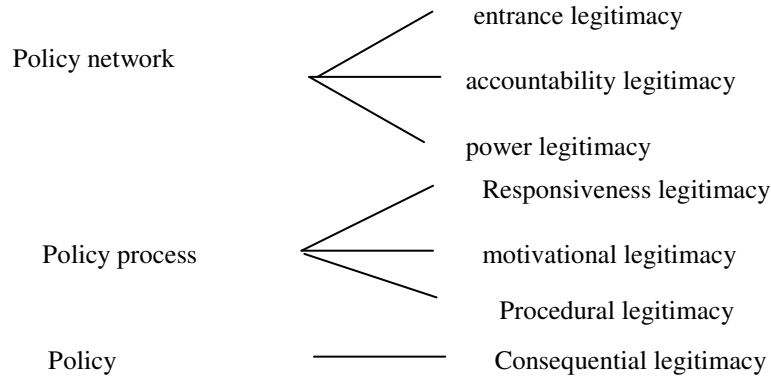
A last aspect for determining legitimacy is the policy outcome, this aspect has two sides: the problem definition and the problem solution. The problem definition focuses on whether the policy network is working towards solving the right problems in society. The problem solution is focused on whether the right problem is solved with the right means. Thus in the case of flood management an actor can perceive that the risk of flooding is so low that trying to decrease this risk is not a pressing issue and should therefore not be on the agenda of the policy network. Yet even if an actor perceives that flood risk is a problem it can believe that the manner in which it is solved is not appropriate, for instance because the negative effects for society, or the individual are too high. In legitimacy terms these types of legitimacy are called results-based legitimacy or consequential legitimacy. Thus legitimacy is granted to a policy system on the basis of a positive evaluation of at least one or more of these aspects, in brackets a proposition is made on how to name these elements of legitimacy:

- Manner of receiving position in policy network of actors (entrance-legitimacy)
- Possibility of actors to loose their position in policy network if they are not performing their tasks right (accountability-legitimacy)
- Relative (power) position of actors in policy network (power-legitimacy)
- Perceived attitude of actors in policy networks towards other stakeholders in or outside of policy network (responsiveness-legitimacy)
- Perceived (alternative) motivations of (powerful) actors in policy network (motivational legitimacy)
- Perceived procedures followed in policy process (procedural legitimacy)
- Policy outcome: appropriate solution to relevant problem (consequential legitimacy)

It is hypothesized in this research that dependent on the personal preferences of the evaluating actor certain elements of legitimacy are more important than other elements.

These elements of the legitimation process can be divided into elements pertaining to the composition of the policy network (entrance legitimacy, accountability legitimacy, power legitimacy), elements referring to the procedures followed in a policy process (responsiveness legitimacy, motivational legitimacy, procedural legitimacy) and policies that come out of a policy process (consequential legitimacy). See diagram 2.

Diagram 2 preliminary conceptualisation of legitimation process

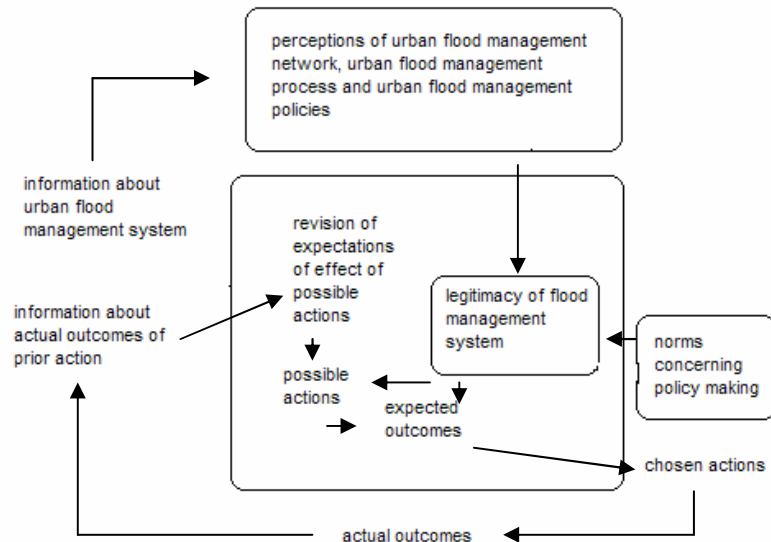


4. The legitimation process

Scholten (1975:19) argued that legitimacy was a product of an actor internal legitimation process. This legitimation process in essence is an evaluation process. The actor evaluates the policy system (policy network, policy process and policy outcome) for its conformity with certain pre-established norms.

This evaluation process is fed by information from outside and personal interpretations of the reality. Based on this evaluation the actor will be incited to cooperate with the system, to be passive towards the decisions made in the system, or to obstruct implementations of decisions taken within the policy system. Below a scheme of the legitimation process based on the mental model concept is depicted.

diagram 3 legitimation process model (adapted from Ostrom 2005:105)



5. Legitimate (?) flood defence in the city of Kampen

In the previous sections the problem of building urban flood defences has been discussed. It has been argued that in a completely egalitarian policy system there is no reason to expect a solution if all actors act as rational egoists. Legitimacy can be a reason for accepting a decree from 'above' even though for the personal benefit another option would be better. In this section an illustration will be given of the effects if an actor in a policy system perceives the system as illegitimate.

In Kampen a levee was in place that did not conform to the new safety standards of the Dutch river flood management valid in the 1990s. Thus a new levee had to be built. The responsible government agency for flood management in this case was the waterboard².

² The waterboard is a form of functional government in the Netherlands. They carry regional responsibility for water related issues, water management regarding the big rivers (Rhine and Meuse) and the sea defense excluded. They have a repre-

Designing a new levee was especially difficult where the river met the historic centre of Kampen, an area later referred to as Kampen-midden. The view on the houses along this quay was destined as a protected conservation area. Therefore the municipality pushed for a flood management policy that would keep this view intact. The plan that was designed, involved building a levee on the location of the historic city wall. This city wall has already long been out of use and runs through many privately owned shops, houses and gardens. The resistance to this idea from the owners of these properties was fierce. Even though the levee has been built after a process of 15 years, a survey held by a regional newspaper indicates that the legitimacy of the policy making system has suffered from this process.

Preceding this process of building a levee in Kampen, ran a process of building an inflatable flood-control dam downstream of Kampen. This dam was needed to protect the hinterland from flooding coming from the IJsselmeer.

In this section the legitimation process of one of the involved actors, a citizen living along the quay, will be discussed. Citizen L. was a highly involved citizen in the process, a former engineer and president of the citizen protest platform against this levee. He was a stark opponent of the final design. A survey research among a wider group of involved citizens, which was undertaken by a regional newspaper, showed that many citizens were dissatisfied with the new levee.(Goeij 2003)

L. bought his house early 1994. Then a few months later in December 1994 he attended an information evening for citizens organized by the water board to discuss the plans for building an inflatable flood-control dam further downstream. Because of the negative effects this inflatable flood-control dam would have for the citizens of Kampen, this dam was opposed by L. And he decided together with a number of other citizens to organize themselves in a platform organization and to sue the waterboard for increased risk. The Raad van State³ ordered the waterboard to take compensating and mitigation measures to decrease this risk, but the flood-control dam could continue.

Immediately hereafter the process was started for building a levee in Kampen. Alternatives could be brought in and from those alternatives the city wall alternative was chosen. L. and some other citizens thought this al-

sentative body called the “verenigde vergadering” which is chosen once every four years.

³ Raad van State is the highest judicial institution concerning administrative issues in the Netherlands. It also has an advisory function to the national government

ternative was ridiculous and decided to make a design another alternative. This alternative was designed by a Kampen inventor and further developed by an engineering firm. The waterboard studied this alternative in a committee, but concluded that the city wall alternative had their preference. A number of citizens decided to fight this decision and the implementation of this policy through judicial and other means. In the end the waterboard and citizens decided to install a committee that would search for a compromise between the citizens and the waterboard. Advised by this committee the waterboard compensated these citizens for devaluation of and damages to their houses. The waterboard organized his own citizen platform in which L. took a seat, because he did not want to be excluded from the process.

An interview with L. on how he had experienced the above mentioned events, reveal a gloomy picture. He stated: "I was always taught to believe that the government would take care of you. This belief has disappeared. This government is not my government."

He claims that any opposition against the plans of the waterboard was curtailed and ridiculed. Moreover even elected members of the waterboard that opposed the plans were silenced. From these statements it can be concluded that L. has doubts on the entrance legitimacy of the policy system. Remarks concerning the power relations in the system (power-legitimacy) concentrate on the lack of resources of citizens and the surplus of resources of the waterboard. Further the role of the province is mentioned as dubious, because of the pressure they put on the municipality to come to a design.

With regard to the attitude of the actors towards each other, L. is very cynical and dissatisfied with the treatment citizens received from the government agencies. He claims that the civil servants are protective of each others interests and see citizens only as nuisances. Public participation, according to L. was just a charade. The decision had been made upfront and could not be influenced. The deal the waterboard and the municipality had made to redesign the riverfront as part of the project was interpreted by L. as the waterboard bribing the municipality.

The policy outcome is very disputable in the eyes of L. He believes that the alternative plan was better, simpler, more efficient, cheaper and more just, because also the houses on the quay would be protected against flooding. He spent quite some time explaining that the reasons the waterboard gave for choosing the city wall alternative over his plan were not valid. Further L is convinced that the water board had a preference and that because of that they were not interested in other alternatives. L thinks that the real reason his plan was not accepted was that it was not invented by the waterboard.

Finally L is not happy about the procedures that have been followed in this process. He claims that the only reason the city wall alternative was chosen was that the plan the water board originally preferred was proven not effective and that the city wall alternative was the only remaining alternative. A second procedural fiasco was that the water board had said that they (the citizens living along the quay of Kampen) were already outside of the flood defense so they should not complain. However the decision that the quay was outside of the flood defense had not been made with the proper procedures. L was especially vexed because even though he could prove this, it would not hold sway in the policy process at hand.

In short L now disputes the legitimacy of the government, because of the workings of the urban flood management policy system that produced the levee in Kampen-midden. All above mentioned elements of the legitimation process are negatively evaluated by L. He is especially vexed by the attitude of the water board in this process and is cynical towards the motivation of the waterboard. Further L feels powerless in the system.

This negative perception on legitimacy has motivated L to obstructive behavior. He followed the judicial path twice to the end and he became very inflexible towards the building company hired to implement the urban flood management plan on his property. He did send the builders home for instance when the water board had not provided a notice in time that work on his house would commence. This attitude has thus led to a slowing down of the implementation of the levee.

6. Conclusion

In this paper it has been argued that urban flood management policies cannot and are not just judged on basis of their impact on individual actors in the system. Moreover mere negotiation on basis of benefits for the actors in the system does not provide a sufficient basis for solving this policy problem. Since the interests of the actors are so dispersed, a win-win-win situation is not often an option.

However actors are not only concerned with the personal benefits of policies, the policy system is also of importance. This policy system is evaluated on basis of the conformity of the system to certain pre-established norms that are important to the evaluating actor. The outcome of this evaluation is called legitimacy and it can provide an incentive to the actors in a policy system to cooperate. On the other hand a lack of legitimacy can seriously endanger the incentive to cooperate. Actors can even show obstructive behavior. This negative effect of lack of legitimacy can

be clearly seen in the case of L in Kampen. Through a succession of events in the policy process regarding the design of a levee in Kampen-Midden, L became more and more cynical towards the governing agencies, especially the water board. This led to obstructive non-cooperative behavior that prolonged the implementation of the policy. Moreover previous negative experiences with flood management policy processes had already made L suspicious of the flood management policy system.

Because of the negative effects a lack of legitimacy can have on the behavior of critical actors in the policy system, flood managers should know how to design their policy processes in such a way that legitimacy is sustained or increased. To be able to manage legitimacy however it should first be understood how legitimacy develops and how it is broken down.

Citizen L is used as an illustration for the problem of legitimacy in urban flood management. This problem will be further the subject of further research. The follow-up research will consist of a combination of survey and case study research. The extent of the problem will be assessed, possible causes will be studied and from this study recommendations for management will be given.

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