# CIVIL SOCIETY ENGAGEMENT WITH LAND RIGHTS ADVOCACY IN KENYA: WHAT ROLES TO PLAY?

## RESEARCH REPORT

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# Contents

# 1   Executive Summary

## 1.1   Questions on D&D Theory of Change and underlying assumptions

Our study gathered evidence on the set of assumptions in the D&D Theory of Change that link 1) political roles, 2) advocacy strategies, 3) sources of legitimacy, 4) organisational forms, and 5) organizational capacities. The implicit idea is that these are systematically linked, such that different configurations (or distinct 'packages') of these five elements can be distinguished. Hence, ideally, a clear typology of advocacy CSOs emerges. Different advocacy contexts -or different phases of the advocacy process in a given context- then call for different types of CSO to be effective. Following this logic, a grounded context analysis should be able to guide decisions on what type of CSO (or what coalition of CSOs) to target for D&D support. One of the policy questions put forward in the Assumptions Call document mimics this logic quite closely: "What mix of political roles/strategies is needed in what context?". Whether this question in fact translates to "what (mix of) CSOs (is) are needed in what context" requires that CSOs (or its supporters) recognize that roles, strategies, legitimacy, identity, and capacity tend to be mutually attuned in well-performing advocacy CSOs. Put differently, the question is whether the empirical evidence underwrites the idea of internally consistent 'packages' of choices and characteristics. The short answer to this question for the case of land rights advocacy in Kenya is 'no', but the upcoming subsections that summarize the core findings from the field (1.4–1.6) will provide a more nuanced answer, including important qualifications. The recommendations (Section 2) and analytical framework (Section 3) draw out the policy and theoretical implications, respectively, of the main finding that 'fixed' configurations prove elusive.

In the course of the research, some elements have gained or lost prominence compared to our original proposal and/or the literature review, not in the least because of the animated interactions with policymakers, practitioners, and scholars during the various INCLUDE meet-ups. Concerning political roles, the critical inquiry that we proposed into the sharp juxtaposition of service delivery and advocacy that, in our interpretation, was included in the D&D ToC, has been followed up in less detail than anticipated. The main reason is that our D&D partner is strongly advocacy-oriented and the areas in which ActionAid still has service delivery components often did not match our case locations, which precludes a full appreciation of potential complementarities in these roles. Also, we discovered that it is more interesting to consider service delivery as a potential counterstrategy performed by companies in the form of corporate social responsibility (CSR). Hence, service delivery entered through the 'back door' in a different guise. By contrast, CSO legitimacy came to occupy a more central place in the research. Given its multiple dimensions and divergent social constructions by different stakeholders, it proved a useful concept to flesh out in more detail. Notwithstanding these modest shifts in research focus, we -by and large- stuck to the set of (sub)questions that were formulated in the literature review, and are included below for reference.

| Q1 | How, when and why do Kenyan CSOs working on land rights, individually or in coalitions, choose strategically between cooperative or confrontational roles, strategies and tactics? |
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| Q1.1 | To what extent do they make conscious decisions on roles, strategies and tactics based on the perceived impact on various stakeholders? |
| Q1.2 | Given the possibility of conflicting perspectives of legitimacy according to stakeholders (private sector, constituencies and government), how do they weigh the importance of legitimacy towards various stakeholders? |
| Q1.3 | What are the conditions and constraints influencing these decisions? |
| Q2 | How does the nature of the advocacy target (government, private sector or other) affect the feasibility and effectiveness of the chosen roles, strategies and tactics as perceived by the CSOs? |
| Q2.1 | To what extent do CSOs perceive that different advocacy targets require different CSO approaches? |
| Q2.2 | Under what circumstances are these approaches combined within a single organisation, and when are they strategically divided between CSOs working in a coalition or network, or simply working on similar issues? |

| Q3 | How do Kenyan CSOs working on land rights seek to acquire, maintain and restore legitimacy in the eyes of specific stakeholders (government, private sector, local communities) when navigating between these different roles, strategies and tactics? |
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| Q3.1 | How do CSOs and selective stakeholders (government, private sector, communities) perceive the relationship between a CSO's chosen strategies and its (normative and performance) legitimacy? |
| Q3.2 | To what extent do they perceive a tension between insider/collaborative strategies and their role as independent representatives of marginalised groups? |
| Q3.3 | To what extent do they perceive a tension between outsider/confrontational strategies and their ability to operate as legitimate partners for dialogue with the state and private sector? |
| Q4 | What are the implications of our findings for the ToC assumptions on role differentiation within and between CSOs? |

## 1.2    Methodological justification

Between May and November 2018 and April to June 2019, three researchers conducted fieldwork on a total of nine cases (see Table 1 below for an overview and Annex 1 for short descriptions of each case). To arrive at the case selection, we first conducted a scoping exercise to identify a broad set of large-scale land investments (henceforth LSLI) in Kenya. Subsequently, we short-listed cases during a one-day workshop, guided by ActionAid expertise. The selected cases embody diversity in terms of regional spread (Coast, Rift Valley, Central, and Eastern region), LSLI type (mining, agriculture, wildlife conservancy, and bioenergy), and the degree of intensity of CSO-business interaction. We also secured variation in the extent to which civil society involved in a case is supported by the D&D framework. Five cases feature strong D&D support, while in two other cases some link to D&D funding could be traced. The remaining two cases are not linked to D&D at all, and thus serve as points of reference, even though we did not take an explicit comparative approach. Finally, we ensured to include cases that are supported by a CSO lobby campaign at the international level, either case-specific (see case #9) or sector-specific (e.g. 'deCOALonize' campaign in relation to case #1). Local CSOs formed the starting point in each research location. In the strong D&D cases, we gained access primarily through local ActionAid partners; in four locations we worked through other local organisations, one of which received periodic assistance from SOMO, another Dutch partner in the Fair, Green and Global Alliance (FGG). Although these organisations served as an entry point, we also conducted independent research activities with other stakeholders that emerged in each setting.

For the fieldwork we predominantly employed a mix of qualitative methods. Participant observation was conducted in CSO offices, during CSO training activities in local communities, during donor visits in the field, and at public forums and events in which the CSOs participated along with other stakeholders. These included a hearing of the National Land Commission in November 2018, and a large multi-stakeholder forum on extractives in Nairobi in September 2018. In addition, in-depth key informant interviews were conducted with individual CSO staff, community members and local government officials. On two occasions, focus group discussions were conducted with a group of CSO programme staff. Representatives of the private sector were interviewed in a number of cases. In one case, participant observation took place at the office and field activities of a Western company involved in extractives. Complementary to the qualitative methods, a survey on community perceptions towards CSO legitimacy was administered in the period May-June 2019 to more than 200 households across two (coastal) areas affected by LSLI. The analysis of these quantitative results is currently in progress. This report includes some general impressions obtained from the survey exercise. More detailed results will be reported in subsequent project outputs, particularly in relation to the subjective assessments of communities on the visibility, sustainability, and relevance of CSO support.

In addition to the research activities conducted in the respective field sites, expert interviews were conducted with donor and CSO representatives in Nairobi, Mombasa and Nakuru. We also discussed our findings with various academics and practitioners in the Netherlands, including a presentation at the office of ActionAid Netherlands in March 2019. In May 2019, a large validation meeting was held in Nairobi in which CSO stakeholders (local as well as Nairobi-based) discussed and elaborated on the preliminary findings and recommendations. These comments have been incorporated into this document.

Table 1: Overview of LSLI cases included in field study

| | County (location) | Region | D&D support | LSLI type | Status | Main investor(s) | International CSO lobby | CSO-business interaction Frequency & Type |
|---|---|---|---|---|---|---|---|---|
| 1 | Kitui (Mui) | Eastern | Y | Coal mining | Emerging | Chinese-Kenyan company | Y | None (*company incognito*) |
| 2 | Kiambu & Muranga | Central | Y/N* | Agriculture | Ongoing | British-Kenyan company | Y | Occasional; dissent |
| 3 | Taita Taveta | Coast | Y | Iron ore mining; agriculture (sisal); conservancy | Ongoing | Indian company; Kenyan plantation owners | N | Occasional; dialogue |
| 4 | Baringo (Tugen Hills) | Rift Valley | N | Conservancy | Ongoing | Kenyan government (Kenya Wildlife Service) | N | Occasional; some dialogue |
| 5 | Baringo (Kerio Valley) | Rift Valley | Y/N** | Oil exploration; conservancy | Emerging | Irish/British-Kenyan | N | Occasional; some dialogue |
| 6 | Nakuru (Lake Naivasha) | Rift Valley | N | Geothermal energy | Ongoing | Kenyan company, (partly government-owned) | Y | Occasional; dialogue in multi-stakeholder forums only |
| 7 | Kilifi (Magarini) | Coast | Y | Salt mining | Ongoing | Indian-Kenyan companies | N | None; dissent |
| 8 | Kwale | Coast | N | Titanium mining | Ongoing | Australian company (previously Canadian company) | N | Frequent; dialogue + dissent |
| 9 | Kilifi (Dakatcha) | Coast | Y | Biofuel | Stopped | Italian company | Y | Occasional; dissent (harassments of CSOs) |

* No ActionAid involvement, but periodic funding for one of the local CSOs from SOMO (D&D partner)

** ActionAid has only recently established contact with local CSOs on this case; more substantive funding might be forthcoming

Finally, three Master thesis projects (by Radboud students) have been carried out within this theme. One concerned the issue of (perceived) legitimacy of a Nairobi-based international CSO that does not take part in D&D. The other two focussed on the lobby of CSO coalitions for sustainable biofuel policies targeting the Dutch government and the EU (related to case #9). Hence, the latter zoomed in on the transnational part of the aid chain.

In the remainder of the report, findings will be linked to particular cases where possible. This evidencing is done through case number indications at the end of a claim [in square brackets], which correspond to case numbers in Table 1 and Annex 1.

## 1.3    Context findings: land rights advocacy while civic space is in flux

Land governance is a highly emotive and politicized issue in Kenya. The stakes are high, as land rights relate to livelihoods, especially for the poorer section of the population, to cultural, spiritual and historical attachments to specific locations and landscapes, as well as to significant investments on the business side. This research project focused primarily on the role of CSOs in mitigating the impact on local communities of large-scale land acquisitions intended for extraction of natural resources, other commercial uses, or the creation of conservancies, although intra- and inter-communal land disputes were also encountered. Several of these (prospective or actual) large-scale projects are initiated by, or conducted in partnership with, powerful political and economic actors at the regional, national or international level. As a result, community members whose livelihoods are affected by large-scale land acquisitions experience power imbalances and feel threatened in their livelihoods without access to effective remedy. Even the remote threat of extraction, displacement and relocation can cause disruption of livelihoods and give rise to inter- and intra-communal conflict.

While the land laws that are in place meet relatively high international standards, their implementation at the local level is often deficient. Although a new legal framework since 2010 in principle allows for public participation and community consultation, impediments in implementation and interpretation tend to undermine genuine community participation, resulting in 'token' consultation. Moreover, historic land injustices are not adequately addressed in existing frameworks.

The civil society sector dealing with land rights in Kenya is generally vibrant, although some regions are better served than others, due to historical patterns, political developments, or donor priorities.[1] A division of labour can be observed between advocacy organizations doing strategic work influencing political practices and law making on the national and international levels, and those doing fact finding, awareness raising and advocacy work at the county or village levels. National CSOs, for example, played a significant advisory role in the drafting of the new Constitution (which also called for the creation of a National Land Commission), the Mining Act, and a number of land laws and regulations, but remained dependent on local CSOs for detailed input from, and access to, local communities.

We encountered all kinds of NGOs, CBOs and self-help groups, varying widely in organizational form and level of capacity. The CSOs at the national level we refer to as NGOs. They mostly consist of highly educated, professionalized staff and are headquartered in or around Nairobi. Yet some of them have constituencies in local areas who would identify themselves as 'members' – though formally many of these NGOs are not membership-based. At the local level, we met CSOs that operated from the regional (i.e. county) capital, and had professional offices and staff with activist track records. While not completely embedded at the grassroots, these organizations were frequently able to develop close relations on the ground. Some of those had external donor funding, paid staff and proper office space. At the regional level we sometimes encountered one-man (mostly men were involved) organizations without consistent funding. We also, however, ran into local CSOs that originated from local self-help groups and had professionalized after (inter)national and regional NGOs had started to fund them. These CSOs were, in fact, hybrids of an NGO, a social movement and a CBO. This diversity reflects the rich palette of Kenyan civil society.

In the absence of effective protection of community rights by the government, community members that have been interacting with CSOs often place great hope in them as actors that could (empower them to) solve their land challenges. Nevertheless, community members and CSO staff point to the government as the ultimately responsible duty bearer for protecting human rights, particularly under

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[1] Historical patterns include the prevalence of land conflicts; the Kenyan Truth, Justice and Reconciliation Commission, for example, found that coastal communities had been facing the most severe and protracted land injustices. Yet, non-land related factors such as a history of postelection violence also determined the focus of CSOs.

the 2010 Constitution. Some (particularly Western) companies with a visible presence on the ground are also subject to community demands, especially since the establishment of the new Mining Act in 2016, yet companies feel that some of these demands should be directed to the government instead. Companies may be concerned about possible reputational damage in the communities they operate in (e.g. as a result of (I)NGO campaigns), although some are more sensitive to this reputational risk than others.

Despite general improvements regarding the position of CSOs in Kenya under the new Constitution, state-civil society relations are fraught by the delayed implementation of the Public Benefit Organisations Act (formally adopted in 2013), which some CSO representatives suspect is an intentional governmental strategy. Meanwhile, CSOs and community members often remain dependent on individual goodwill of -and personal contacts with- duty bearers and power holders, which moreover may differ from one level to the other (e.g. local, county and national level) and may not be durable over time. A functioning legal framework governing civil society–government relations with adequate complaints provisions and procedures is therefore seen as preferable for the protection of human rights in order to avoid arbitrariness. Therefore, CSOs continue to call for the implementation of fair CSO legislation, even if favours are already granted on a personal basis. However, new legislative steps are not necessarily pointing in this direction; at the time of writing, for example, a Public Order (Amendment) Bill is being discussed in parliament, which would hold organisers of public protests accountable for any loss of or damage to property, life or earnings inflicted by participants, a proposal that CSOs feel could easily be abused to restrain demonstrations.

The high political and economic stakes related to land investments set land rights apart from other human rights advocacy, where CSO, political and business interests may be closer aligned, or at least may not be as opposing as in land rights cases. In the case of large-scale investments, political actors are believed to be often closely connected to, or partnering with, business actors, which adds to community distrust. Moreover, government representatives and business actors occasionally threaten civil society actors with court cases, deregistration, intimidation and violence, especially when influential power holders find their interests at risk. Alternatively, they may seek to co-opt CSO staff, community members or their lawyers. Even if no direct threats are issued, government representatives may accuse community members of interfering with the development of the country, which serves to delegitimise their claims. A similar effect can be observed from the label 'squatters' applied to community members who, often through external factors, cannot substantiate their land claims with legal documents. The expertise and resources required to counter legal and physical threats to community members and CSO staff take a significant toll on the capacity of the CSO sector as a whole, and on those engaged in land rights advocacy in particular.

## 1.4    Core findings I: CSO roles, strategies, and tactics

### 1.4.1 Roles

Based on our literature review and fieldwork, we make a different distinction between roles than outlined in the Theory of Change of Dialogue and Dissent. In our observation, the roles in the ToC are more inspired by a particular strand of literature, namely that about organizations promoting democracy, which is different from literature that is more inspired by political organization (more broadly) and development studies. The roles we will present in this report better reflect, in our opinion, the way national and local civil society organizations in our study perceive different roles. Therefore, we will not further reflect on the educational, communicative, representational and cooperative roles in this report. Not because we did not encounter these roles, but because we prefer a different theoretical distinction that more closely matches the debate and the practice in the field. Particularly, the distinction between representational and cooperative *roles* rather refers to different categories of 'strategies' in our view. Hence, these will be discussed in terms of cooperative and confrontational *strategies*.

We distinguish between the following roles that CSOs can play: a service delivery, educational (cf. ToC), advocacy, watchdog, and protective role. Service delivery refers to the direct delivery of material goods and services, such as seeds for agriculture or other input for income generating activities, school assistance, cash handouts, micro-finance, et cetera. The educational role encompasses the transfer of knowledge and skills to local communities, particularly in the field of human rights education and awareness raising. An advocacy role entails the direct activities of organizations to influence or change the decisions made by political and economic elites – either taking a confrontational or cooperative approach. In a watchdog role, CSOs typically monitor the behaviour of government and business through (research) reports or field visits. Finally, a protective

role serves to provide safe spaces and assistance to human rights defenders, a particular role that we did not find in the literature but which we identified as a separate CSO specialisation in the field.

We noticed that organizations combine several of the above described roles. Most land rights advocacy organizations combine advocacy with educational and watchdog activities. They impart civic education with the goal of empowering communities to fight for their rights, but they also engage in direct advocacy themselves. They also monitor activities of corporations through research reports and field visits, though in practice this proves more difficult to achieve because of a lack of technical funding. Combining service delivery and advocacy was rare (we will come back to this combination later), and the protective role was also left to more specialized organisations working on the protection of individual human rights activists, especially in the face of severe personal risks. Examples of personal risks include the suspicious deaths and the frequent legal and physical harassment of (land) rights activists and their lawyers, which in some cases caused them to flee or abandon their activities. Short-term arrests were also mentioned as a governmental strategy to intimidate activists or derail their resistance. These and other obstructive measures have been qualified by some CSO representatives as 'counter-strategies' by governmental and corporate actors in reaction to the watchdog roles taken on by advocacy CSOs.

We furthermore encountered regional, as well as some role specialization between national Nairobi-based CSOs and CSOs operating on the local level. While national advocacy CSOs took the lead in advocacy and policy advice towards the central government and liaised with lawyers and other technical experts, local CBOs were typically better equipped to engage community members in an educational role as well as in an advocacy role, as a consequence of their ability to establish relationships with stakeholders on the local level. In some cases these mutual strengths were constructively combined, e.g. when national level CSOs recruited lawyers to assist local communities whose needs were identified by CSOs on the local level.

Regarding service delivery, we encountered one example where the advocacy efforts of youths were supported with small income-generating projects, which not only helped them with livelihood support, but also enabled them to educate fellow community members on land rights.[2] The CSO indicated this combination was important in order to ensure sustainability of advocacy efforts even after funding would stop. In another example, an environmental NGO combined community forest conservation efforts with income generating activities in order to reduce the incentive for community members to chop forests for charcoal [#9]. However, in general, although some CSOs combine training with the provision of social or legal services at the local level, they do not usually focus on income generation or coordinate with the activities of service delivery organizations providing agricultural support, education or other practical services. Consequently, some of the training potential may be underutilized if livelihood concerns such as food security, job opportunities, literacy skills or transportation challenges are not addressed. Some advocacy CSOs have consciously moved away from service delivery in the form of alleviating direct needs, as they view this as a task of the government, and fear that it can foster dependency among communities. Others, however, emphasise the importance of addressing immediate needs in order to increase resilience and make any rights-based training and advocacy more sustainable.

### 1.4.2 Strategies and tactics

In our research we focused on strategies of local CSOs in specific case studies, and examined to what extent different kinds of strategies (especially, confrontational and cooperative strategies) could be combined in one organization or coalition. Strategies that we encountered in the field included civic education (which we regard as a strategy, as it serves to empower citizens who are supposed to then better defend their rights in relation to investors or government), petitions to companies and government, one-to-one meetings with government officials and company representatives, bilateral or multilateral dialogue, demonstrations, sit-ins, trainings for community members (e.g. to become paralegals), participative land mapping, land titling, participation in public forums, media mobilization, court cases, and commissioning or conducting technical research. Some unique resistance strategies that we encountered in relation to land, though they were endorsed rather than employed by CSOs, include the rebuilding of houses after destruction by investors, setting up permanent structures such as schools and dispensaries so as to avoid easy evictions, destruction of project structures, burning tractors, and chasing away police [#5; #7].

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[2] While service delivery in the narrow sense refers to alleviation of immediate needs, we also encountered other definitions in the field, where CSO representatives would include 'services' such as training activities or the provision of legal aid under service delivery.

We found that CSOs combine multiple strategies within an organization or coalition. They do this mostly in a planned manner, analysing the situation and then pinpointing different strategies. They adapt their strategies and courses of action according to what they believe is the most effective in a changing context. For example, a CSO could start with dialogue. If their advocacy targets would not listen, they could try petitions or demonstrations. If successful, dialogue could follow. If not successful, CSOs could start legal cases. While dialogue was usually tried first, some CSOs also indicated they would start with confrontational demonstrations in order to generate attention for their message. All CSO representatives we spoke to unanimously stated that one single strategy did not suffice: there was a range of strategies they would pick from. Some CSOs would employ different 'faces' to different stakeholders: while they could employ confrontational attitudes when in the field and doing demonstrations, they would apply a more cooperative attitude when in dialogue with government or business actors.

It was not always easy to categorize strategies in terms of cooperation or confrontation (cf. D&D ToC). For example, demonstrations, which would typically be regarded as confrontational, were also used as a way to attract attention in order to secure cooperation – not all CSOs therefore saw demonstrations as a confrontational activity. Nevertheless, broadly speaking, confrontation and cooperation are relevant labels, which roughly correspond to outsider and insider strategies, respectively, although these labels should be regarded as a continuum rather than a strict dichotomy.

Whether CSOs pursue confrontational or cooperative strategies or a combination of these depends on a number of factors. The attitude of the advocacy target and the CSOs' relationships to that advocacy target were decisive factors in the way the interplay of CSO strategies and counterstrategies of the advocacy targets played out. Regarding government-CSO relations, it is important to distinguish between different levels of government, as national government, county government, politicians and governmental institutions have very different roles to play. For instance, a CSO can have conflictual relations with national government representatives, while having warm relations with Members of the County Assembly (MCA), or vice versa.

CSOs and community members often felt dependent on individual goodwill of, and personal contacts with, duty bearers and power holders. CSOs stated that as long as government officials have the interest of the community at heart, they can very well cooperate with each other. In one example we encountered, community members and CSOs were assisted by a sympathising representative of the National Land Commission, although they stressed that such assistance could quickly wane if officials get transferred or called back by their superiors [#2]. In another case, a local government representative was perceived as being helpful to the community in advising them about compensation and informing them about their right to Free, Prior and Informed Consent (FPIC) [#8]. However, in other cases we observed a lack of responsiveness by governmental institutions, and sometimes conflicts of interest, when government representatives would play a direct role in evicting or pressurizing communities, even bringing in police forces. In those cases, more confrontational strategies are employed. The same applies to CSOs' relations with business. If CSOs feel that a company violently abused human rights, their strategy will be confrontational from the outset, as basic human rights are considered non-negotiable.

In these more conflict-oriented settings, CSOs would often refer to actions of business and government as 'counter-strategies'. For example, a counter-strategy of a company to crush resistance to evictions would be to compensate some willing community members who then would convince others to also leave the land. CSOs did not have adequate responses to these strategies other than asking the community members to 'stay strong', as they could not guarantee they could safeguard the land. Other 'counter-strategies' from government and/or business to legitimize their own operations were disputing historical narratives (such as the time and number of original land occupants), violence and intimidation, setting up 'proxy'-NGOs, issuing positive project assessment reports, blaming CSOs for political interference, and downplaying the severity of the situation.

When both parties accept that their mutual interests may not always converge, confrontation and cooperation can be combined. For example, a conference organized on extractives and human rights by a number of Kenyan CSOs brought together government and business actors as well as affected community members under the slogan 'dialogue and action'. In this platform, which is intended as an annual event, government and business representatives are confronted with problematic performance, but they are also facilitated in reaching out to CSO and community representatives. In one case we observed in the field, a company was in serious conflict with a CSO about a research report it had published, yet they were able to work together on certain CSR projects. Even while the company expected CSOs to be critical, a company representative voiced the wish to cooperate more

closely with CSOs on matters regarding land and resettlement [#8]. In the same case, a CSO representative who served in a liaison committee organized by the company indicated he would not hesitate to criticize the company. This 'inside' strategy was combined by the same CSO with 'outsider' strategies such as petition-writing and community mobilization. However, even when CSOs collaborate with business or other actors they are wary of role diffusion, and guard their independence to avoid undue influence on their agendas or activities, e.g. by discussing or rejecting 'suspicious' invitations for platforms or collaborations where they expect to have minimal influence or to be somehow co-opted.

Confrontational approaches by CSOs in some contexts make government and business actors reluctant to subsequently accept them in a dialogue setting; they might even regard them as enemies. In some cases, CSOs and community members were accused of being too vocal, too emotional, dismissive of governmental or corporate intentions, or pursuing financial gain. For example, one government official we interviewed did not understand why a CSO was using media strategies while they also had dialogue forums between government, companies and the CSO. The latter, however, countered that the dialogue forums were ineffective and therefore they had to use more confrontational strategies [#7]. Furthermore, there were sometimes challenges to pursue cooperative strategies with government alongside court cases. In some circumstances, we observed a division of labour within coalitions or informal collaborations, where for example one CSO would focus more on dialogue with government officials, while the other CSO would use more confrontational approaches such as court cases and media engagement [e.g. #7].

Multi-stakeholder platforms and committees are often set up with the aim of encouraging dialogue between different stakeholders. However, the extent to which CSOs considered these platforms suitable for genuine dialogue depended on the context. Platforms set up by the government often do not provide equal representation or concrete solutions for communities and CSOs, although they are being held up as genuine consultation efforts. We observed cases where CSOs did voice their concerns in these platforms, but their expectations were low as the platforms were not action-oriented, and served more as a way of exchanging information. There are other examples of more successful dialogue platforms where members had some decision-making influence. In one case we followed a CSO representative who served on a committee set up by a company. While the CSO representative acknowledged that this committee was not truly representative of the community, he nevertheless considered a seat in the committee useful, as it enabled the CSO to get information from the company which informed future strategic decisions. Moreover, this person used the seat in the committee to exercise influence over de company's decisions [#8].

In general, CSOs find it challenging to engage the government in genuine conversation, especially concerning situations on the ground. High-level public meetings on land rights were typically organized by the CSOs, who invited government representatives to participate. In several of such events we attended, government officials appeared unpredictable in terms of their time commitment, requested significant speaking time or financial allowances, or discredited speakers who came from communities or involved CSOs. Despite the consultative setting, this gave the impression of a one-way dialogue. Government presentations also tended to focus on the legal framework, while CSOs attempted to point out the practical challenges and focused on discussions with community members to find solutions. Community consultation meetings by government representatives in the field reportedly had a similar orchestrated, predominantly one-way character, where government officials seemed primarily interested in securing electoral support, e.g. through monetary hand-outs [#1]. Consequently, an enabling environment for generating genuine community consent is often felt to be absent. Another telling example concerns the NGO Coordination Board, which was set up to create an enabling environment for civil society, yet its previous director actively harassed critical NGOs, as confirmed by a current representative during an interview. However, we also had talks with government representatives that confided that they wanted to engage more with CSOs – though preferably in more informal settings, as they felt that CSOs could assist them in safeguarding community interests. It must be noted that the hands of lower-level government officials are also tied by bigger, powerful interests higher up in the bureaucracy, and good intentions by new officers may eventually be thwarted by higher-level bureaucrats.

The same applies, in general, to CSOs' relations with business. When companies are concerned about their reputation, they usually attempt to adhere to international standards such as Free, Prior and Informed Consent (FPIC). The multinational company we conducted research with also had extensive CSR projects, and was more open towards CSOs and more receptive to their demands. However, despite the open-door policy of this company, we did not observe very close relationships with CSOs. Relations were still thwarted by distrust, lack of communication, lack of shared interest, and conflicting expectations concerning each other's role [#8]. In other cases, we observed that CSOs

had difficulty engaging business in genuine dialogue. CSOs complained that companies would send low-level managers or intermediaries who could not make decisions, thus making any dialogue attempt fruitless. Dialogue was sometimes also regarded as a way for companies to delay the CSOs' or communities' goals. In cases where engagement with business actors appeared unfeasible or unproductive, CSOs would sometimes target international actors with more leverage, e.g. financial institutions such as the World Bank or African Development Bank in order to influence their benchmarks and thereby exert indirect pressure on companies active in the field [e.g. #1].

Thus, the attitudes of advocacy targets and their relations with CSOs influence the strategies that CSOs can adopt. Strategic decisions, therefore, should not be seen as being made without CSOs taking into account the context they are operating in. CSOs' strategic choices are also heavily influenced by their power relations with advocacy targets. Although dialogue may be preferable in terms of saving resources and relationships, the position of CSOs is often hampered by inequalities in terms of political power, financial resources, and access to information. There is a strong fear of CSO representatives and individual community members being co-opted, bribed, or deceived with false promises, which damages their trust relations with government and business actors and may divide communities. Many CSOs rely on court cases as a last resort, but these cases might be protracted and/or frustrated by power holders, who are in an advantageous financial position compared to CSOs and communities [e.g. #2]. Lack of information was also cited as a factor influencing the power dynamics. Some CSOs have resorted to specific laws and acts, such as the recent Access to Information Act, to obtain relevant information for the communities they work with.

Apart from the relations to advocacy targets, strategies were also influenced by the attitudes and preferences of the communities CSOs worked with. CSOs stated that their decision-making was based on communities' input (although, in practice, CSOs would typically take the lead in deciding the course of action). Combining confrontation and cooperation in their direct interaction with businesses was sometimes considered a challenge by CSOs, because of the suspicions that communities would develop when seeing CSO-staff together with company representatives. Indeed, in some of the case studies, we heard from several community members that they suspected the CSO having been 'bought', often as a result of CSOs' practice of obtaining information and subsequently engaging with the company without reporting back to the community. The fact that there is a certain tension, thus, between representing the community and cooperating with the advocacy target, lends some support to the ToC assumption that different roles require different forms of legitimacy. However, when the CSOs came back with concrete results after having engaged with business actors, this suspicion would normally be reduced.

Furthermore, strategies of CSOs are dependent upon the frameworks provided by donors. While priorities often overlap, for example, where support is provided for court cases, civic education and media engagement, there is still little flexibility to respond to ad-hoc dynamics on the ground. For example, all CSOs we met had difficulty accessing funding for technical research, while this is highly relevant in land conflicts to support communities' complaints about environmental impact of investors' activities, or to have land surveyed. When there is no independent evidence, the government or company does not take these complaints seriously, while government- or company-supported studies are distrusted by CSOs and community members. In one instance, a CSO wanted to get a mediator on board in order to facilitate dialogue between the company and the CSO, yet there was no funding available [#7]. National CSO representatives further mentioned that although some donor programmes allow flexible allocation of seed funding, local CSOs are 'conditioned' on existing donor frameworks to such an extent that they do not consider these opportunities in their proposals or activity reports.

On the other hand, we clearly saw that organizations receiving D&D funding were much better equipped in terms of staff, office space and materials, which seem preconditions for the basic functioning of an organization. The long-term funding also allowed for long term plans, such that CSOs were able to gradually and sustainably empower communities and were granted the flexibility to experiment with different strategies over time. Not only does this funding enable practical activities, it also enhances confidence and a sense of stability among staff, characteristics which are helpful when engaging with powerful elites. We found that D&D funding was strongly instrumental in promoting civic education in the area of women's land rights, an important focus area of ActionAid Kenya. As such, we could observe that the D&D-supported organizations paid considerable attention to women and were more gender inclusive, with a substantial number of active women stating that they had benefitted from empowerment efforts by these organizations, in contrast to non-D&D cases where participation tended to follow more traditional gender patterns, although we should be cautious in assuming causality in the face of potential cross-regional variation in gender norms.

Lastly, strategies of CSOs not only depend on contextual or relational factors; the character, goal and mission of the CSO also inspires the course of action. If the goal of the CSO is to stop an investment altogether [#1;#9], then there is less room for dialogue with business or government actors who wish to pursue the investment, and media mobilization, demonstrations and petitions or court cases are the main strategies employed. However, when the goal is not to stop the investment, but to stimulate the company to respect human rights, mitigate environmental impact and/or offer better compensation for relocation, then there is room for more dialogue-oriented approaches.

Whether CSOs target government or business depends on which actor is identified as responsible, but also, which actor is considered more open to dialogue or pressure. In the case of a more open multinational [#8], CSOs tended to target the company actors as they are considered more responsive towards demands, whereas in other cases, CSOs targeted government authorities to mitigate the negative impact of business actors. Struggles became more complex when CSOs felt they had to battle the very actors that are meant to support them. Complaints were expressed regarding the functioning, receptiveness and objectivity of the staff and leadership of several government institutes responsible for monitoring land rights, including the National Environment Management Authority (NEMA, overseeing Environmental Impact Assessments), the Kenya National Commission on Human Rights (KNCHR), and the National Land Commission (NLC), although these bodies also proved valuable in certain instances. While the existence of these institutions was considered important, some of the individuals within these institutions were not trusted. In one of our field locations, the National Land Commission issued a report which was perceived by CSOs as aiding the investors and giving insufficient information, raising suspicions about irregularities in the research [#7]. Suspicions were also raised in relation to licenses and certifications issued to companies. In one case we observed, an intervention by a Western NGO was required to expose the corrupt practices of Kenyan auditors involved in an international agricultural certification process, upon which the certificate was withdrawn [#2]. These are all factors that influence the strategic decisions by CSOs made in each particular situation.

## 1.5    Core findings II: CSO legitimacy and community representation

The legitimacy of CSOs is actor-, context- and time-specific, and therefore cannot be determined authoritatively for one organisation by one stakeholder across multiple settings. In our literature review and in a forthcoming article we identify various sources of CSO legitimacy, ranging from regulatory requirements to moral authority, impact, familiarity, and legitimacy derived from an organisation's leadership, partners, or donors. During our fieldwork, it was confirmed that different stakeholders prioritised different sources of CSO legitimacy. Valued sources of legitimacy across the board include content-specific knowledge, transparency, and the ability to achieve and demonstrate tangible results. For field-based organizations, other sources of legitimacy were long-term engagement in the field, embeddedness in the community and the active involvement of community members, and the ethno-religious background of individual representatives. Government and private actors flagged a cooperative attitude, moderate tone of voice, evidence- and research-based advocacy, and representation of broad community interests as important CSO characteristics. For donors, online visibility and diligent management and reporting practices were additional sources of CSO legitimacy. In one case study where we followed stakeholders at various levels, the multiple sources of legitimacy became particularly apparent. A national group of environmental activists that had taken up a local community campaign was praised extensively by donor representatives for their detailed knowledge, access to policy makers, and online activities. Among community members, however, they were perceived as Nairobi-based activists who hardly engaged with locals and failed to report back on their activities conducted on behalf of the community (which in themselves were appreciated on the local level). When a demonstration was organised in Nairobi, only a handful of local activists could attend due to high transportation costs, and community members complained that no follow-up information was provided. Conversely, the local CSO which acted as an intermediary had no visible online presence, but had a better reputation in the field for its extensive involvement and repeated community visits [#1].

Most government and business actors acknowledge the need for CSOs to advocate for community interests and demonstrate dissent. However, CSOs were also accused of incitement, and of presenting false or biased information. Thus, CSOs are viewed both as important voices and as trouble makers, depending on the personal views of the actors and the issue at hand. Although CSOs typically prioritised legitimacy towards local communities as their primary objective, they also emphasised the importance of adhering to regulatory requirements, as rights-based organisations are more likely to have their legitimacy challenged by power holders who may search for any

opportunity to obstruct them. Consequently, most CSOs indicated that they were open to constructive criticism, as long as such criticism was based on facts, and not on false accusations that aim to discredit them and disrupt their work.

CSOs were eager to state that they do not work for, but with the communities that they serve – meaning that activities and decisions are ideally produced by communities themselves. This stance not only served to give communities ownership of their 'struggle', but also to avoid de-legitimization attempts by government or business actors. In practice, we indeed observed that some community members were involved in taking initiative for certain actions, such as requesting assistance or organising demonstrations, yet it was common for professional CSOs to take the lead in activities that require particular expertise, such as drafting petitions, mobilizing media and initiating court cases. However, CSOs indicated that they were working on capacity building so as to have communities take the lead in these activities too. Economic and educational marginalisation, as well as remote locations with poor road networks, formed particular obstacles with regard to broad and active community participation.

Civic education is an important first step for participation in CSO activities, yet it is a highly complex task. While those community members that are intensively and repeatedly trained show considerable knowledge of land laws and institutions for recourse, a survey that was conducted in Kilifi and Kwale revealed that CSOs had difficulty reaching broad sections of the community. Many community members had not heard of the CSOs that were active in their area, or indicated they had never participated in any meeting – a finding that cuts across generations and gender. This reality does not align with the CSOs' claims to speak on behalf of the whole community, despite the fact that there might be significant community involvement in their decision making.

CSOs usually 'outsource' mobilization for community meetings to local community leaders. While some community members claimed that all community members are normally mobilized, others complained that these community leaders only mobilized their 'own people', and that some community meetings had a closed character [e.g. #7; #8]. Some CSOs relied on Training-of-Trainers (TOT) methods to spread the message [#7], but this did not always happen. Some stated that community members would not show up for meetings, others stated that they did not have the time or resources to distribute information to other community members, due to lacking transportation or communication options [e.g. #1]. Our general impression was that CSOs worked with a certain selection of active community members, but the educational efforts meant to empower citizens did not trickle down to the community as a whole. While CSOs cannot be expected to train all community members equally, selecting a few leaders for trainings and exposure visits, especially far away in Nairobi or in other countries, can raise eyebrows with other community members, especially if they perceive subsequent reporting activities as insufficient. Moreover, civic education efforts were sometimes regarded as useless if there was no funding to follow up on the lessons, e.g. to obtain title deeds or for transportation to administration offices.

As communities consist of a plurality of actors with different perspectives and interests, no single CSO can be expected to represent all community members. Leadership positions can also be misused to further the leaders' own interests ('elite capture') and as such the whole CSO might lose support. It is therefore a challenge for CSOs to work closely with community members in complex settings around land, as CSOs might find themselves entangled in local battles over leadership. Moreover, consensus among all community members is unlikely to be achieved. For example, community members who stand to gain from an investment or political involvement may benefit from interactions with business actors and local administrators, although some may benefit more than others. These intra-community dynamics sometimes appear to be lost in CSO attempts to mobilize communities against powerful investors through campaigns, when, for strategic reasons, community differences are not always acknowledged. Yet, as CSOs countered, it is the companies that employ 'divide and rule' strategies, thereby 'artificially dividing communities'. CSOs also face an uphill battle to win over the entire community in cases where a company offers tangible goods and services to villagers, often under the banner of corporate social responsibility. Offering scholarships seems a particularly effective strategy [#6], by which a company in fact takes on the role of service provider, thereby undermining the 'impact' legitimacy of CSOs. In such cases, CSOs considered building a 'critical mass' of villagers to be a more realistic goal when mobilizing movements against unwanted land investments than striving for full coverage. Moreover, it was emphasised that CSOs base their legitimacy by representing communities primarily on the principle of inclusiveness of minority voices, rather than representation of the largest number of community members. CSOs consider it their explicit goal to uncover, support and represent 'hidden voices' that may otherwise not be heard within communities, e.g. those of marginalised women and the physically challenged. This implies that their voices and concerns weigh stronger in the position taken by many CSOs than the voices of

already powerful community members, e.g. those with sizeable property or other economic or political interests.

Relying on multiple sources of legitimacy can pose challenges to CSOs, but these need not necessarily be traded off against each other. For example, in one case where a CSO had originated from local self-help groups and can be regarded as a grassroots social movement, we observed a tension between professionalization (including upward accountability towards donors) and local legitimacy (and downward accountability). The once so lively self-help groups that used to deploy non-institutional acts of resistance such as road blocks, burning of equipment, attacking security guards and staging occupations, had come to rely on the more professional expertise of the staff when a CSO was founded that advocated the use of law instead of the more radical resistance strategies. Over the years, however, the self-help groups became 'dormant' as the professionalized staff had taken over most of the activities. Even though communities appreciated the CSO and the funding it came with, because it enabled them to attract better lawyers and set up more coordinated and professionalized lobby efforts, some former leaders complained that the young staff had taken over and did not include them anymore in decision-making, even though the older generations had founded the CSO. It must be emphasized that the fizzling out of resistance had multiple causes, most notably a successful crushing of resistance by the private sector and companies due to arrests and forced evictions. Without funding, therefore, the activism could as well have died down completely. Yet, the gap between the organization and the grassroots was a recurring theme during community discussions in this specific case, and the staff recognized that inasmuch as funding had helped in continuing 'the struggle', it had killed some of the original spirit. Although the CSO was still considered a legitimate representative of the community by national CSOs, government actors and the community itself, it struggled to maintain its local legitimacy while at the same time keeping donors satisfied. A reconsideration of its own role, a plan to revive the self-help groups, to have more meetings at the local level and to re-transfer ownership of the activism towards the self-help groups, were some of the strategies that the organization pursued in order to restore its legitimacy in the eyes of local community members [#7]. We would therefore argue that the trade-off between professionalization and local embeddedness is not a given, but a process with uncertain outcomes.

Despite claims to represent broad community interests, CSOs often experience difficulties reaching minority groups such as youth, despite the fact that youth make up the majority of the population in Kenya, and are particularly affected by decisions around land and corporate investment. The marginalized position of youth may inadvertently contribute to economic stagnation and potential future conflicts. Some land rights campaigns are specifically directed at women, as they are seen as a historically marginalized group. Women also tend to feature as the primary opponents of extractive projects in these campaigns, since they are presumed to be concerned with the environmental and social impact, rather than focus on potential financial or employment benefits. We observed a clear effect of this focus on women among communities that had been targeted by such campaigns, as the women we met in those areas, mostly during CSO activities, were better informed and more vocal than in communities where no such empowerment programme had been rolled out. Some were even able to represent their communities in (inter)national platforms.

However, some respondents stressed that CSO interventions must be culturally sensitive and preserve harmony, since a sole focus on female community members can lead to new divisions within the community and within households. Some female community members conveyed how domestic violence had increased as they became more vocal within their families ('male backlash'), and we observed a general absence of programmes that incorporated the (changing) roles of men, as male community members were mobilized primarily to 'champion' women's rights. One of the CSOs we studied confirmed that their focus on women had yielded important results, but that it was time to include male community members, so that they do not feel left behind [#1]. In another location, our observation that many women that had been trained were now divorced, was confirmed by the CSO [#7]. At another level, we encountered more male than female spokespersons in a national meeting we organised to discuss land rights advocacy; when we conveyed this observation to some of the participants, we were advised that equal representation should be requested explicitly. In cases when the focus on women's rights was less evident, community members indicated that women empowerment was urgently needed [#6, #8]. In previous resettlement schemes, men had run away with all the money from the compensation, leaving their wives behind. Moreover, fieldwork in various locations revealed that, due to historical patterns, few title deeds or sales agreements carry the name of women, indicating the need to continue focusing on women's land rights without ignoring the larger effects at the domestic and community level. These examples indicate the importance of making even gender policies context-specific.

## 1.6    Core findings III: CSO mutual relationships and coalition building

International coalition building and global partnerships were greatly valued by the CSOs we interacted with. In one case where a jatropha plantation was proposed [#9], international advocacy at the EU-level was combined with advocacy from the ground. At the international level, research was conducted into the harmful effects and non-viability of jatropha, journalists were mobilized, and even farmers from France wrote petitions to the Kenyan Minister of Lands, but, most importantly, the EU was lobbied to reduce the target for crop-based biofuels in its Energy Directive. This lobby was enacted by a broad coalition of both environmental and development NGOs in the Netherlands, which not only tried to influence EU policy directly, but also indirectly by pressurizing the Dutch government to demand policy change in Brussels. A preliminary analysis of this advocacy campaign suggests that it has indeed been instrumental in achieving the desired policy change embodied in the new EU Energy Directive, as the policy statements from The Hague and Brussels respond to the strategic 'frames' used in the NGO campaign. At the local level, demonstrations were organized, media was mobilized and the Minister was lobbied to visit the area. It was felt that both processes had strengthened each other and led to the cancellation of the targeted investment. In another case concerning an investor with international roots, the CSO is working with a Dutch NGO to explore international linkages, such as certification schemes, international financial institutions, and Western consumers to pressure the company [#2]. However, while promising, it must be noted that these international linkages are not always accessible. When companies do not export to overseas markets, international consumers cannot be targeted. Moreover, some products (such as food) are easier for mobilizing international consumers than raw materials (such as titanium). Moreover, consumers in some countries may be more likely to react to negative publicity than consumers in other countries.

Coalitions built on the national or local level can benefit from pooling of resources, sharing of knowledge and best practices, and providing mutual encouragement and support. Cooperation and coalition building was often mentioned as a means of strategizing, especially for purposes of spreading individual risks. Working alone means being an easy target, while working in coalition offers a form of protection. This was particularly the case for confrontational advocacy and legal action, where CSOs indicated that mentioning a large number of complainants reduced individual risks, as opponents could not easily go after a large group of people. However, an opposite effect was also observed, as reputational damage for one coalition member can taint the reputation of other members in the coalition. For example, where the legitimacy of a coalition member may be challenged due to procedural irregularities or strong criticism, power holders may attempt to discredit the coalition as a whole. Moreover, we encountered several examples where committees of community representatives were hand-picked by local politicians, or where government-organised CSOs (GONGOs) competed with independent organisations for membership. This also makes coalition building difficult.

In some cases we observed a fair extent of equality between the local CSO and the national CSO that provided the funding. Local CSOs saw their opportunities increase and stated that the national CSOs had helped them grow. Typically, the national CSO would not interfere with the activities of the local CSO on the ground, yet they would advise them from a distance, make regular visits for capacity building purposes, and remained updated on the situation on the ground. Apart from capacity building, we found examples where local CBOs that had linkages to the grassroots connected with regional or national NGOs for legal cases. The national or regional NGO would provide the expertise and link up with lawyers, while the local CBOs would feed the NGO with grassroots knowledge and community witnesses [e.g. #2; #7].

However, we also observed cases where the larger CSOs could bypass actors with expertise and networks on the local level, by entering the field without consulting or informing them [e.g. #1;#8]. Conversely, some community members distrusted NGO workers entering their area due to bad experiences with 'outsiders' in the past. In the case of land disputes, land speculators tend to come in under false pretences to benefit from prior knowledge on prospective investments. We heard of various examples where Nairobi-based CSOs were distrusted or even chased away as a result [e.g. #1]. Consequently, CSOs either had to regain local legitimacy, or in some instances transfer their activities to partner organisations with more legitimacy with those particular communities. In other cases, local CBOs feel that Nairobi-based CSOs rely on local CBOs for the first mobilization and contact with community members, yet refrain from transferring skills or resources to these local CBOs. When local CBOs want to apply for funds, they encounter stringent conditions which they cannot meet because of their small size. Nairobi-based CSOs are also critiqued for having meetings in expensive hotels, or entering and leaving communities without following up, which could damage their legitimacy on the local level as community members do not experience a genuine, prolonged

commitment to their cause. Nairobi-based CSOs, however, stressed the importance of strategic country-level advocacy, and of looking beyond local grievances to identify patterns and successful strategies from other locations.

Whether or not national CSOs are inclined to work together also depends on the strength and unity of local civil society. In one case, we found a highly fragmented field that was divided in two disputing factions, where mutual accusations were made about political interference, personal interests, or lack of genuine field-based projects. Each faction had several dozens of self-help groups and grassroots CBOs as support base, some of which were accused of being 'briefcase' CBOs, making the CBO field highly unclear. Faith-based organizations were brought in to try to reconcile the two factions [#8]. In cases where the CSO network is strong, however, it is easier for national level organizations to channel their activities through such networks.

CSOs emphasised that coalitions are most viable when the members share a common theory of change, when mutual trust has been developed and when internal power dynamics have been dealt with. They also indicated that a coalition cannot be forced from above, and that CSO coalitions are and should be flexible and loosely structured. CSOs would unite in a coalition when they feel they have a stake, but if the context changes, they could retract. For example, at the national level, there was a strong coalition building surrounding the new Constitution, yet this coalition fell apart after the Constitution was in place. A similar dynamic occurred in the case of a jatropha investment that was halted by a coalition. After the coalition stopped its work following this initial success, the area faced new threats. Because the coalition was no longer there, the only remaining CSO had difficulty to safeguard the land [#9]. This shows that even after initial successes of campaigns and coalitions, there is a need for follow-up.

## 2    Policy recommendations

- Advocacy CSOs are essential to create a more equal level playing field for community members, who are often entangled in a 'David and Goliath' struggle with investors. Although support for dissent may appear provocative, if done responsibly it can prevent a lot of future damage, including further losses of livelihood as a result of inadequate attention to community needs and the emergence of conflict as a result of displacement. Unlike dialogue, active support for dissent is not easily found among faith-based or government-sponsored initiatives, and communities have more trust in externally funded agencies than in government bodies that are supposed to defend their interests. Civic education is another sector where CSOs are uniquely positioned to empower citizens to express their needs and demand their rights towards the government, although the government also has a strong responsibility in this respect.

- As another component of supporting dissent, donors should actively demonstrate their support for human (land) rights defenders who speak out on behalf of communities at great personal risk. In addition to much needed financial support, donors could show solidarity by attending court hearings and 'moral diplomacy', i.e. raising their causes with companies and government representatives. This would provide important moral support to activists who tend to make many enemies as a result of their outspokenness.

- Flexibility is required in the allocation of funding, including the type of activities funded and the selection of CSOs, especially when it concerns supporting dissent. It is not advisable to designate specific roles or strategies for specific CSOs 'at the drawing table'. Instead, the diversity of roles and strategies played between and within CSOs on the ground should be acknowledged. It is up to the local CSOs to craft and adapt their own strategies. Also, consistency is necessary for funding, in order to safeguard support for protracted land struggles, and to safeguard initial successes. Land struggles are not completed in 1, 5 or even 10 years, and even when successful, still might need follow-ups.

- CSOs should be required to pay systematic attention to, and allocate budget for, the dissemination of information beyond the individual community members directly exposed to their activities (i.e. operationalize their 'trickle-down effect'). Extra thought should be given as to the best methods to reach and to educate those community members who have received less formal education, are illiterate, are too busy to make a living to attend community meetings, or are not convinced of the need to attend forums. More attention should be given to mobilization methods so as to ensure that news about meetings reaches the whole village. Moreover, it takes more than one village meeting for a message to sink in – funding should therefore also consider communication materials towards the community, for example simple booklets or cartoons that can inform them about their rights. Furthermore, funding should allow, and not restrict, CSOs' mobility to reach out to the very local grassroots – conducting home visits and village meetings, which are essential for their local legitimacy. This could be done by the CSOs themselves, or by community members who are already trained. If the latter is considered the best option, attention should be given to how to effectively direct funds and salaries beyond the permanent CSO staff. For example, selected community members could be equipped with a salary in order to spread their message in their home villages door-to-door, as 'trickling down' does not automatically happen because volunteers are also busy conducting their day-to-day activities to earn income. Along with enhancing the trickle-down effect, community members' expectations should also be managed, as they tend to over-rely on CSOs and community leaders to solve their problems, and may be disappointed in the absence of quick, tangible results. Lastly, CSOs should actively consider and design potential exit strategies from specific communities, in order to maintain legitimacy in the eyes of affected community members after they have concluded a certain advocacy case.

- When supporting communities, CSOs must make explicit how they expect to deal with different actors and potentially opposing interests. CSOs should continue to invest in adequate consultation methods that allow for community input beyond the (often self-appointed) leadership. Significant attention should be paid to women, youth, disabled people and other disadvantaged groups, but this should be integrated in a holistic approach that

strengthens community ties rather than reinforces divisions. Moreover, participatory approaches should avoid 'elite capture', where vulnerable groups such as poor families, or individuals who are not aligned to chiefs, local politicians, or wealthy community members risk being side-lined. CSOs are advised to actively seek out best practices. In relation to gender, for example, significant academic and practical literature is available on how to advance the role of women without ignoring the interests of men.

- Most CSOs lack the technical and research capacity necessary to engage in dialogue with the government and private sector on a more equal level. The government frequently employs geologists, land surveyors and other experts, which CSOs and communities cannot afford. There is also a lack of independent, reliable information concerning the health and environmental effects of extractives, and companies tend to discredit the information presented by CSOs. Community members and CSOs further lack funding to participate in high level meetings, e.g. the annual events organized by the extractive industries, which charge high participation fees. The fear was frequently expressed that 'if you are not at the table, you are on the menu'. Donors could help by funding (scientific/high-level) research on the health and environmental impacts of investments, and facilitating technical knowledge acquisition to address power imbalances. Such research should be independent, and additional to current CSO efforts to conduct their own 'action research', which inherently has an advocacy purpose. Direct access to justice can also be improved by providing legal assistance when communities or individuals are prosecuted by corporate actors, or when they plan to level a strong case against a company or the government for injustices. Legal assistance is a costly and long-term engagement, and donors should be willing to fund this, despite the costs and protractedness, since in quite a number of cases in Kenya the court is the only viable option to redress human rights violations.

- Forging stronger complementarity between advocacy and service delivery is advisable in order to strengthen community members' economic position and (in)formal education level, alongside knowledge of their political rights. Some livelihood support can be provided by advocacy CSOs, while larger scale support can be coordinated with development-oriented CSOs with larger budgets, or through donors coordinating their service delivery funds with advocacy funds. By enhancing their economic position and level of information, community members are empowered and less easily compromised. Moreover, combining civic education with income generating activities will most likely give an impetus for people to actively participate in advocacy efforts. This enhances the chances of sustainable community participation and thereby, the legitimacy of advocacy CSOs on the ground, and strengthens their overall position vis-à-vis powerful stakeholders. We therefore recommend an active effort to combine advocacy, civic education and service delivery activities, as long as service delivery serves the goal of the advocacy efforts and is not a stand-alone goal. This could be part of the Dialogue and Dissent framework, or perhaps catered for by flexibly combining D&D funds with other funding schemes.

- Advocacy organizations should be encouraged to network and coordinate among themselves at the local level, especially on issue-specific cases outside the capital, in order to avoid the duplication of efforts, fragmentation, and internal divisions caused by concurrent advocacy activities. Networking can also help to increase mutual accountability and reduce vulnerability to divide-and-rule strategies. Donors should acknowledge the value of coordination between CSO actors working in the same field, as this saves resources in the long run. However, donors should be aware of differences in orientation and strategies among CSOs and community members, as well as the existence of 'proxy', 'fake' or 'politicized' CBOs. We encountered several examples where committees of community representatives were hand-picked by local politicians, or where government-organised CSOs (GONGOs) competed with independent organisations for membership. Understanding the local dynamics on the ground, characterised by mutual accusations between actors, is not always easy, and it has to be factored in that a donor can end up supporting individual interests by aligning with one CSO. Yet, certain measures could be developed that go beyond financial accounting that lower these risks, for example, by coordinating with other donors or researchers operating in the same area.

- Small CSOs with close connections to local communities usually lack direct access to (small-scale) funding, which makes them highly dependent on the agendas and priorities of larger NGOs. Donors should explicitly target local actors with tailor-made conditions that can be met by small CBOs. In addition to multi-year funding, donors could establish small grant

schemes that can be allocated within a short time period based on recommendations and do not require detailed proposal writing and reporting. Such funds could be spent on ad-hoc mobilization, emergency legal aid, and other unanticipated costs. Moreover, they should be made available in a format that is accessible to organizations in remote, poorly connected areas, i.e. not only through online channels. This should not, however, be at the expense of CSO capacity building and core funding for necessary expenses such as office space, computers, accounting systems and transportation costs (which in rural Kenya may be higher than expected) to ensure organizational sustainability. International and national CSOs should continue to be actively supported, as they are uniquely positioned to bring in external researchers and monitoring bodies, initiate international complaint mechanisms, or upscale advocacy campaigns to the international level.

- Donor countries and embassies should critically assess their policies towards aid and trade, and must not be afraid to hold corporate actors accountable for their impact on the ground. CSOs identified the need for more binding international standards on business and human rights, a cause which our data show would be beneficial for communities and therefore deserves broad support. The focus on Corporate Social Responsibility should be shifted to accountability, in order to create a holistic policy rather than allowing companies to contribute to service delivery without assessing their long-term impact on the ground. This watchdog role cannot be left to consumers, especially as unlike some sectors (food, garment), the extractive industries, for example, largely operate outside the view of critical citizens. Likewise, corporate self-regulation or interventions by the Kenyan government can currently not be relied upon to adequately cater to community needs.

- As advocacy is inherently political, it is difficult to quantify its success. Land struggles can be protracted, and successes can be interpreted in multiple ways. Scrutinizing advocacy CSOs requires different thresholds than service-delivery CSOs. Therefore, assessing CSO success requires long-term engagement, solidarity, trust, and an understanding of the local (power) dynamics. It is the power of narratives, of storytelling, that gives credibility to an organization, rather than box-ticking exercises such as the number of community members attending a meeting. Likewise, while gender equality should be mainstreamed and integrated into every advocacy activity, the impact of such programmes should be assessed at multiple levels, e.g. by looking at power relations in various decision making processes, rather than the number of visible male or female representatives.

- An understanding of the local context is necessary to assess which type of CSO can best be supported, as some CSO or community representatives may be aligned to certain political or economic interests. This does not mean that every funding program necessarily requires protracted research, but it implies that donors should have specific tools in place to evaluate the work of advocacy organizations beyond a mere focus on concrete outcomes. For this purpose, donors may also rely on (academic) researchers with an established presence on the ground, as well as trusted local intermediaries. Relations with these actors should be fostered at an early stage.

# 3    The analytical framework revisited

The insights gathered from the fieldwork significantly altered the analytical framework to study the roles of CSOs. While most of the original building blocks can still be traced in the updated figure on the next page, a number of revisions have been made, which we discuss briefly here.

Perhaps the most substantive revision concerns the low profile of roles, strategies and tactics as explicit categories in Figure 1. This is not to downplay their importance, but a deliberate move to avoid the suggestion that a CSO's strategic choices are largely autonomous, i.e., inspired by the organization's mission and vision and in tune with its capacities. The case studies reveal that land rights advocacy CSOs rather seek a 'best response' to strategies (potentially) employed by the investor (see section 1.4.2), given certain constraints within the own organization (e.g. funding and capacity). The analytical framework distinguishes four principal 'arenas' (labelled A-D at the centre of the scheme) in which the conflict around LSLIs plays out. These arenas correspond to different

types of power that actors can leverage. Arena A centres around *physical power*, including harassment, intimidation and the (threat of) use of force, for instance by the state or a company directed at vocal community members and activists. On the part of the community, the 'resistance' strategies mentioned in Section 4.2.1 are potential counterstrategies in the same domain. Arena B and C both rely on *discursive power*. Arena B represents the site where narratives around LSLIs are contested. Actors try to debunk or change each other's 'message'. Such acts of persuasion can be classified into different types of politics. As foreseen in the original framework, discourse can centre around the future benefits of the proposed land investment (e.g. employment creation or infrastructure development), which we termed the *politics of anticipation*, as these narratives are often contested by civil society. Several case studies [#2;#3;#4;#7;#8], however, showcase conflicting narratives of past events as well, especially in areas plagued by historic land injustices. Colonial land leases, past resettlements, and 'squatter' arrangements are illustrations of issues that are reconstructed differently by different actors. Hence, the framework now features *politics of retrospection* as an additional sub-arena for discursive power-play. A third discursive battle tends to take place around the *politics of evidence*, where each side casts doubt on, or dismisses, the evidence brought to the table, for instance on environmental or public health hazards caused by mining activities [#1;#8].

Arena C also heavy relies on discourse, but the subject of contestation is the legitimacy of the messenger, rather than the validity of the message as such. These 'politics of legitimization' involve attempts to discredit a narrative by questioning the identity or motivation of the actor that produces it. Even though the issue of legitimacy was on our radar from the outset of the research, its role in advocacy dynamics still proved more important than anticipated, which motivates the choice to set the politics of legitimacy apart in the analytical framework. Three additional observations on legitimacy are pertinent here. First, the battle for legitimacy tends to be fought on multiple dimensions; regulations, norms and values, performance, governance, and relations. A detailed exposition of what these dimensions entail is beyond the scope of this report, but is included in our forthcoming article entitled 'Conceptualising civil society legitimacy in practice' (Matelski et al.). Second, legitimacy needs to be built (or defended) vis-à-vis multiple actors. CSOs not only need to counter de-legitimization attempts from the side of investors, but also face the task of building and maintaining legitimacy with respect to communities whose interests they claim to advocate for. Especially the more cooperative strategies, where CSOs hobnob with government officials and company representatives, may raise suspicions of co-optation among community members. A lack of (perceived) impact of CSO activity, or (perceived) lack of long-term commitment to the community's cause, may also erode legitimacy at the grassroots. Especially in communities characterised by in-fighting, due to dysfunctional village politics or incitement by investors, the (lack of) legitimacy of CSOs may become part of a polarised discourse. Third, we have come across a category of actors, often labelled as liaison, CSR or development committees (located at the bottom centre of Figure 1), which are set up by companies -or sometimes co-created with state entities as multi-stakeholder platforms- in a bid to reach out to communities. These outfits complicate the landscape of actors and intensify the politics of legitimization, as they may constitute a deliberate attempt to diffuse community support for CSOs by presenting themselves as genuine alternatives, while in fact these merely act as a 'smokescreen'. Filtering out such 'uncivil' actors presents an additional burden for CSOs and communities alike.

Finally, the field research drew attention to an arena in which *material power* is manifested (D). There are many instances where investors were believed to engage in vote buying, harnessing economic resources for co-opting communities, which are often poor and therefore easily tempted by instant and tangible benefits (*myopia*). This can either be in a benign way, such as by the delivery of public services or individual benefits (e.g. education grants), often under the guise of corporate social responsibility, but also less subtle in the form of 'handshakes' and 'envelopes'. Similarly, donor funding for CSOs could be considered a source of material power that can encourage citizens' participation in advocacy.

In our view CSOs try to anticipate the dynamics across these different arenas and play their 'best response' in terms of strategy. Weighing up the expected physical, discursive, and material power-plays, they may choose dialogue, dissent, or some combination of these, as the optimal strategic line of attack (or defence). Simultaneously, CSOs decide whether to pursue such a strategy in a coalition or individually. As witnessed, coalitions tend to make specialization in a certain strategy per organization more feasible. Especially in response to physical power, there are specialist CSOs that can be called in. Since advocacy processes typically evolve in a sequence of episodes, CSOs are observed to periodically update their strategy mix and allegiance to coalitions, informed by feedback on the level of success resulting from earlier 'rounds' of interaction with advocacy targets (represented in Figure 1 by the black arrows that form a feedback loop). Frequent strategic re-
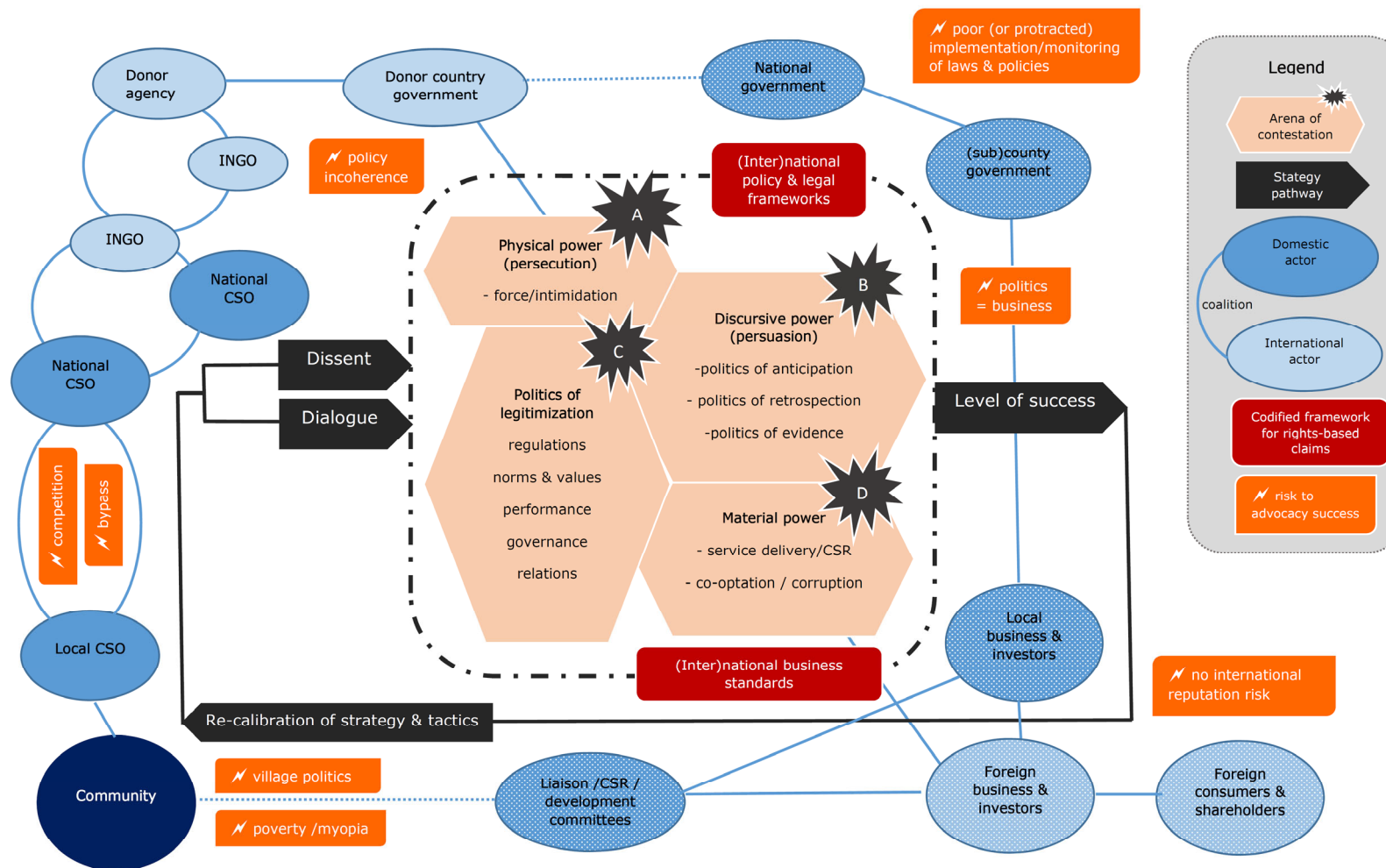
calibration seems a more realistic scenario for CSOs than fully autonomous (and fixed) choices on strategy, as the outcomes of the various power-plays inherently embody some degree of unpredictability. Part of the complication in anticipating 'what works' lies in the multi-faceted character of interaction, not only between CSO and advocacy target (state or business), but also among CSOs themselves (e.g. competition for donor funds, or national CSOs bypassing local ones), between CSOs and communities, between different levels of the state (interests of local officials may not align with those of national politicians, for instance), between businesses and the state, etc. Table 2 tentatively maps which types of power-play are observed as (most) relevant in each bilateral interaction, as emerges from the case studies [note: Table 2 refers to arenas A-D in Figure 1].

Table 2: Mapping of types of power-play across and within (groups of) actors

|  | Community | CSOs | State | Business |
|---|---|---|---|---|
| Community | B,C |  |  |  |
| CSOs | C,D | B,C,D |  |  |
| State | A | A,B,C,D | D |  |
| Business | A,B,C,D | A,B,C,D | D | D |

Another adaptation of the initial framework to be appreciated is the increased visibility of 'Northern' advocacy coalitions (top-left of the figure), modelled on the strategic partnerships in the Netherlands. These coalitions can exert pressure on investors, both public and private, by lobbying for stronger policy/legal frameworks as well as (voluntary) corporate standards at the global level (see rectangles in red in Figure 1), which influence power dynamics in the various arenas. The salience of Free, Prior and Informed Consent (FPIC) and Indirect Land Use Change (ILUC) standards in some of our cases illustrate the point. This 'sandwich' strategy has most potential when land investments involve multinational companies that are sensitive to international scrutiny of their behaviour in the Global South. Domestically owned businesses, or foreign-owned ones whose home countries lack critical consumers and/or shareholders, are less easily pressed to action. The same likely holds for foreign-owned companies whose home governments prioritize their foreign trade agenda over inclusive development elsewhere. Hence, policy coherence in 'the North' is key. Another complicating factor that surfaced in the research is that even when international policies trickle down to the national level, effective monitoring and sanctioning are notorious bottlenecks in the Kenyan context. The latter is partly due to the strong intertwinement of the worlds of politics and business in Kenya, which is widely evidenced. Once politicians have strong commercial interests, state control on business compliance with official standards inevitably weakens. This risk, as well as other stumbling blocks for CSO success in land rights advocacy, are highlighted in the 'lightning' rectangles (in orange) dispersed across Figure 1. These risks could be reworked into more generic assumptions underlying an updated ToC on CSO advocacy.

Figure 1: Visualization of (updated) analytical framework

# 4    Contribution and self-assessment

We have contributed to the academic debate about legitimacy by providing insights into the various sources of legitimacy in relation to different stakeholders, and into the formation of different advocacy strategies. The findings are an important contribution to the ToC as well. The insight into the various strategies that CSOs can simultaneously adopt and the factors contributing to the choice for certain strategies, primarily in interaction with advocacy targets, can create more in-depth understanding of CSOs' political roles. We believe our research has helped the MFA once more to understand the importance of context, but, more than that, we have offered various contextual variables (e.g., attitude of advocacy target, institutional environment, an organization's history) that can influence advocacy roles, which can be used as an analytical tool for the assistance to other advocacy organizations working in similar circumstances. Given the unequal power relations, we furthermore have advised the Dutch government to look beyond its donor role by scrutinizing critically its own trade policies and using its leverage to raise land issues in bilateral talks with the Kenyan government.

Moreover, we have problematized the empowerment of communities and shown this is not a straightforward process, something that can inform the ToC and policy makers in the field to pay more attention to the structuring of empowerment programmes. We have provided concrete suggestions for CSOs to make community-based advocacy more inclusive, and for donors to critically assess CSO claims for community-based advocacy.

Given the focus on the assumptions underlying the Dialogue and Dissent framework, our research mainly prioritised the perspectives of those working for, or in close cooperation with, CSOs. We did not focus as extensively on the views of those involved in business or government, nor did we study the power dynamics within the aid chain or in transnational advocacy campaigns in great detail - though we did interview some of these non-CSO actors.

For practical reasons related to access and trust building, our visits to communities were mostly accompanied by a CSO representative or affiliated community member. At a later stage in the research, when we ventured in the communities by ourselves, we got more independent opinions of community members which provided valuable information in terms of reach of the CSO and community representation. Yet, disentangling a community and its different interests, relations, suspicions and opinions, specifically when a company investment is underway, is a time-consuming endeavour, and was beyond the scope of this specific project.

We further identify a need for more research on what roles CSOs can play during company-community negotiations. Are they observers, intermediaries, advocates, or all at the same time? How can better partnerships between companies and CSOs be forged in contexts where interests do not align – and in which circumstances should they refrain from such partnerships? The (potential) role of CSOs in negotiations for resettlement is under-researched and could constitute a new research focus. Research on civil society should moreover cover local contexts where interests collide, in addition to the frequent focus of research on CSO engagement in typically less controversial issues. The interaction between local advocacy efforts and international campaigns could also be a focus of future research – we made a start with this with a retrospective study on the lobbying directed at the EU biofuel policy, but the findings of this study are still being analysed.

The Dutch MFA's initiative to have its own assumptions scrutinized was clearly an innovative approach, which was met with surprise and admiration in the field. In line with the research assignment given for this project, we would like to stress that our study was by no means – and was not intended as – an evaluation of the performance of CSOs. When we use the term 'effectiveness' in our research questions, we mainly refer to the interpretations of CSO staff, and in some cases community members, of which strategies work when, and what impacts certain roles have. The conflicts that featured in our case studies were often complex and involved many interests, sometimes from powerful business and government actors. Hence, it would be unfair to hold CSOs accountable for a lack of change; some of these conflicts have dragged on for decades, and some even stem from colonial times. We would therefore argue in favour of studying the impacts of CSO roles and strategies in a broader sense, linked to community representation and empowerment. Such an approach requires a less quantitative and more qualitative – perhaps narrative – mode of

studying, focusing more on civil society capacity to uncover and foreground the voices of marginalized groups in society. The power configurations of which CSOs are part and in which they operate deserve special attention.

## Annex 1: Profiles of Large-Scale Land Investment (LSLI) cases studied



Case #1

| County | KITUI (Mui) |
|---|---|
| Region | EASTERN |
| D&D support | ● |
| LSLI type(s) | |

Keywords: Coal mining – environmental impact – resettlement risk – Chinese-Kenyan company

In Mui, Kitui County, a large coal basin was opened up for tender in 2010. The area, which is inhabited by approximately 20,000 people, was divided into four sections, blocks A-D. A Chinese-Kenyan company and a Kenyan investor were granted concession for two blocks each. ActionAid's local partner had already been active in the area on issues of governance. When concerns arose regarding the coal mining plans, they started informing local communities of their right to information and the importance of free, prior and informed consent.

Community members expressed concerns about possible relocation plans, and about the environmental and health impacts of the proposed open-pit mining. Women in particular mentioned these risks, while some (predominantly male) community members remained interested in the economic opportunities of coal mining. A number of investors, originating both from within and outside the area, attempted to acquire pieces of land in anticipation of compensation schemes. In 2012 a number of community members started a court case against the government and one of the investors, which challenged the concession process on various grounds. It later emerged that some of the claimants had sought to obtain a mining concession themselves. In 2015, the court dismissed their claims, but reaffirmed the need to provide opportunities for public participation in relation to the Environmental Impact Assessment, resettlement and benefit sharing.

At the time of our research in 2018 no mining company was active in the area, and one of the concessions was thought to have expired. The community could not establish contact with the other (Chinese-Kenyan) investor, which had no known office in the country. A study conducted on behalf of ActionAid Netherlands could not trace the company to a clear location in China either. Meanwhile the county governor continued to express her intention to start community relocation and mining soon. During a visit to the deputy governor, we learned that the county government considered this an important opportunity for economic development, but would not proceed with the relocation plans until all remaining issues, including outstanding land titling, had been dealt with.

In 2019, a petition was sent to Parliament by a local MP in a new attempt to stop the coal mining plans. The local ActionAid partner has continued to work with communities in the hope that their resistance would result in the cancellation of the mining plans. ActionAid Kenya and its local partner also participate in a larger environmental movement which organises an anti-coal lobby and demonstrations at the national level, and maintains ties with international supporters, primarily through social media. Meanwhile, a number of other (predominantly faith-based) organisations has been active in the Mui area, which aim to provide more balanced information regarding the potential costs and benefits of coal mining. Most of the organisations are on speaking terms, but there are profound disagreements regarding the most viable strategy and the best representation of community interests.

Research activities conducted in this area included extensive participant observation during community visits and civil society forums, individual community visits, and interviews with other active CSOs, local politicians, and a representative of the Kenya Chamber of Mines.

| Case #2 | | |
|---|---|---|
|  | County | KIAMBU & MURANGA |
| | Region | CENTRAL |
| | D&D support | ◖ |
| | | |
| | LSLI type(s) |  |
| | | |

Keywords: Export-led agriculture – British-Kenyan company – colonial land lease – labour rights

Bordering on Kiambu and Muranga counties, communities have been engaged in a protracted struggle on land and related human rights with a large Kenyan-British agricultural company, which during colonial times secured a long-term land lease from the government. A small local CSO has been active in the area since the early 2000s to assist community members and employees with their claims and inform them of their rights. In recent years it has received periodic assistance from a national human rights organisation and the Dutch organisation SOMO (funded under the D&D framework), which approach the issues primarily from a business and human rights perspective

Although the local CSO has secured a number of meetings between community members and company representatives this has not brought any solutions, and severe violations have been ongoing, including the killing of an alleged trespasser by a security guard in May 2018.  However, the CSO's efforts in recent years have resulted in the cancellation of an international agricultural certificate in September 2018, as well as in the involvement of the National Land Commission (NLC) which is mandated to deal with historical land injustices. For this purpose, the CSO representative worked extensively with the county NLC representative to establish which claims were eligible under the NLC mandate. In November 2018 we attended an NLC hearing which was meant to be a final session before a decision would be issued; however, the company challenged the legality of the NLC last-minute, after which the hearing was postponed and the case was handed over to newly incoming NLC commissioners, which is likely to result in a significant delay.

In the course of 2019, community members attained several successes, as the NLC put a hold on all renewals of land leases until the historical injustice claims have been dealt with. The county NLC office had also issued instructions to restore community access to various public facilities, which the company is yet to follow up on.

Until recently, the community's issues had not been picked up by many external CSOs, reportedly due to the influence of high level politicians in the area. However, recent developments have resulted in more interest from Nairobi, especially with regard to legal assistance. The national CSO continues to send complaints to various entities regarding the company's violations of workers' rights. The Kenyan and the Dutch CSOs have secured the involvement of a British law firm, which is examining options to file a case in British court based on the fact that the company is subsidiary to a British parent company.

Despite several requests, no company representative was available for an interview. We did have discussions with CSO representatives, with individual community members, and with the county land commissioner.

| Case #3 | | |
|---|---|---|
|  | County | TAITA TAVETA |
| | Region | COAST |
| | D&D support | ● |
| | LSLI type(s) |  |

Keywords: Iron ore mining – ranches – national park – sisal plantation – historic land injustices

Taita Taveta county is one of Kenya's most mineral-rich areas, where benefit sharing and community participation in mining activities have been ongoing issues. The county also forms the site of several land struggles, since over 60% of the land is allocated to a national park and to group ranches, leaving only 40% for private and community ownership. In recent years, the county government has made progress with outstanding land claims issuing about 60,000 title deeds, but there are a number of ongoing disputes with investors. There are several disputes between communities and Kenyan sisal plantation owners, but also with an Indian iron ore company, which is accused of ignoring environmental concerns, community land claims, and workers' rights issues.

ActionAid has a small local partner covering the county, which assists community members to express their grievances and claim their rights. Apart from land rights they also work extensively with artisanal miners, as well as on women's and children's rights. During a meeting we attended, it became clear that gender-based violence and child abuse rates are among the highest in the country, and one of the county's ethnic groups maintains the practice of female circumcision, which various civil society actors try to abolish.

Research on these activities with the local ActionAid partner took place at various moments and in various locations throughout the county. Particular events attended included a public forum for artisanal miners' rights, and a visit by a senate committee to hear community views on various land disputes in the county. We further visited two of the investors, and were able to speak with one of them. We also interviewed the county's land registrar and a former county governor.

| Case #4 | | |
|---|---|---|
| | County | BARINGO (Tugen Hills) |
| | Region | RIFT VALLEY |
| | D&D support | ◯ |
| | LSLI type(s) | |

Keywords: Conservancy – forced evictions – historic injustices – ancestral land – compensation

Baringo county is predominantly populated by the Tugen who are highland Nilotes. This county is classified as one of Kenya's arid and semi-arid land regions. It is almost entirely arid except for the Tugen Hills (also known as Saimo) North West and Central of the district. There are four main forests that make up the Tugen Hills Forests (THF), namely; Katimok, Tarambas hill, Kipng'ochoch and Kinyo forests. This highland region is endowed with numerous hills, vast forest coverage and wildlife.

In the framework of converting the forest into a conservancy, by orders of the national government, the county government of Baringo evacuated inhabitants of Tugen Hills Forests (THF) between the late 1930s and 1988 (documented last eviction), and in the process destroyed their homes and property, leaving as of now nearly 3,000 homeless persons without livelihoods dispersed across Baringo North, Central and South. These displaced persons for decades beckon redress for rights to the forest land and resettlement promises by the Kenyan government. The forest was taken over by the government, and is now under management of the county council of Baringo and protected by Kenya Forestry Service.

During the Moi regime (1978-2002), the government ordered all community members who had been issued with the 1949 Blue Print (BP) - a document that indicated the evictee's plot number and resettlement destination - to give the BP back to the government as the first step of addressing the compensation and resettlement as promised. As soon as this legal document was handed in, the government went quiet on the issue. That was when the people realised that they had been "manipulated and tricked" and left landless. The displaced persons then founded a CBO (registered in 2013) with the sole objective of resettlement and rights to stay on the land documented in the BP.

Advocacy measures by the forest evictees proved futile until in 2008 (following the postelection violence) the group formed a coalition with a national network for internally displaced persons (IDPs), which was set up under government auspices. At the time, it seemed like a solid plan for the forest evictees to join the network in order to penetrate the government agenda. The network nominated two members (male and female) to champion the Tugen Hills Forest evictees. First, priority was given to the 2007/2008 postelection violence IDPs, who were granted compensation; second, the forest evictees who were living in tents were compensated; third, the integrated IDPs (living with family, neighbours or friends) of the 2007/2008 postelection violence were compensated. After this, the government decided to close down the network's offices, putting the resettlement and compensation of other persons to rest.

In April 2018, Tugen Hills Forests evictees, alongside evictees from other forests in ten other counties, staged a peaceful protest in Nairobi. They demanded that the offices should be reopened to look into their concerns. This protest yielded positive results, because the two offices were reopened and the forest evictees were instructed to prepare and present new portfolios for their concerns. A substantial period has now elapsed and the displaced citizens have become increasingly impatient. Their frustration has prompted them to issue verbal threats to the government, as observed in one community meeting, of cutting down and burning the forest.

To reconstruct this case, we carried out extensive focus group discussions, interviews and site visits, which allowed us to grasp the gravity of forced eviction exerted on Tugen Hills' "original"

inhabitants. Although most of the respondents could express themselves in English and/or Kiswahili, we encountered a few instances where an interpreter was needed.

      We found the cases in Baringo county (including the next case) to be telltale examples of how civilian rights to land have consistently been infringed by the Kenyan government over the past century. Despite countless involvements of legal entities to this quest, the government has proved adamant to redressing these historic injustices. In other instances, where lawyers have been involved, the government either co-opted or threatened them, such that they abandoned the case or even fled the country.

| Case #5 | | |
|---|---|---|
| | County | BARINGO (Kerio Valley) |
| | Region | RIFT VALLEY |
| | D&D support | ◐ |
| | LSLI type(s) | 🛢 🐘 |

Keywords: Oil exploration – conservancy – benefit sharing – public participation - displacement

Within the Kerio Valley Belt in Baringo county, citizens fear displacement for two reasons; oil exploitation and wildlife conservation. This area is one of Kenya's oil and wildlife-rich areas, where the community has displayed intense concerns regarding tenure insecurity, which the government and oil sector have insufficiently addressed by continuing to give undocumented "false" promises. In 2014, a multinational oil company concluded a petroleum agreement with the Kenyan government and carried out seismic surveys around the Baringo – Elgeyo Marakwet border in the Kerio Valley belt. This area was termed "Block 12 A" and identified as a potential area for exploratory oil drilling by the contractor. The citizens living in Block 12A, which covers more than 7,000 km$^2$, resist this venture because of fear of losing their customary land to be expropriated by government and allocated to private investors.

Apart from insecurity of tenure, the community has not been consulted on matters of public participation and benefit sharing by the oil exploitation and conservancy (Rimoi Wildlife Conservancy on Lake Kamnarok). The interesting phenomenon in this area is that the government is displacing the community around Lake Kamnarok with the pretence of conserving wildlife and the lake itself, yet the community categorically indicates evidence of oil exploration, which has in fact caused Lake Kamnarok to continue shrinking and risking its dry-up in the near future. Although the county government has recently promised to issue title deeds to the community in Block 12A, disputes between them and the government are still ongoing. The community also continues to dispute directly with investors, but it proves tricky to get a hold on them. At the time of the research, it had been over six months that any investor had been sighted in the area. We were informed that this is a tactic used by the investor where he disappears after the community raises concerns only to return when "things have cooled down".

In 2014, residents of "Block 12A" resorted to riots when sub-contractors of the company started oil exploration in the area. In 2016, however, these sub-contractors, acting under the directives of the government, ignored the residents' concerns about a proposed law that involves local communities in exploration and actual mining of minerals. Also, they did not produce the required outline of their long-term plan, nor did they provide locals with employment or involve them in the procurement of locally-produced goods. Citizens of "Block 12A" have written a series of letters to the government, requesting the issuance of title deeds as a leverage to benefit fully from the ongoing project. Worth noting, the land in this area is owned communally and its ownership is still contested.

ActionAid has collaborated with a small local partner organization that covers the belt and tries to advocate for community members to express their concerns regarding tenure security and benefit sharing, but it not (yet) fully involved due to a high case load in the area. For instance, we attended one meeting organised by ActionAid (together with FAO), where most attention went to resolving the recurrent Baringo-West Pokot county-border conflict, which has caused loss of lives by cattle rustlers in North Baringo (Tiaty area). As a consequence, some community members on the border fled abandoning their land. On this case, we also interviewed Kabarion Community Conservancy, who confirmed that the community did not have any title deeds for the land. This renders it all the more problematic to return where they fled from. Additionally, in the recent past, there has been a case in this region where a Chinese oil exploitation company was successfully stopped from operations in this highly volatile area. We also talked to the local Professionals

Association, whose members were able to take us to various locations under threat of eviction within the belt and also invited us to attend some public open-air meetings (*barazaas*), where a few government officials were present but who failed to offer tangible solutions to the community regarding resettlement and rights to land.

| Case #6 | | |
|---|---|---|
| | County | NAKURU (Lake Naivasha) |
| | Region | RIFT VALLEY |
| | D&D support | ◯ |
| | LSLI type(s) | |
| Keywords: Geothermal energy – water use – Maasai - grazing rights – informal settlements | | |

Lake Naivasha Basin is endowed with exotic flora, fauna and wildlife. Since the government discovered geothermal activity in the area, it set up Geothermal Development Companies (GDCs) to explore and enable a partly government-owned energy company to drill and supply the country with electric power. As much as the energy company has resettled communities that were in the target geothermal area, there have been resounding complaints about the poor resettlement in terms of household facilities, amenities, transportation and an even more alarming concern among those who were displaced but are yet to be resettled. The most recent resettlement case happened when the company commissioned Olkaria V (one of the resettlement areas). The resulting displacement of persons created major informal settlements within the urbanised areas around Naivasha, such as Mithuli, Ezel Hakia region, Kihoto, Karagita and Kamere. Some of these informal settlements are situated on the lake's riparian land and access corridors. The community believes that the company has already acquired part of the lake area's land in preparation for an intended Industrial Park project. This creates an even bigger problem for those residing in informal settlements, as they face further eviction.

As recent as May 2018, some senior government officials were converting big tracks of land that used to be leaseholds into private ownership. At the same time, the flower farmers in the area are considering change of land tenure because of the recent downturn in the Kenyan flower sector. This means that those in informal settlements will be rendered jobless on top of their homeless status (as they do not have titles). To address this, the World Bank has recently been partnering with the county government to set up a low-cost housing project. When the residents raised concerns on legal land ownership and resettlement, the World Bank recognised the validity of their concerns and the project is on hold until issues are sorted.

The Lake Naivasha Basin does not feature strong civil society organizations able to champion land issues. Most of the CSOs in Naivasha either focus on gender issues or on HIV/Aids. Land advocacy has been taken up by a few actors in the past, however. Both a national and a regional NGO used to address land issues in the area, but these activities date from more than 10 years ago. More recently, a local CSO became vocal and influenced the energy company to involve the community in projects, resulting in the creation of a stakeholder coordination committee, which was put in charge of projects. However, this CSO ceased operations, because the chairperson was co-opted to be a Minister in the county government of Narok, where he also got lucrative business with the company. In 2006, the Maasai, being the original inhabitants of Lake Naivasha Basin and the greater part of Nakuru county, formed an association to reclaim Maasai ancestral land appropriated by the British colonial government and the Kenyan government for extensive ranches owned by government officials and wealthy expatriates. The association demands compensation for loss of lives and livestock as a result of mass eviction, and represents the community on matters of benefit sharing from projects within the basin. It also demands grazing rights and water use for livestock.

Apart from consulting these 'typical' CSO actors, we also interacted with an association of land-owners around Lake Naivasha, which is likely the oldest association in the country, as well as with an organisation representing the interests of all the flower farmers in the area, and the Geothermal Development Company (both in Nakuru town and Naivasha town). Only after several requests, we managed to meet with the energy company's Liaison Officer for an interview.

Furthermore, we engaged in extensive participant observation and conducted interviews during a community forum, visits to the aforementioned informal settlement areas, and site visits to Olkaria I – V resettlement areas.

Generally, CSOs in this basin seem short-lived because of failure to showcase their effectiveness, (over)politicization of their actions, insufficiency (if not misappropriation) of funds, overreliance on donor funds, and lack of competent human resources.

| Case #7 | | | |
|---|---|---|---|
|  | County | KILIFI (Magarini) | |
| | Region | COAST | |
| | D&D support | ● | |
| | LSLI type(s) |  | |

Keywords: Salt mining - Indian-Kenyan companies - evictions - environmental degradation

Magarini district in Kilifi county, at the Kenyan Coast, is one of the most marginalized and poorest districts of the country, with a large share of the population not owning title deeds (popularly labelled as 'squatters'). About 10 miles north to the coastal tourist town of Malindi, there is a 40 to 50 mile strip along the coast where salt is mined through the use of salt ponds. There are 5 active Indian/Kenyan-owned salt companies. They started operations mostly in the 80s by obtaining a lease from the government. Although the government and the salt companies tend to downplay the number of inhabitants occupying the area designed for salt mining during that time, there had been people living in these areas for decades. From the 80s onwards, numerous households have been evicted, sometimes by force. They were not compensated for their land since they did not own title deeds and were termed as squatters, while the people themselves claim it concerns their ancestral land. Compensation for standing crops and structures was offered, but human rights group claim this gesture was grossly inadequate and, in some cases, compensation has not been paid out till date.

Communities have been resisting evictions since the early 2000s when the Kenyan government changed leadership, and this has resulted in clashes between communities and police, with some casualties as a consequence. In 2006, the Kenya National Human Rights Commission conducted a public inquiry that confirmed reports of human rights violations having taken place in the area. CSOs started to visit the area and upon discovering active farmers groups, they advised the local groups to form an umbrella CBO. This CBO is active up to today and serves as the main human rights organisation in the area with linkages to national NGOs and funding from two donors, one of them being Action Aid. Its mission is to claim back the land, but in partnership with an environmental NGO (with which they share an office) it is also engaged in 'environmental justice' issues that stem directly from the operations of the salt mines. Communities complain about fresh water wells having been salinated, soil fertility loss, health problems, pollution of sea water which affects fishing activities, and mangrove cutting. Throughout the years, the conflict has receded, as the salt companies have started engaging in CSR projects, and also a liaison committee has been put in place in order to deal with conflict between communities and the salt companies. Yet, relations between communities and the salt companies are still tense. A satisfactory solution to the perceived historical land injustices that have been taken place has not come about. CSOs are currently attempting to start litigation to solve the problems once and for all. Lack of proof for environmental degradation caused by the salt companies has hindered progress on the case due to lack of funding. The National Land Commission recently published a report that aimed to verify the legal boundaries of the salt companies, yet human rights groups distrust the process and thereby the results of the report. Meanwhile, the people that are still residing in the salt areas, face future evictions.

Research took place with the local CSO in the area though participant observation, group discussions, informal talks and interviews. We interviewed leaders of the farmer groups and active community members, and also conducted a survey among residents in the salt mine areas. We have conducted interviews with the MCA, local representatives of the national government, the Environmental Agency, the liaison committee, and one of the salt companies, and also attended a multi stakeholder platform.

| Case #8 | | |
|---|---|---|
| | County | KWALE |
| | Region | COAST |
| | D&D support | ● |
| | LSLI type(s) | ⛏ |

Keywords: Titanium mining - multinational company - CSR - resettlement - FPIC - compensation

Kwale, the Southernmost coastal tip of Kenya, is rich in mineral resources. It currently hosts the largest mining company in Kenya; an Australian multinational that mines titanium. Mining activities started early 2000s with a Canadian company, followed up by a Chinese company that tried to explore the area but left it again in 2009. The Australian company took over in 2011, but actual operations only started from 2013. The company employs about 600 people, the majority of which is sourced locally within the district, though management posts tend to be occupied by other Kenyans and foreigners. The company has an extensive community relations department that consists of four sub-departments (health, infrastructure, livelihoods support and life-skills) and hosts 11 liaison subcommittees and 3 bigger liaison committees representing the regions affected by the mining operations. These committees are supposed to provide the link between the company and the community. They are headed by the District County Commissioner and its members include community representatives, Chiefs, MCA, county government representatives, and civil society. The company has a good reputation within the business community and is known for its rather extensive CSR framework, and is also mentioned as an example of a relatively accessible company. However, community complaints are plentiful and its performance is also criticized by CSOs.

In 2007/2008, about 400 families were relocated by the Canadian company, followed by additional relocations because of a dam construction around the year 2014. Although Resettlement Action Plans were in place, the implementation, that was mainly left to the government, was fraught with irregularities. Moreover, conflicts ensued between relocated households and their host communities, among others because of irregular issuance of title deeds, where the relocated people found people already living on the plot of land they had been allocated. Others were assigned plots of land in swampy areas. While the company claims that a large number of families has found better places to live with the money they got from the compensation, the negative experiences still continue to 'haunt' the company when looking for new opportunities in the area to mine, because many communities now refuse operations and explorations in their area. Meanwhile, there are people that have been 'left behind' in areas just outside of the mining lease area, who have seen their whole village disintegrate. These households are waiting for relocation up to today.

National CSOs have been coming and going to the area, and have sometimes been instrumental for communities in fighting for their rights. However, while communities tend to place great hopes on them for help, they experience disappointment when engagements fail to prove long-term. This is partly due to the unpredictable nature of funding, as the national CSOs claim to their defence. The local CSO field is dispersed and fragmented and suffers from competition, political interference and conflicts, which complicates speaking as 'one voice' to power-holders. While some of the organizations seem highly capable of rolling out advocacy programs, they lack the manpower and funding to scale these up effectively. The communities suffer from this inefficacy of civil society, as they lack consistent support.

Research activities were conducted with the multinational company through participant observation mainly of their CSR projects and interviews about land and relocation. Some dialogue forums were also attended. Numerous field visits were conducted to the communities, often accompanied by the local CBOs. Further, we participated in activities of three national NGOs. A survey was also conducted among selected communities in the salt belt.

| Case #9 | | |
|---|---|---|
|  | County | KILIFI (Dakatcha) |
| | Region | COAST |
| | D&D support | ⬤ |
| | LSLI type(s) |  |

Keywords: Biofuel - jatropha - EU Energy Directive - forests - IBA (birdlife) – charcoal trade

Dakatcha Woodlands is an area in Kilifi county, about one hour inland from Malindi. The 'capital' of the area is Marafa, which hosts the regional offices of most NGOs operating in Magarini district. The whole area is beset with trees, but some patches qualify as 'forests'. The area has been assigned the internationally acknowledged status of Important Bird Area (IBA), and houses a variety of rare birds, including Clarke's weaver, which lives nowhere in the world but in Dakatcha. The area never secured the status of 'protected area', however.

Around 2009 an Italian company came to Dakatcha, as it wanted to invest in a jatropha plantation of about 50,000 acres. The investment came at a time when jatropha was a global hype, and Kenya wanted to step on the bandwagon. At the same time, the European Union had adopted a policy that prescribed that 30% of fuel use should be biofuel, thus pushing up demand for jatropha. Companies were attracted by the availability of subsidies for their 'green' investment. After numerous studies indicating its marginal yields and negative social and environmental impact in production areas, jatropha fell out of favour worldwide.

At the time of the planned investment, there were about 20,000 people living in the area, and its location was at the heartland of the forest. An environmental NGO that was already active in the area started to resist the plantation proposal together with local communities, as the majority of them also opposed the investment. Soon, the resistance was joined by other NGOs, including ActionAid. The issue was brought to Europe and lobby campaigns were launched towards the European Parliament and European Commission. Following the resistance from the communities and national and international media exposure, and the 'Northern' lobby by INGOs, the investment was withdrawn.

However, by no means this implies that the forest is safe, nor the people living inside it. The area is used for charcoal logging and much of the forest has been degraded. The charcoal business is connected to politicians and the infamous 'cartels', in which even Kenya Forest Services employees are implicated. It is rumoured that another investor has a proposal for a pineapple plantation in the area, and many upcountry speculators now buy the land for as cheaply as 20 to 50 USD per acre. The economic deprivation of the local population is believed to drive cheap land sales and easy seduction into joining the charcoal business. The environmental NGO is currently the only CSO still fighting to preserve the forest (and the communities) directly. ActionAid is trying to make an indirect contribution by implementing a large-scale food security project in the area, which should reduce the survivalist orientation of the local population. The example shows the importance of the connection between advocacy efforts and food security programs in order for advocacy efforts to be sustainable.

The research in this area was short but intense and consisted of a one-week stay in the area, carrying out interviews with NGOs, local activists involved in the anti-jatropha campaign, and the Kenya Forest Service. A community group discussion was unfortunately prevented from taking place by a local politician.

## Annex 2: List of outputs

- Matelski, M., Otundo, B., Zijlstra, S., Dekker, M., Van Kempen, L., Nangulu, A. & Spierenburg, M. (2018). *Civil society engagement with land rights advocacy in Kenya: what roles to play?* Literature Review. Nijmegen: Radboud University; Leiden: African Studies Centre; Eldoret: Moi University.
https://openaccess.leidenuniv.nl/bitstream/handle/1887/62459/Civil_society_engagement_with_land_rights_advocacy_in_Kenya.pdf?sequence=1
- Presentation at 'Future Rural Africa' conference in Cologne, 11 June 2018.
https://www.crc228.de/2018/05/03/crc-lecture-series-2018/
- Presentation at LANDac conference in Utrecht, 28 June 2018.
http://www.landgovernance.org/assets/LANDac-Conference-2018-Programme.pdf
- Matelski, M. & Zijlstra, S. (2018). *How legitimacy of CSOs in Kenya's land rights advocacy is being formed, maintained – and challenged.* INCLUDE blog, 17 October 2018.
http://includeplatform.net/legitimacy-csos-kenyas-land-rights-advocacy-formed-maintained-challenged/
- Presentation held at ActionAid Netherlands, 4 March 2019.
- Otundo, B. K. (2019). *Why grassroots movements addressing displacement in Kenya continue to face challenges.* INCLUDE blog, 29 April 2019.
https://includeplatform.net/why-grassroots-movements-addressing-displacement-in-kenya-continue-to-face-challenges-decades-after-independence/
- Presentations held at learning event with fieldwork partners in Nairobi, 2 May 2019.
- Presentations held in panel 'Displacement, dispossession and defense strategies around land' at LANDac conference in Utrecht, 4 July 2019. https://www.landgovernance.org/wp-content/uploads/2019/06/LANDac-Annual-International-Conference_full-programme-3.pdf
- Bardenheuer, Y. (2019). *Legitimacy in the eye of the beholder: stakeholder perceptions of an NGO in transition in Nairobi, Kenya*. MPhil thesis (May 2019). Radboud University.
- Beumer, D. (2019). *Convergence and Divergence in the European Bioenergy Coalition: an explorative case study of coalition dynamics among Dutch and European advocacy NGOs*. Master thesis (August 2019). Radboud University.
- Reijmer, M. (2019). *Fuelling the debate on the EU Energy Directive: the strategic use of frames by civil society in influencing EU biofuel policy (2012-2016)*. Master thesis (July 2019). Radboud University.

Forthcoming:

- Matelski, M. et al. *Conceptualising civil society legitimacy in practice: community priorities in Kenya's land rights advocacy.* Paper submitted (in review). Radboud University.
- Zijlstra, S. et al. *CSO strategies on a continuum of collaboration and confrontation in the context of land investments in Kenya*. Paper in progress. Radboud University.
- Otundo, B.K. et al. *Threat in advocacy discourse: a language strategy by Kenyan community based entities to achieve and maintain legitimacy.* Paper in progress. Moi University.