

Interim findings

Civil society engagement with land rights advocacy in Kenya

The project 'Civil society engagement with land rights advocacy in Kenya' explores the various roles played by civil society organizations (CSOs) when advocating for fair and inclusive land deals in Kenya. Advocacy activities by CSOs may take place at the local, national or transnational level, and may be directed towards government agencies, donors, investment banks or private actors. CSOs may navigate differently between confrontational and cooperative strategies with regard to government and private actors. While some CSOs prefer to specialize in one role, perhaps within a broader CSO coalition, others may choose to combine roles. The aim of this study is to understand these roles in light of CSO legitimacy, as perceived by various stakeholders. The following are the interim findings and tentative policy messages from the project, which will be adapted based on further data analysis and stakeholder validation.

Interim findings:

- **The civil society sector in Kenya is vibrant and a division of labour can be observed:** The civil society sector in Kenya is generally vibrant, although some regions are better served than others. 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 on the county or village levels. While such CSOs frequently work in constructive partnerships, some larger NGOs may bypass actors with expertise and networks on the local level. Conversely, community members may distrust NGO workers entering their area due to bad experiences with 'outsiders' in the past.
- **Most advocacy CSOs are viewed by the government and business actors as 'noise makers', a label they acquire because of their persistence, but which can also serve to delegitimize them:** Despite general improvements under the new constitution, state-civil society relations are hampered by the delayed implementation of the Public Benefit Organisations Act (formally adopted in 2013), and remain dependent on individual goodwill and personal contacts. 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. When advocacy work involves personal risks for activists, it is sometimes left to specialized organizations working on individual human rights protection, or taken up as a CSO network to avoid individual persecution.
- **CSOs combine roles and strategies pragmatically within an organization or coalition according to the situation:** Whether CSOs combine confrontational and cooperative strategies depends on a number of factors, including the goal of the CSO (e.g. to stop an investment, negotiate compensation, or influence policy), the character of the advocacy target, and the level of political or economic interests involved. When both parties accept that their mutual interests may not always converge, confrontation and collaboration can be combined. However, confrontational approaches by CSOs in some contexts might make government and business actors reluctant to subsequently accept them in a dialogue setting.
- **CSOs' strategic choices are 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. Multi-stakeholder platforms and committees set up by the government or private actors often do not provide equal representation or concrete solutions for communities and CSOs, although they are being held up as genuine consultation efforts. In court cases too, communities and CSOs are often not adequately represented, due to lack of funds.

- **The legitimacy of CSOs is actor, context and time specific:** 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 are 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 are additional sources of CSO legitimacy. Views on CSO legitimacy may also differ among the same type of actors, e.g. between government actors on the local and the national level. Relying on multiple sources of legitimacy can pose challenges to CSOs, but these need not necessarily be traded off against each other.
- **As communities consist of a plurality of actors with different interests, no single CSO can be expected to represent all community members:** Moreover, CSOs often experience difficulties ensuring gender equality and reaching 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.
- **Where investments influence land ownership, advocacy CSOs are often the first to inform communities about their rights, which has a strong empowering effect:** Although some CSOs combine training with the provision of social or legal services at the local level, they do not generally 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 job opportunities, literacy skills or transportation challenges are not addressed. The absence of alternative sources of income tempts some individual community members to go for quick wins (e.g. by selling their land cheaply) and to prioritize short-term income over long-term group or family interests, thus disrupting social relations.

Tentative policy messages:

- Advocacy organizations should be encouraged to network and coordinate among themselves at the local level, especially on issue-specific cases outside Nairobi, 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. 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.
- 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. This enhances the chances of sustainable community participation and, thereby, the legitimacy of advocacy CSOs on the ground. For this purpose, CSOs should also 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').
- Most CSOs lack the technical and research capacity necessary to engage in dialogue with the government and private sector on a more equal level. 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. 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.
- Flexibility is required in the allocation of funding, including the type of activities funded and the selection of CSOs, especially where it concerns supporting dissent. Moreover, 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. 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, e.g. 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 Kenya may be higher than expected) to ensure organizational sustainability.

Knowledge products:

- 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/>

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<http://includeplatform.net/new-roles-csos-inclusive-development/land-rights-advocacy-kenya/>