African Studies Centre Leiden

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

LITERATURE REVIEW

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change perspective

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1 Introduction

The Theory of Change underlying the 'Dialogue and Dissent' programme clearly shows the choice set for civil society organisations (hereafter: CSOs) in terms of the different political roles they may assume, as well as the range of strategies on offer to fulfil such role(s) effectively. But why do such choices differ across CSOs with apparently similar advocacy goals, and even within a given CSO across time and place? Put differently, what makes them choose certain (combinations of) roles and, in tandem with this role selection, why do they settle for certain (combinations of) advocacy strategies, and what are the consequences of these choices in terms of their legitimacy in the field? These 'design' questions, which are at the core of our research proposal, have guided the current literature review.

During the review process it quickly surfaced that in many cases choices for roles and strategies proved unstable, in the sense that CSOs tend to balance (or alternate between) multiple roles and strategies rather organically. Given our belief that such dynamics are not merely the result of random 'trial and error' but rather testify to continuous (deliberate or intuitive) calibration, the review investigates what systematic factors are identified in the theoretical and empirical (case study-type) literature that help understand such choices.

Since the body of literature that touches on CSO advocacy is wide and unwieldy, we settled for three specific entry points. The first one is the idea that the organisation's (perceived) *legitimacy* is key for effective advocacy on behalf of marginalised groups. We suggest an interrelation between the roles and strategies that CSOs opt for, and their perceived legitimacy. While weak legitimacy may limit the roles and strategies available, their chosen roles and strategy may also impact on their perceived legitimacy. We propose a number of criteria for CSO legitimacy, starting from the social constructivist position that legitimacy varies across time, place and stakeholder perspective. Second, we suspect that the *labour division* between CSOs matters. A strong drive for coalition building can be witnessed across the advocacy field, to which the D&D alliances also attest. Such collective efforts imply opportunities for both role and strategic specialisation at the level of individual CSOs, but what are the limiting factors, if any, to pursue such specialisation? Third, we suspect that the *nature of the advocacy target* puts boundaries on what is feasible and 'what works'. Here we distinguish more specifically between public and private entities, i.e. those targets that respond to incentives within the administrative and political system (broadly 'the state'), and those which are primarily subject to market forces ('corporates'). As the review will convey, the issues of legitimacy, labour division, and target identity interrelate. For instance, sources of CSO legitimacy can be role-specific, and vary depending on whether one adopts the state's or a company's point of view. Such interactions are signposted as much as possible, while using these three entry points as organising principle for the review.

1.1 Outline

First, we unpack the concept of legitimacy in **Chapter 2**, using Suchman's (1995) seminal contribution as a starting point for discussing alternative operationalisations applied more specifically to CSOs. Subsequently, in **Chapter 3**, the central argument revolves around the issue of specialization. The literature is screened both for contributions that support the (internal) specialisation logic as well as those that stress its limits. The latter group of studies tends to evidence how CSOs combine service-oriented and advocacy roles, and/or use collaborative and antagonistic tactics in parallel. For the sake of argument, we pitch these 'schools' against each other, without wishing to imply that one view excludes the other. Since the studies highlighted in Chapters 2 and 3 predominantly deal with CSO-state relations, **Chapter 4** zooms in on CSO advocacy vis-à-vis the private sector. The chapter draws in perspectives from the business literature, such as the notion of 'stakeholder engagement', but also pays due attention to more radical views that put power struggles at the heart of CSO-business relations.

The discussions represented in these chapters are not tailored to the Kenyan context, nor to the Sub-Sahara African one for that matter. Despite a keen interest in the African case studies we encountered, the main selection criterion is thematic relevance. Especially in the discussion on role specialization, the more relevant contributions are situated in Western contexts, most notably the United States. Notwithstanding this wide geographical reach, the review draws attention to particular features of African states when discussing CSO-government relations.

It is in **Chapter 5** that the review turns to the case for which we will collect primary data to inform the abovementioned questions, i.e., the case of land rights advocacy in Kenya. The chapter first highlights the politicised nature of land rights and offers a quick tour past significant events in

building a more solid legal framework for land rights, which has been a focal point of CSO advocacy for at least the past fifteen years. It continues by laying out the country's civil society landscape and delineates civil society's 'room to manoeuvre'. The degree of success that civil society has achieved in addressing injustices concerning land rights is briefly evaluated. ActionAid Netherlands and ActionAid Kenya, our civil society partners in the research, are very vocal on land rights issues at different levels of policy-making and corporate governance. A list of controversial land investments that have sparked civil society action is included in the Annex, which serves to appreciate the diversity in the nature of these conflicts as well as in the CSO coalitions that are mobilised in response. Finally, our main insights from the review, which will feed into the design of the upcoming field research, are summarised in **Chapter 6**.

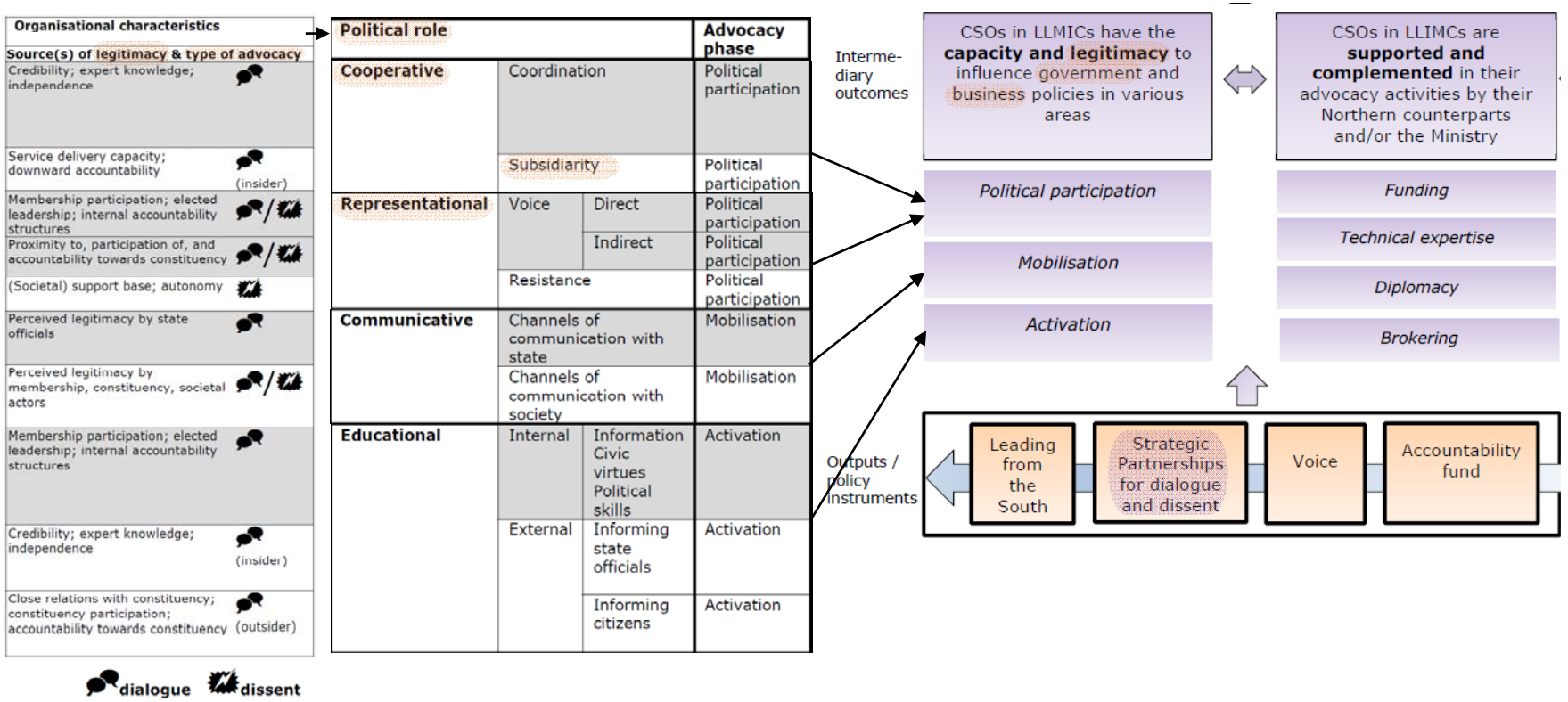
1.2 Positioning in the D&D Theory of Change

Some readers may find it useful to get a better grip on where this review is situated in the Theory of Change underlying the Dialogue & Dissent programme (ToC version 2.0, dated June 2017). The core assumption (on civil society's role) that the review aims to critically examine is the following: 'Different roles require different organisational forms, capacities and different forms of legitimacy' (ToC Table 2, p.9). While touching on organisational forms and capacities, our main interest lies with the connection between roles and sources of legitimacy. In fact, the ToC assumes multiple congruencies, not only between roles and types of legitimacy (ToC Table 7, p.28), but also between roles and phases of advocacy (ToC Table 5, p.24), between roles and advocacy strategies (idem), and between 'roles' and 'organisational characteristics' other than legitimacy (Toc Table 7, p.28). Therefore, the ToC embraces the idea of internally consistent 'packages' of phases, roles, strategies and organisational characteristics. Consequently, when zooming in on the bottom-left corner of the ToC visual (ToC Fig.2, p.8), which depicts the different phases of advocacy (*activation ▸ mobilisation ▸ political participation*), such constellations are implied. Fig. 1 (next page) connects these dots by appending two tables (in adapted form) into the ToC. Roles are connected to each advocacy phase, and, in turn, advocacy types –varying from dialogue to dissent- and sources of legitimacy are connected to each role.

The advocacy stages in the ToC visual lead up to the following intermediary outcome: 'CSOs in LLMICs have the capacity and legitimacy to influence government and business policies in various areas'. This intermediary outcome level is our main concern, in particular the empirical question how legitimacy is acquired, maintained, or restored in relation to the roles and strategies selected. Also, in the context of land rights advocacy, Chapter 4 prioritises the legitimacy of CSOs with private sector actors, such that influencing 'business policies' is as central in the review as influencing government policies.

Overall, the review aims to contribute to the following policy question, as put forward in the Assumptions Call document: 'What mix of political roles/strategies is needed in what context?' It is attractive to think in terms of coherent role-strategy 'packages' in this respect, as it conveniently pictures CSO choices as picking a 'package' off a single shelf for each context at hand, rather than CSOs shopping around multiple aisles of shelves, where choices are less path-dependent. The 'package' idea would allow CSO support to be better targeted, as it creates a clear typology of CSO activity. However, for this to work, CSOs need to recognize these 'packages' as relevant, either in their own work or within civil society at large. The literature review offers preliminary insights in this degree of recognition based on secondary material, but this assumption will be further scrutinised during the in-depth field stage in Kenya.

Fig.1 How does literature review connect to Theory of Change of Dialogue & Dissent Programme?



Core assumption:

- **Different roles require** different organisational forms, capacities and **different forms of legitimacy**

Policy question:

- **What mix of political roles/strategies is needed in what context?**

2 Civil society legitimacy

The question of civil society legitimacy and accountability has drawn attention from scholars and practitioners for a number of reasons (Brown & Jagadananda, 2007; Chandhoke, 2002). First of all, CSOs have become increasingly influential on the local, national and transnational level. The most powerful organisations may even successfully challenge or compete with state institutions (Hudson, 2001; Jordan & van Tuijl, 2006; Van Rooy, 2004). The most extreme examples are BRAC and Grameen Foundation in Bangladesh, which basically act as a kind of parallel government (Lewis, 2004). The annual turnover of World Vision, the world's largest development-oriented CSO, is also illustrative of the clout that CSOs represent. According to its latest consolidated financial report, its income reached 2,6 billion US$ in 2015, which easily matches all official development assistance (ODA) offered by a donor country like Denmark, or by another yardstick, all ODA received by Nigeria or the DRC (as reported in the OECD-DAC aid statistics database). Different from the state, however, there are no inherent accountability mechanisms such as elections that are binding to CSOs (Atack, 1999; Edwards & Hulme, 1996).

Yet CSOs draw their authority from their perceived ability to represent broader societal needs. They usually claim that their agendas benefit at least a certain sub-section of society, and act on behalf of a larger constituency that is not strictly defined; although some CSOs are membership-based, many of the larger NGOs are not. Moreover, these public demands themselves often relate to issues such as transparency, democracy, and other goals that are deemed good and desirable, which creates expectations that they themselves set the right example (Edwards, 2004; Hudson, 2001; Jordan & van Tuijl, 2006; White, 1999). The recent scandals regarding sexual misconduct within international aid organisations are a good illustration of the moral indignation that arises when CSOs do not live up to public standards. As a result, NGOs are no longer considered 'magic bullets' (Edwards & Hulme, 1996), and we may have encountered 'the end of blind faith' with regard to civil society (Naidoo, 2004), if such an era ever existed in the first place. Civil society organisations all over the world face continuous pressure to demonstrate their importance, their relevance, and their moral authority to speak and act on behalf of marginalised groups. They require legitimacy in order to secure political, moral and financial support for their work, and to guard themselves against attacks from state and non-state adversaries.

Before starting this review of civil society legitimacy, we need to acknowledge the academic background of the concept 'civil society'. The notion of civil society gained prominence during democratisation processes that took place in Latin America and Eastern Europe in the 1970s and 1980s. It has since played a strong normative role in neoliberal development policies, although its application to non-western contexts has been critically examined (Lewis, 2002; Van Rooy, 1998). While civil society is generally thought of as a collective sphere that includes churches, labour unions and local associations, its operationalisation in western academic literature has largely dealt with the more professional NGO sector (Chandhoke, 2002).

Both the Ministry of Foreign Affairs of The Netherlands (ToC version 2.0, dated June 2017) and the Fair, Green and Global Alliance,[1] which includes our partner organisation ActionAid, acknowledge that civil society is a broadly defined space in which community-based organisations, social movements and individual activists should be taken into account. However, for pragmatic reasons the Dutch MFA supports mostly formal CSOs, and the academic literature on CSO legitimacy has likewise focused predominantly on NGOs. These professional organisations are often viewed as playing an intermediary role between funders and local constituencies, and may also distribute funding themselves.

In this review we refer to CSOs, non-governmental organisations (hereafter: NGOs) or international NGOs (hereafter: INGOs), as identified in each particular source. While community-based organisations (hereafter: CBOs) play a vital role in civil society, their legitimacy is less contested by critical academics, as their intermediary role is often smaller or absent. This is perhaps one of the reasons why CBOs are less frequently covered in academic discussions on CSO legitimacy. Authors that do include CBOs often view them as more focused on addressing immediate needs in a community than on strategic goals (Covey, 1995; Nyamugasira, 1998). Further (sub)classifications of CSOs are possible (Vakil, 1997), of which 'grassroots organisations' is the most relevant for our research (see below for our discussion on notions of 'local' or 'grassroots'). The interaction between (inter)national NGOs, CBOs and local communities is one of the components we will examine in our research dealing with land rights activism, which frequently involves translating local grievances to international policy levels.

[1] Fair, Green and Global Alliance (2017) *Mutual Capacity Development: A modern and effective approach for fair, green and global change*, p.4.

2.1 Definitions and types of legitimacy

Organisational legitimacy has been discussed by scholars from various disciplines, but its application to civil society organisations remains somewhat elusive. The most widely cited definition in the field of organisational theory comes from Suchman (1995, p. 574), who refers to 'a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions'. A recent study in organisational science discusses legitimacy in the context of companies seeking local approval and acceptance of their extractive projects, which is usually referred to as 'social license to operate' (Gehman, Lefsrud, & Fast, 2017). Applied specifically to CSOs, Edwards (1999, p. 258) defines legitimacy as 'a sense that an organisation is lawful, admissible, and justified in doing what it does and saying what it says, and that it continues to enjoy the support of an identifiable constituency.' Atack (1999) refers to moral justifications for political and social action, including the right to assert leadership, to organise people, and to allocate resources. Similarly, Lister (2003) refers to moral justification for action, rightful authority, and grounds for participation in public (policy) processes.

The concept has been further deconstructed in a variety of ways (see Table 1 for a selected overview), for example by distinguishing between lawfulness and credibility (Thrandardottir, 2015), between discursive and local legitimacy (Molden, Abrams, Davis, & Moseley, 2017), or between the existence, activities, and impact of CSOs (Brown & Jagadananda, 2007). For Suchman (1995), pragmatic legitimacy concerns the question whether an organisation can meet the needs of its primary audiences (rather than a larger public good); cognitive legitimacy refers to an organisation's 'taken for grantedness'; and moral legitimacy concerns the question whether organisations are doing 'the right thing'. Baur and Palazzo (2011) discuss moral legitimacy in the context of CSO interactions with corporations. Based on deliberative democracy, they define criteria to establish an organisation's moral legitimacy as civil, discursive, and consensual behaviour. This concerns, respectively, a commitment to non-violence and dialogue, a dedication to public rather than individual interests, and an orientation towards consensus, alignment, and conflict avoidance.

Brown and Jagadananda (2007) further distinguish legal legitimacy (compliance with laws and state requirements, e.g. registration), normative legitimacy (groundedness in social norms and values), pragmatic legitimacy (having instrumental value for stakeholders, e.g. by delivering services), and cognitive legitimacy (whether an organisation's activities and goals are seen as appropriate for, and accepted by, larger society).

Atack (1999) distinguishes formal-procedural from substantive-purposive forms of legitimacy. Formal-procedural legitimacy includes mechanisms and standards for representativeness, transparency and accountability on the one hand (how do CSOs ensure they are seen as legitimate?), and a set of shared solidarity values on the other hand (what values are CSOs seen to promote?). Substantive-purposive legitimacy refers to effectiveness and operational success in terms of scale, replicability and sustainability of impact (can CSOs demonstrate an effect of its operations?), and to empowerment effects on the poor (can CSOs motivate marginalised groups to become more vocal and self-reliant?).

Based on interviews with representatives of INGOs and 'core stakeholders' such as donors, corporations and intergovernmental organisations, Logister (2007) distinguishes seven types of legitimacy, namely procedural, popular, effective, international normative, moral, network, and representative legitimacy. Ossewaarde, Nijhof, and Heyse (2008) classify four main types of legitimacy, namely normative, regulatory, cognitive, and output legitimacy. Based on organisational studies conducted by Scott and Suchman, Lister (2003) makes an almost similar distinction, with output legitimacy being replaced by pragmatic legitimacy.

Legitimacy based on governance includes the way an organisation seeks to represent its members and ensure internal accountability (Van Rooy, 2004). We have categorised it here as an attribute of the organisation, although it is partly expressed through activities and adherence to norms and values. The other characteristic associated with organisational governance concerns the qualities of individual leadership. Suchman (1995, p. 581) refers to this as 'personal legitimacy' based on charisma. Such 'moral entrepreneurship', he argues, is relatively volatile. Molden et al. (2017) provide other examples of legitimacy based on individual (CBO) leadership, such as personal status and connections, and a willingness to use these for the benefits of the community.

We have compared and categorised these deconstructions according to the source of legitimacy, namely based on formal regulations, societal norms and values, and organisational performance and governance. These four sources have been subdivided into various types of legitimacy with corresponding criteria. As mentioned, different authors have come to different classifications, so there might be overlap between certain types of legitimacy in our model. Pragmatic and output legitimacy, for example, are closely related, but output legitimacy is a broader concept, as it may extend beyond direct stakeholders or beneficiaries. Other typologies such as network or associational legitimacy based on an organisation's coalition members or allies (Brown, 2008;

Logister, 2007) have been left out, because we consider them to extend beyond the legitimacy of individual organisations (as discussed below, CSO coalitions often have their own legitimacy dynamics). In Table 1, we have indicated a selection of sources where reference to each type of legitimacy may be found.

Some types of legitimacy are more directly dependent on organisational decisions than others. Suchman (1995)'s pragmatic legitimacy, for example, is easier to influence by organisations than the more 'elusive' moral and cognitive legitimacy, since the former is based on tangible results, while the latter requires a build-up of organisational reputation over time. Moreover, not all types of legitimacy are inherently positive in evaluation. Correspondingly, Suchman's distinction between moral and cognitive legitimacy separates the substantive evaluation of an organisation from its 'taken for grantedness'; a bank, for example, might be perceived as a necessary part of society, even if its individual practices or leadership is being questioned.

Brown and Jagadananda (2007) argue that CSOs can take specific actions to enhance their legitimacy, for example by adopting certain procedures and terminology that are perceived as legitimate (e.g. monitoring and evaluation). CSOs may also suggest new definitions or standards of legitimacy in an attempt to bring about social transformation. Hudson lists a number of ways in which NGOs may discuss or define their own legitimacy. They may do so based on perceived public support, voluntary requests for assistance, technical expertise, accountability procedures, practical experience on the ground, promoting a value widely shared in society, transnational contacts, a history of institutional survival, a demonstrable membership or support base, and upholding particular principles, rights and values. In the section below, we will discuss the relationship between legitimacy and accountability in more detail.

Some authors have drawn specific attention to the time-specific aspect of legitimacy. Vedder (2003), for example, distinguishes between general (global) legitimacy and specific (occasional) legitimacy, in order to highlight that certain NGO activities may be disapproved of, even if the NGO itself remains legitimate. In theory, an illegitimate organisation could also perform legitimate activities, e.g. by pairing up with legitimate organisations (Logister's 'network legitimacy'). However, we suspect that it is more difficult for 'illegitimate' organisations to gain legitimacy through activities, than for legitimate organisations to be associated with illegitimate activities.

Likewise, Suchman (1995) distinguishes between legitimacy for continuity (being able to operate e.g. by securing resources) versus credibility (being seen as meaningful and trustworthy), and between passive and active support. For passive support, the threshold of legitimacy is lower than for organisations that require active audience involvement, for example in campaigning activities. He further distinguishes between activities that are intended to acquire, maintain, or repair organisational legitimacy. The abovementioned scandals regarding sexual misconduct by (I)NGO staff are an example of a 'legitimacy crisis' that needs to be repaired. In our research, we will predominantly examine how 'established' civil society organisations maintain their acquired legitimacy in the context of land rights activism, but we will pay attention to activities aiming to improve or repair organisational legitimacy where relevant.

2.2 Social construction of CSO legitimacy

Lister (2003) argues that NGO legitimacy is not well defined in development studies, as it relies on definitions from other fields that emphasise technical solutions and observable actions (e.g. in the form of structures and procedures). In her view, this approach ignores more fundamental questions about why NGO legitimacy actually matters, and to whom. Drawing on organisational and institutional theory, she argues that legitimacy is socially constructed, and should be seen in light of relevant power relations and discourse analysis. Suchman (1995, p. 574) similarly emphasises that legitimacy is socially constructed, which means it is 'dependent on a collective audience, yet independent of particular observers.'

Different stakeholders in terms of perceived legitimacy include donors, members and other private supporters, Southern partner organisations and governments, target institutions of advocacy (e.g. the World Trade Organisation or the World Bank), employees, and beneficiaries (Lister, 2003). Hudson (2001) argues that an NGO will rarely be perceived as (equally) legitimate by all stakeholders. For some, formal membership, elected board members and evaluation systems best ensure legitimacy, while others rely on less tangible criteria such as an organisation's reputation or its proximity to the field. Likewise, increased legitimacy in the eyes of governments or inter-governmental institutions may sometimes diminish legitimacy on the local level. Thus, legitimacy relies not only (or even not primarily) on the characteristics of an organisation, but also on the approaches, interests, and perceptions of specific audiences or stakeholders in particular contexts and at particular points in time. For example, a faith-based approach might be a source of legitimacy in certain contexts, while in other circumstances such an approach may lead to a perceived bias towards certain religious groups. In many African (and other non-Western) contexts, local

Table 1 Overview of sources and types of CSO legitimacy in selected references

Source of legitimacy	Type of legitimacy	Criteria	Selected references
Regulations	Legal	Compliance with (inter)national laws and other formal requirements (e.g. CSO registration, international agreements)	Brown & Jagadananda 2007; Lister 2003; Logister 2007; Ossewaarde et al. 2008; Thrandardottir 2015
	Procedural	Based on techniques and procedures (e.g. accountability and transparency mechanisms)	Atack 1999; Logister 2007; Suchman 1995
Norms and values	Moral, rightful authority	Righteousness, justification for action	Lister 2003; Logister 2007; Suchman 1995
	Credibility, popular support	Seen as meaningful and trustworthy	Logister 2007; Suchman 1995; Thrandardottir 2015
	Substantive, normative	Mission grounded in shared societal norms and values	Atack 1999; Brown & Jagadananda 2007; Lister 2003; Ossenwaarde et al. 2008
	Cognitive, existence, discursive	Taken for granted and accepted in society, represented in popular discourse	Brown & Jagadananda 2007; Molden et al. 2017; Ossewaarde et al. 2008; Suchman 1995
Performance	Pragmatic, instrumental	Meeting the needs of specific stakeholders (e.g. service delivery for constituencies)	Brown & Jagadananda 2007; Lister 2003; Suchman 1995
	Consequential, output	Demonstrable accomplishments, effectiveness	Atack 1999; Brown & Jagadananda 2007; Logister 2007; Ossewaarde et al. 2008; Suchman 1995
	Impact	Replicability, sustainability, empowerment of constituencies	Atack 1999; Brown & Jagadananda 2007
Governance	Organisational representation	Size and composition of membership, internal democracy, accountability, and transparency	Logister 2007; Van Rooy 2004
	Leadership	Individual charisma, connections, status	Molden et al. 2017; Suchman 1995

organisations formed around ethnic identity or kinship ties may be perceived as legitimate, despite their partisan and potentially exclusivist nature (Lewis, 2002).

Walton, Davies, Thrandardottir, and Keating (2016) emphasise the transnational component of CSO legitimacy in the context of INGOs, which are influenced both by global norms and by local priorities. However, they argue that these two levels influence each other, as emerging global norms e.g. in terms of politics or development cooperation also affect perceptions of CSOs on the local level. The Western trend to combine aid and trade relations is one of the global factors affecting CSO legitimacy on the ground, as local activists feel compelled to address the consequences of these policies for their constituencies. Gehman et al. (2017) add that the global influence of social media has altered conversations on these issues by empowering previously unheard voices.

Apart from the multi-faceted nature of legitimacy, Lister (2003) draws attention to the importance of a legitimating environment, and of identification with symbols and terminology such as 'the south' or 'the local', which may serve as legitimising concepts without being further defined or critically tested in the field. Fundamentally, she warns against viewing legitimacy as a binary question, i.e. a characteristic that an organisation either lacks or possesses. In line with anthropological approaches, more attention should be addressed to underlying power relations in society, and the way in which situations are framed within a certain dominant discourse. In terms of land rights, for example, we cannot assume a fixed separation between companies as 'land grabbers' and communities as victims (Salverda, 2018). Neither companies nor local communities are uniform entities, and their views and interests might differ across time and space, as argued below. The growing international focus on 'land grabs' is in fact an example of an emerging discourse in itself (Borras, Hall, Scoones, White, & Wolford, 2011). The social constructivist approach implies that the legitimacy of CSOs active on land rights remains continuously subject to contestation and re-definition.

Walton (2013) draws attention to the political components of civil society legitimacy and attempts at de-legitimation, particularly in conflict-affected environments, where state legitimacy and its control over territory and populations tends to be contested. He emphasises that stakeholders or audiences do not passively judge civil society behaviour, but often use debates around CSO legitimacy to further their own political agendas. CSOs that engage in political action, and are therefore seen as partisan, are particularly vulnerable to scrutiny by power holders. In the Palestinian Territories and in Sri Lanka, for example, NGOs that received donor support were viewed by nationalist groups as supporting the peace process, thereby undermining more radical resistance efforts (Walton, 2013). In this case, legitimacy with foreign donors reduced support by politically radical local actors. The NGOs' perceived legitimacy in the eyes of the state, moreover, varied with the political actors in power at any given time.

In the case of Kenya, which has experienced various recent episodes of (sometimes violent) political strive, Orvis (2003) argues that civil society is closely linked to politics, and that its activities in rural areas are often tied to political patronage. However, he argues that in the Kenyan political climate, partisanship (i.e. activities in support of the opposition) may simply serve as a counter-balance to the power exerted by the state on the local level. Likewise, in her article on the role of civil society in post-conflict mediation, Zanker (2014, p. 78) argues that 'In the Kenyan case, where ethnicity or tribalism continues to be engrained in society, it seems that civil society participants in negotiations need to represent ethnic groups to be *subjectively representative* and as a result legitimate.' For our research, we will be entering the field at a period in time when the outcomes of the 2017 elections have been heavily contested by the Kenyan opposition. Like in earlier years, we expect that this will have further polarised the political landscape, and raised the stakes of CSO legitimacy in Kenya.

In conclusion, legitimacy has been defined and operationalised in a multitude of ways. It revolves around a widely held perception of an entity or action as beneficial, but only in the eyes of particular stakeholders within a specific context and timeframe. For example, being acknowledged by allowing registration or extending invitations to meetings may be a sign of legitimacy in the eyes of the state, but it may have a different or even adverse effect in the eyes of more radical, independent activists or social movements. In our research, we will approach legitimacy as a significant but socially constructed assessment of CSO operations in the field, and pay ample attention to the role of politics on various levels. Rather than being a static characteristic of an organisation, legitimacy is assessed differently (and sometimes strategically) depending on time, place, and the stakeholders involved, including the private sector. We will try to assess how CSO legitimacy is viewed in the eyes of the corporations they target, but more importantly, we will examine how CSO activities towards the private sector affect perceived legitimacy as viewed by other stakeholders, and how CSOs deal with these anticipated effects.

2.3 Legitimacy and accountability

The concept of accountability is frequently discussed in relation to legitimacy. According to Baur and Schmitz (2012, p. 14), accountability concerns a relationship between an organisation and specific stakeholders, whereby it is assumed 'that being responsive to those stakeholders will be beneficial to the NGO and its mandate.' Andrews (2014, p. 100), citing Day & Klein (1987), refers to accountability as 'the measure of who can call whom to account and who owes a duty of explanation and rectification.' Accountability is both more specific, and subject to more direct CSO influence than the more general notion of legitimacy. However, the two concepts influence each other, and questions about CSO legitimacy are often raised in terms of accountability (Najam, 1996).

In his study on environmental NGOs, Jepson (2005) warns that NGOs that come under pressure to demonstrate their accountability should not simply copy existing accountability mechanisms from the government or private sector. Rather, the sector should work towards its own accountability regime, centred around the notion of public trust. The model he subsequently proposes combines notions of legitimacy with structural and public accountability. According to this model, structural accountability depends on systems and procedures in the institutional domain, while public accountability is dependent on perceptions in the social domain.

Despite originating from political and legal discussions, most authors consider accountability, like legitimacy, to be stakeholder- and context-specific (Jepson, 2005; Jordan & van Tuijl, 2006; Williams & Taylor, 2013). For Brown (2008), accountability systems form a mechanism for CSOs to operationalise their legitimacy in practice, as they subject CSOs to specific standards and measurements. This may be done by defining stakeholders and indicators, and establishing operational support systems on various levels, from the individual to the sector-specific. Baur and Palazzo (2011) emphasise the importance of operationalising procedural legitimacy on the empirical level, e.g. by linking it to existing accountability frameworks that distinguish transparency, participation, evaluation, and complaint and response mechanisms. Our partner organisation ActionAid is frequently cited as an organisation that has sought to reinvent its accountability mechanisms in various contexts in light of new insights and approaches, such as the adoption of an explicit rights-based approach (Brown & Jagadananda, 2007; Okwaare & Chapman, 2006).

2.3.1 Upward accountability

CSOs are subject to multiple, potentially competing, accountabilities (Edwards & Hulme, 1996; Jordan & van Tuijl, 2006).[2] They must balance the demands of government, donors, clients, members, allies within their networks, their own staff, and their organisational mission or values. These demands are derived from established societal norms, existing codes of conducts, and strategic organisational choices (Brown & Jagadananda, 2007). Najam (1996) distinguishes NGO accountability to patrons (donors, including governments), to clients (their beneficiaries), and to themselves (staff and mission). In other cases, NGOs may act as donors themselves, with recipient CSOs being accountable to the donor NGO. While most authors distinguish between downward accountability (towards beneficiaries, clients or communities) and upward accountability (mainly towards donors), others have categorised both these forms as outward accountability, as opposed to inward accountability which refers to the organisation's internalised values (Andrews, 2014; Brown & Jagadananda, 2007).

The excessive power yielded by donors as funders of CSOs and their extensive reporting requirements often result in an emphasis on upward over downward accountability (Brown & Jagadananda, 2007; Jepson, 2005; Walton et al., 2016). This is particularly the case for CSOs that strategically choose to reject (or simply do not have access to) government support, as it increases their dependency on private donors. Donor requirements for monitoring and evaluation mechanisms increasingly include assessments whether the demands of beneficiaries are met. Yet paradoxically, an excessive focus on reporting requirements may decrease opportunities for CSOs to ensure downward accountability. Given the previously mentioned diversity within communities, accountability to clients is not easily established, especially when community members' views (e.g. support for commercial logging projects) do not meet the aspirations of the (donor) NGO. Moreover, it is important to look critically at cases where community aspirations match NGO priorities, as this may either reflect NGO-community resonance, or 'aspiration manipulation' by the NGO (Najam, 1996, p. 345).

In a case study on the Mexican Zapatista movement described by Andrews (2014), local communities were able to decline cooperation with certain donors that they felt did not share their values, because their well-known status drew sufficient support from alternative sources to continue the required funding. Similarly, De Bakker, Den Hond, King, and Weber (2013, p. 585) refer to the

[2] In this section, we note an explicit cross-reference to the 'aid chain' theme as covered in the ToC.

concept of 'resource niches' in social movements, whereby radical groups draw their resources from funders that endorse their position. Kilby (2006) argues that the occurrence of negative community responses to an organisation's activities and values might actually be an indication of effective accountability. Although organisations may choose to end cooperation with donors or other partners that diverge from their core values, as the aforementioned examples illustrate, Kilby argues that very large and very small organisations might find it more difficult in practice to do so. Large CSOs may find it difficult to untangle themselves from existing networks and relationships, while small CSOs often have fewer support options in the first place.

2.3.2 Downward accountability

We note that downward accountability towards communities and direct beneficiaries, while being the backbone of CSO legitimacy, is not as easily established as upward accountability towards donors. In this section we cite some examples from CSO campaigns and coalitions in which the (trans)national framing and agenda setting was disputed or negotiated on the local level. We will emphasise diversity of identities and interests within the professional civil society sector, but also within local communities.

Adversaries may employ divide-and-rule strategies towards civil society actors. Batliwala (2002, p. 398) writes that government authorities often reinforce the exclusion of direct stakeholders by inviting elite NGOs for conversation, rather than 'the loud, militant, and difficult to control grassroots groups who do not speak the same bureaucratic language that elite social advocates have learned'. She argues that grassroots constituencies may feel used by NGOs that want to establish legitimacy and credibility for themselves. NGOs take issues out of their hands for their own benefits, but then drop the issues when they are no longer relevant for their campaigns. Batliwala mentions the example of an eviction of pavement dwellers in Mumbai that was taken to court by a lawyer's collective. The lawyers withdrew from the community while the case was processed in court. When they eventually lost the case, the authorities started demolitions, and the community members lost their opportunity to engage in dialogue or negotiation with local authorities. This case is of special relevance, as court cases are one of the tactics often employed by land rights activists on the (trans)national level.

White (1999) reminds us that following Gramsci's theory, civil society may well be or become part of pre-existing hegemonic power structures. During the post-2010 political transition period in Myanmar, for example, a group of 'urban educational elites' grew into an increasingly powerful role. Many of them were educated abroad or by Western embassies, which made them uniquely capable of expressing themselves in the familiar (English) terminology that donors were accustomed to (Matelski, 2016). As urban-based 'gatekeepers' they were easily visible to foreign observers, while rural populations that were not as well-connected struggled to have their -often more practical and less overtly political- demands heard on the (trans)national level (Malseed, 2009). Prasse-Freeman (2012, p. 383) even proposes a hypothetical distinction between 'grassroots' and 'elite' civil society, whereby grassroots civil society actors make 'gentle' demands on the state, which then create bargaining moments for elite-level civil society advocates to step in.

In most cases, it is the elites who spearhead advocacy on the (trans)national level, and marginalised populations can only hope to have their voices included (Chandhoke, 2002). Within poor and marginalised groups, moreover, the voices of women and children (or youth) are most likely to be left out (Nyamugasira, 1998). Zanker (2014) mentions that mediation efforts involving civil society groups after Kenya's electoral violence in 2008 were elite-driven, and that the negotiations were led by CSOs from Nairobi. As a result, local community concerns such as gender-based violence and food shortages were not included in the peace negotiations.

Forbes (1999) describes how in the context of a World Bank project, local identity was used strategically by educated Nepalese who acted as community spokespersons in transnational advocacy efforts. Local Nepalese villagers largely lacked the expertise and terminology to communicate with high-level audiences, and moreover were reluctant to speak out openly against the project, fearing retaliation by local authorities or even other villagers who viewed the project as beneficial to the region. While there might be strategic considerations to leave public advocacy to activists from outside affected areas, the author warns against the use of 'localness' as a legitimising concept. Likewise, Batliwala (2002, p. 395) distinguishes 'between those who are negotiating the adverse impacts of economic changes in their own homes, communities, and lives – what can be termed 'direct stakeholders' – with those who are less directly affected.' While 'grassroots' used to refer to small rural communities or impoverished urban communities as opposed to social elites, the concept has since evolved as a blanket term to describe activism that seeks to influence socio-economic policies on transnational levels.

Forbes (1999) highlights the importance of timely information sharing on the local level as a prerequisite for informed consent. In her case study on a World Bank project, people inhabiting the

proposed project site in Nepal were so ill-informed that they considered only the potential benefits (such as the building of a new road or an electricity network) and not the disadvantages, such as severe pressure on the environment and other local resources due to the size and duration of the project. The right to information on development projects was later confirmed by the Nepalese Supreme Court. For the NGOs involved, this project therefore served as a test case to demand stronger consultation on the use of natural resources, in which they saw a prominent role for themselves. Forbes argues that the inhabitants of the project area (arguably the most 'local' people) ultimately did not have their voices heard in (trans)national platforms. Here too we see the potentially disempowering effect of taking local grievances to court. At the same time, the Supreme Court decision regarding the right to information could potentially benefit other communities in similar situations, a strategic insight which national activists might have prioritised over the individual case.

Covey (1995) lists a number of factors that help to strengthen local actors working in alliances with NGOs, including the pre-existence of grassroots organisations (as opposed to establishing new ones), a strategic division of labour between local communities and NGOs, and the availability of sufficient resources to support both grassroots concerns and policy-level goals. in cases where local people felt used for legitimacy purposes without being given a subsequent role in the campaign, some indigenous groups chose to withdraw from the alliance. Interestingly, Covey argues that the withdrawal of radical community groups helped establish trust and flexibility within the alliance that enhanced the legitimacy of grassroots concerns, while Nyamugasira (1998, p. 306) refers to the silencing of 'radical views or revolutionary ideas' as a threat to democratic advocacy.

Writing about NGOs working with women's self-help groups in India, Kilby (2006) relates the question of downward accountability particularly to the broad values or worldviews ('Weltanschauung') of NGOs working in developing countries. These values are more abstract than the practical organisational values and accountability models, and are usually identified through more specific frameworks such as gender equity, environmental protection, or respect for human rights. Kilby argues that downward accountability should be an empowerment process, whereby the NGO makes itself subject to scrutiny by its presumed beneficiaries. For Kilby, NGO accountability mechanisms towards their constituencies should ideally be formalised (e.g. regular meetings, formal agendas), because this generates rights (rather than benefits) to the constituents, and thereby empowers them in relation to the NGOs. However, the effect of such mechanisms also depends on constituencies' willingness to engage in open conversation; moreover, broader groups of constituents are more difficult to include.

Kilby also points out the 'moral hazard' that NGOs may simply impose their own perceptions of empowerment, resulting in a top-down approach. Academic references to participation as 'tyranny' (Cooke & Kothari, 2001), or the previously mentioned 'aspiration manipulation' (Najam, 1996), seem to confirm this risk. Powerful elites within communities may have a strong influence on framing local demands, which other community members are not in the position to question; this personalised form of 'aspiration manipulation' is referred to as 'elite capture' (Platteau, 2004). Moreover, White (1999) warns against a conflation of the terms 'target group' and 'beneficiaries', as they are often used interchangeably. In fact, the target group usually constitutes an economic or gendered section of society such as the poor or women, while beneficiaries refers to the people directly expected to benefit from the organisation's activities (e.g. in a particular community). These examples show that the question of voicing legitimate local concerns should be assessed beyond geographical location, and that power relations on the local and (trans)national level should be critically examined.

Instead of organisational accountability systems, Brown and Jagadananda (2007) suggest that CSOs may resort to 'domain accountability systems' by identifying which actors share a common interest, which actors do not, and which actors may pose internal or external threats. In domains with a broader and diverse set of interest, the risk of conflict and outside threats increases. Members of the domain must then negotiate standards, codes, and performance measures in interaction with other relevant stakeholders. Subsequently, they must establish implementing organisations, such as regional or national umbrella organisations or coalitions. Lastly, 'domain performance consequences' must be established, e.g. related to government certification or financial benefits such as tax advantages and donor support.

Several authors have argued for the expansion of mutual accountability systems, whereby the more powerful (I)NGOs are explicitly accountable to local constituencies, without losing all influence on priority- and agenda-setting (Andrews, 2014; Brown & Jagadananda, 2007; Najam, 1996). The mutual expectations between the stakeholders should be clearly laid out, as they also influence the type of information sharing required. Brown and Jagadananda (2007) further argue that accountability requirements may differ depending on the type of CSO. For advocacy organisations, legitimacy towards both constituents and advocacy targets are important, while service delivery organisations merely need to demonstrate the quality and reach of their services. For capacity building, organisational expertise and cooperation of the targets are vital. We will return to this distinction based on CSO roles in the following chapters.

In a rare case study on CBO as opposed to NGO legitimacy, Molden et al. (2017) describe how the legitimacy of an American CBO working on community forestry on the local level was based on interpersonal relationships, shared development narratives, and the achievement of demonstrable practical outcomes. This 'local license to organise', as the authors refer to it, was achieved through the CBO leader's charisma, trustworthiness, and relevant education background, which he used to gain support of local community members and government officials, despite being a newcomer to the area (in Table 1 we referred to this as leadership legitimacy). The authors argue that the development of a shared community narrative, in this case related to local economic and environmental insecurities, was key for the establishment of legitimacy on the local level. The CBO's activities compared favourably to environmental activists who entered the area with standardised narratives, but without knowledge of the local context.

Another source of legitimacy in this case study concerned the demonstrated outcomes of CBO involvement for local community members. The CBO leader managed to secure monetary donations, facilitate connections to local agencies, and secure services such as internet connection and a community garden at a local school (in Table 1, we have characterised this as pragmatic legitimacy). The authors refer to these contributions as 'localism', which in the long run gave the CBO the required 'moral legitimacy' to speak on behalf of the rural community. Despite the CBO leader's success on the local level, some community members were concerned that this reliance on an individual personality could constitute a vulnerability for the organisation's long-term success. Dependence on individual leadership may also be risky where there is limited oversight on the activities of this individual.

White (1999) similarly describes how NGO staff may act as patrons towards community members, and how they can make use of their connections to solve certain individual problems. She argues that this relationship may be a key part of the appeal of NGOs for the poor. Lister (2003) concurs that northern or international NGOs such as ActionAid may gain both understanding and credibility from their grassroots-level work, as well as from other factors such as a governing body which is diverse in terms of gender balance and international background. She also identifies a risk, however, if organisational activities and decisions are justified with reference to local partners, but without directly consulting them.

Other authors have also warned that a focus on local concerns does not solve questions of legitimacy and accountability, as local communities are not necessarily more democratic, egalitarian or static in composition than CSOs working on a broader level (Mohan & Stokke, 2000). In the example of the Zapatista movement, the inverted power relations between funders and recipients did not necessarily create a more egalitarian community structure. The movement's leaders, for example, decided that women's empowerment was no longer a key concern, an assertion that not all community members would necessarily agree with (Andrews, 2014).

2.4 Challenges to legitimacy and accountability

Challenges to CSO legitimacy may stem from various actors, including government (which may disapprove, discredit or obstruct CSOs, or seek to co-opt them), donors (the 'mission drift' caused by excessive upward accountability discussed above), and the private sector (discussed in section 4.2.1).

2.4.1 Government restrictions and discrediting

In some cases, CSOs take on powerful actors (e.g. multinationals or local elites), and their actions may be perceived as illegitimate or subversive by power holders, who may in turn initiate retaliation by seeking to discredit the organisation (Brown & Jagadananda, 2007, p. 6). In India, the government insisted not only on NGOs' financial transparency but also on their staying away from 'the political field' of advocacy, except for topics pre-approved by the government. In the case of land, for example, NGOs strategically chose to let others advocate the government, rather than speaking out directly (Kilby, 2006, p. 958). In many other countries, governments impose these restrictions in more or less formal ways, as captured in the recent debates about 'shrinking space for civil society'. CSO accountability requirements towards the government may thus limit the type of advocacy they can engage in.

Wood (2016) describes how in Kenya, the government first gave room to independent civil society, but eventually began to view CSOs as supporters of the political opposition. While CSOs became increasingly vocal as a result of the progressive provisions for citizen participation stated in the 2010 Constitution (see chapter 5 for further discussion on this), they also experienced a backlash as a result of the referral of Kenyatta and Ruto to the International Criminal Court. The CSOs that supported this process were accused of facilitating Western interference, while the mitigating role

CSOs played in the subsequent electoral violence was not widely acknowledged.[3] Although a progressive Public Benefit Organisations Act was adopted in 2013, the government has delayed implementation, and has suggested several amendments to restrict the independence of civil society. Moreover, the Kenyan government seized the opportunity of an increased terrorist threat in the country by accusing three CSOs of association with Al-Shabaab, two of which successfully challenged this allegation in court (Wood, 2016).

Meanwhile, Wood describes how Western governments have increasingly shifted priorities towards trade and investment, posing a second challenge to civil society space. Foreign aid to Kenya has been decreasing in recent years, while foreign investment grew exponentially as a result of Kenya's categorisation as lower middle-income country in 2014. Kenya's private sector has even been referred to as 'the new donor darling' or 'the magic bullet', a term previously reserved for CSOs (Edwards & Hulme, 1996). The rise in foreign investment has thus led to an increased pressure on land, while CSOs in support of land rights have not experienced a stable enabling environment from the side of the Kenyan government. In our research we will take these consequences of shrinking space for civil society and rising foreign investment into account.

2.4.2 Inequality in transnational advocacy campaigns

According to Hudson (2001), links with the grassroots, or with the South as a whole, are most often mentioned by (Northern) NGOs as a basis for their legitimacy. However, most NGOs do not claim to speak directly for the South, but rather present themselves as intermediaries promoting Southern interests in various platforms (Rubenstein, 2014). It is their self-stated capacity to link Southern interests to Northern audiences from which they derive their legitimacy. Yet the literature shows that NGOs often struggle to stay accountable to their original goals and constituencies, particularly when they are successful in transnational advocacy and fundraising, and are able to grow as a result (Banks, Hulme, & Edwards, 2015). Given the increased (donor) pressures imposed on larger organisations, NGO growth may paradoxically pose a challenge to civil society effectiveness and legitimacy (Atack, 1999; White, 1999).

In line with Ferguson (1990), White warns about a de-politicisation of development, in which representation of the poor is reduced to a technical issue, rather than a problem with socio-economic and political causes. This is especially important since the outcomes of advocacy that does address these root causes is particularly difficult to measure, as these are long-term processes in which many confounding variables may arise (Edwards & Hulme, 1996; Fowler, 1996). In Wood's research on Kenya, a respondent therefore stated that NGOs need to highlight their daily contribution to development and democracy in Kenya, so that they are not just seen as 'making noise in Nairobi' (Wood, 2016, p. 540).

Compared to donors, communities have fewer enforcement mechanisms to stir partner NGOs in the desired direction; they may either refuse collaboration, or obstruct NGO activities in their communities. Hertel (2006) lists two examples of communities that sought to influence the way that local concerns transformed into transnational advocacy campaigns. In Bangladesh, for example, a campaign to ban child labour was transformed into an attempt to reduce harm for child labourers, as a complete ban was considered too economically disruptive by local actors.

Rubenstein (2014) also mentions two case studies in which the ability of INGOs to represent local people was challenged, albeit in different ways. The first case concerned a campaign to establish an American law which requires companies to show that the minerals did not contribute to conflict in the Democratic Republic of the Congo (DRC). This 'Section 1502 campaign' was headed by the INGOs ENOUGH and Global Witness, despite significant opposition from Congolese CSOs, which considered the proposed law not only ineffective in reducing conflict, but also damaging to millions of Congolese miners and their families. The second case concerned a report criticising the health care system in Ghana, which was co-authored by Oxfam and three local NGOs. The Ghanaian government framed the report as a foreign attack on a 'home grown African initiative', and the World Bank also referred to it as an Oxfam report, ignoring the contributions of the local NGOs. This framing made the report vulnerable to accusations of neo-colonialism.

In the DRC case, Rubenstein argues that the INGOs actively blocked organisations with more local legitimacy from having their voices heard to warn about negative local consequences of the proposed bill, as they were in charge of invitations for the relevant hearings. Consequently, Rubenstein regards their intervention as a misuse of their internationally powerful position. In the Ghanaian case, however, Oxfam actively worked together with local NGOs and was subjected to local criticism, two factors that according to Rubenstein constrained their influence on domestic public policy. The only risk in this cooperation was that Ghanaian NGOs might have felt they had little other

[3] Zanker (2014) describes how civil society organisations in Kenya, while not being official delegates to the peace negotiations, played an active role in reconciliation efforts after the 2007-2008 post-election violence.

options than participating with the Oxfam report, a situation Rubenstein refers to as a 'lowball offer'. While lowball offers in themselves do not impact on INGO legitimacy, the author argues that INGOs should be wary of such offers if more democratic forms of participation (i.e. with more local influence) are available.

Kraemer et al. (2013) describe a case of a national advocacy network (NAN), which took on a company involved in land acquisition in India. They argue that ActionAid, which had been involved in the community for years, initially played a significant role in organising the resistance movement. In the course of the resistance, however, the gap between local ('grassroots') and urban-based activists widened. ActionAid was accused by local activists of fragmenting the resistance movement by intervening directly (and selectively) in the field, and creating a 'parallel leadership' (Kraemer et al., 2013, p. 838). As ActionAid subsequently took the case to a transnational advocacy level, it was also accused of misrepresenting tribal culture by organising their own worship event on the community's behalf, and of putting forward spokespersons that did not actually represent local activists. ActionAid's financial stimuli and its access to transnational advocacy platforms clearly generated tensions on the local level. However, as we already noted, local communities may also benefit from those actions, and moreover are not uniform entities.

In many cases, local government officials and NGO staff have more similar backgrounds than the local population of the area where they work. The risk, as also identified by Banks et al. (2015), is that NGOs may inadvertently become co-opted. Relatedly, Brass (2012) writes that Kenyan NGOs have been increasingly involved in policymaking committees and participation in planning and budgeting. Conversely, the rising influence of the urban middle class and the use of social media in various countries has limited the monopoly of INGOs to represent the people's voice in global platforms (Walton et al., 2016).

Hudson (2001) proposes the term 'political responsibility', as coined by Jordan and Van Tuijl (2000), as an approach to understanding NGOs' local legitimacy in the context of transnational advocacy networks. In such networks international organisations often represent distant communities and contexts (Keck & Sikkink, 2014). Nyamugasira (1998, p. 300), however, claims that even Southern NGOs involved in advocacy lack a clear constituency: 'It is not a question of Northern versus Southern NGOs…it is the poor versus both.'

Batliwala (2002, p. 399) expands on the importance of heterogeneity of cross-border movements, which may comprise grassroots versus global (landmines, anti-globalisation) agendas; short-term and long-term struggles; single-issue and broader transformation agendas; as well as activists engaging in multiple such movements. Relationships between actors may also be changed by movement success or upscaling to the international level, which may bring about new challenges in terms of legitimacy and accountability, but may also make the movement more democratic.

In response to these challenges and attacks on the legitimacy of INGOs, several of them have in recent years gone through restructuring processes. Many organisations, including ActionAid (South Africa) and Oxfam (Nairobi), have moved their headquarters to Southern countries, in order to be closer to the ground. Others, such as Amnesty International, have scaled down their offices in Western countries in order to expand their field offices.

2.4.3 Contested CSO legitimacy in African land rights cases

We will end this section with two African case studies on land rights, since land rights advocacy will be the focus of our study. Salverda (2018) argues that critical counter-movements do have an influence on corporations involved in land acquisitions, although the precise preconditions for this influence have remained under-studied in academic literature. Likewise, Hall et al. (2015) argue that local reactions to land grabbing are more diverse than is generally assumed, and that gender, class, and generational differences should be taken into account, particularly in cases where land grabs are coupled with a demand for labour. The examples below further demonstrate the risk of 'elite capture' in land rights advocacy.

Krijtenburg and Evers (2014) describe a case study in Kenya's Tana Delta, where a Canadian company between 2009 and 2011 attempted (and eventually failed) to establish a jatropha plantation. The authors describe how conservation and humanitarian NGOs presented themselves as protectors of the delta and its inhabitants. In this process, they argue that the views of local residents and officials that supported the company's plans were not respected, and that the company closed down operations as a result of NGO pressure (although reportedly due to conflict in the region). They analyse the success of this 'anti-biofuels rhetoric' in terms of local-to-global NGO alliances, the use of social media and messages that were picked up by international news outlets, and the strategic use of rhetorical images and polemic, such as the risk of environmental destruction and distortion of local livelihoods (although the latter fear was to some extent shared by local communities, according to the authors). Other possible frames, however, such as the risk of a water shortage, were not

tapped into by the activists, despite the potential to contribute to an international discourse on 'water grabbing'.

This example provides a potential case study in which NGO agendas diverged from local preferences. It also provides an example of the influence of vocal minority voices, as discussed in the articles by Gehman et al. (2017) and Rubenstein (2014). The authors suggest that the NGOs might have benefited financially from their opposition to the jatropha project, with at least one of them being able to upscale their operations as a result of their campaign success. However the article remains rather speculative, with neither the (I)NGOs nor community members' views being explicitly portrayed.

Igoe (2003) describes the case of Tanzania's pastoralist land rights movement (originating in the colonial era), which transformed from local, non-coordinated resistance with limited effectiveness, to a registered NGO with institutional legitimacy and formal coordinating mechanisms for advocacy at the international level. He attributes the emergence of the pastoralist NGO movement to the effects of political liberalization on educated Tanzanians who started NGOs in the 1990s. In his analysis, the NGO gained donor support by demonstrating its connection to disenfranchised communities, but its leaders subsequently became less accountable to their constituents, as their activities were drawn away from highlighting political problems to technical reporting requirements for donors. The initiation of court cases was also welcomed by donors, as this would likely lead to tangible outcomes. Igoe points out similar pitfalls that we highlighted in previous sections, namely that NGO leaders spent more time in court than in the community, and that the court cases polarised the situation on the ground, and reduced opportunities for compromise. In this case the community's grievances were not resolved, as the court refused to rule on what it considered a 'political' matter. Meanwhile, donors failed to recognise either their own role in this process of professionalization or the underlying socio-economic causes, and simply created new networks and (umbrella) organisations when the previous constellation proved disappointing.

Igoe's example demonstrates the importance of taking local context and historical factors into account. In Tanzania and many other African countries, elites continued to connect with European actors after colonial independence, an outward-oriented process that has been referred to as 'extraversion' (Bayart & Ellis, 2000). As a result, patron-client systems that had developed in colonial times remained in place, which complicate NGOs' ability to respond to the demands of their constituencies. In Igoe's case study, donors ignored these relations of powerful local elites, and instead viewed pastoralist (Maasai) NGOs as inherently grassroots-oriented and democratic. They failed to realise that NGO leaders (often males) can be both committed to the goals of their organisations, and concerned about maintaining their middle class lifestyles, a standard the average local NGO salary hardly facilitates. The result may be mission drift, and even misappropriation of money.

Another context-specific factor concerns African job opportunities, since the imposition of structural adjustment policies in the 1990s (Amutabi, 2013; Igoe, 2003). With the roll-back of government services, reliance on NGO service delivery grew, particularly in rural areas. However, many former civil servants also turned to NGO jobs, as they were made redundant in the public sector. Igoe (2003, p. 871) concludes that 'the very same people who were previously running African states (and some who still are) have tended to dominate the NGO sector.' The inaccessibility of the Tanzanian court system to deal with the grievances of local community members proved to be another country-specific barrier for effective NGO intervention.

Igoe also points out the interrelatedness between NGO leadership, political leadership, and the business sector. In the Tanzanian case, the pastoralist NGO was driven into the hands of an opposition party with which they supposedly shared goals. However, it turned out that these opposition leaders had close relations to the businessmen that were actually taking the land away from the pastoralists. The elite appropriation of land rights agendas, the dominant influence of Western donors, and the close relationship between CSO and government leaders (as well as between political power holders and business) are important components to take into account in our research on land rights advocacy in Kenya.

3 Role selection of CSOs: Specialist or Jack-of-all-trades?

We start this section with a full quote from the ToC of MFA, as this inspired this study and continues to be our point of reference. The ToC (p. 30) states the following:

> The four hypothetical examples provide a good sense of how different organisational types are best suited for performing different political roles and different advocacy strategies. They also help explain the point that some political roles are difficult to combine in one organisation. Even though it is known that bigger organisations are better positioned for performing multiple political roles and employing different kinds of advocacy strategies (Bass et al., 2007), the characteristics which make them strong in one role potentially weaken them in other roles (Kamstra & Knippenberg, 2014). For instance, the characteristics which make the think tanks strong in their educational and cooperative role, weaken them in their representational role. Their professional staff and policy advice provide access to the state and legitimacy in the eyes of state officials, but at the same time provoke the criticism of having an urban elite bias and not representing ordinary people. Vice-versa, while the confrontational tactics of social movement organisations make them strong as watchdogs and provide them with legitimacy in the eyes of their support base, their confrontational tactics might harm access to the state and damage their legitimacy in the eyes of government officials. Rather than expecting organisations to perform all political roles, organisations can complement each other by combining strengths. A community based organisations can use a think tank to convey its message to government officials, and by doing so the think tank strengthens its link with society. Service delivery organisations can join social movements, enabling them to go beyond issue-based advocacy claims and contribute to systemic change while the social movement gains access to information on community needs. Many of such combinations are possible, and they should be considered in advocacy capacity development trajectories.

The question we therefore attempt to answer in this part of our literature review is: what does the literature tell us about the combination of different roles and strategies of non-governmental organisations and social movements? This chapter will focus on civil society's relations with the *state*, drawing from a rich variation in literature spanning development studies, democracy literature, social movement literature (albeit limited), and, to a great extent, management and organisational studies. In chapter 4, we will look at civil society and private sector relations. Because the classifications of roles of different civil society organisations are primarily embedded in state-society literature, we have placed this section in this chapter.

3.1 Roles

To formulate an answer to this question, we first offer a brief overview of the different roles that NGOs can play. Broadly speaking, classifications in the literature are made between service delivery, catalytic, brokerage, advocacy and empowerment roles. These can be placed along a continuum from being managerial to social transformational, the distinction made in the Theory of Change. From a managerial approach, development is seen as a rather technical, economic or institutional problem. NGOs can help solve these problems mainly through service delivery. A social transformational approach focuses, instead, on the underlying systems. A number of authors relate NGOs' roles to the historical development of the NGO-landscape, critiquing the rather instrumental approach that NGOs seemingly have taken in the last decades (Banks et al., 2015; Korten, 1987, 1990; Mitlin, Hickey, & Bebbington, 2007).

Two influential studies have appeared by Korten (1987 and 1990), who identifies four 'generations': 1. *relief and welfare* organisations (1960s), which focused on the immediate needs of people and families, providing material goods and welfare services; 2. *local and self-reliance* organisations involved primarily with community development projects, such as improving farming practices and local infrastructure projects; 3. Organisations working towards *sustainable systems development*. NGOs started to engage with the political sphere, such that their work became more catalytic in nature, serving the capacities of other actors such as user associations, to strengthening capacities of NGOs, banks, local governments and ministries, to assisting government. A fourth generation was added later, as Korten (1990) realized that, inasmuch as second generation strategies ignored systemic changes and thus had to replicate itself numerous times at the micro-level, the same argument holds for the third generation strategies – only this time at the macro level. Moving away from his earlier rather instrumental approach, Korten became interested in social movements, identifying them as powerful in creating systemic change (e.g. women's rights

movement and environmental movement). This fourth generation of NGOs has the aim of energizing 'a critical mass of independent, decentralized initiatives in support of a social vision' (Korten, 1990). The role of NGOs is then to support the people in the 'real social movement', with an emphasis on communications and networking. The root cause of underdevelopment is, according to Korten, no longer found in systemic institutional shortcomings, but a lack of mobilisation (Korten, 1990). In more general terms, Korten thus distinguishes between service delivery, catalytic (local and national), and empowerment or brokerage roles.

In line with Korten, other authors have advocated a reorientation of NGOs towards grassroots organisations or social movements as well (Banks et al., 2015; Escobar, 1992; Mitlin et al., 2007). Banks et al. (2015), for example, critique the development of NGOs, arguing that their service delivery focus goes at the expense of their civil society function. They argue that NGOs are pressured to be non-confrontational and non-political rather than confrontational, and to take up moderate positions and to focus on service delivery. Even when NGOs have a stated vision and mission to empower the poor and marginalised, their ability to influence drivers of social change may still be very limited. To escape from this 'trap', they propose a 'new' role for NGOs: as bridge builders. In this role, NGOs should 'step back' and support grassroots organisations that are more embedded in their respective societies to take on powerful economic and political actors. NGOs must move away from the narrow focus on institutional advocacy, i.e. lobbying elites nurturing state relations, toward a deeper engagement with broader politics through public advocacy, which is employing innovative strategies for communication with, and amplification of, citizen voices. NGOs should seek to expand their impact, not replicate or scale up standard interventions (or be measured by their ability to deliver services). This way, they could strengthen their role in social transformation even if their delivery functions decline. They should 'step away from the driving seat' from decision makers to co-creators and translators and become supporters and facilitators of deeper networks of social action, i.e. work together with social movements (Banks et al., 2015).

Mitlin, Hickey and Bebbington (2007) put forward a similar argument in their historical account of NGO development, where they demonstrate that NGOs have moved from more radical organisations seeking to alter systems in the 60s, to a rather instrumental approach where dominant ideas are challenged, but not the underlying foundations. An example can be found in microcredit: instrumental approaches would focus on including the poor, whereas more radical NGOs would question the whole neoliberal arrangement of society (Mitlin et al., 2007). Their ideal type resembles the brokerage function as proposed by Korten, Escobar, and Banks and Hulme: NGOs should foster relationships with other stakeholders. NGOs could either influence other actors, such as politicians, directly, or by linking up with mass movements. But, they can also engage with other actors such as companies or consumers. There will be contestations over hegemonic ideas in society, to which NGOs are not a party as such, but act more as a 'convener', trying to draw in marginalized sections of society, and be responsive to them (Mitlin et al., 2007, p. 1713). Next to building relations, public opinion is an area of utmost importance, as it is through public opinion that contestations over hegemonic ideas unfold. Activities are targeting the press, schools, interest and pressure groups, religious institutions, cultural institutions, and more. This can also be called 'a knowledge brokering role'. However, as much as the authors advocate for this role, they do not lose sight of operational programs, which are considered important to inform advocacy work (Mitlin et al., 2007, pp. 1713-1714).

From this historical outline, we come to a broader categorization developed by Arhin (2016), who distils from the literature three typologies of NGO roles: service providers, advocates, and brokers or facilitators, including capacity builders. In this latter role, they act as intermediator between different parties, such as the private sector, communities and government. Arhin asserts that it is 'common practice' that NGOs conduct all three kinds of roles at the same time, even though there can be shifts over time (Arhin, 2016, p. 559). Minkoff (2002) and Yazidi and Doh (2009) categorize NGOs in service delivery NGOs, advocacy NGOs and 'hybrid' NGOs, the latter combining the former two functions. We will come back to this 'hybridity' later on.

3.1.2 Political roles

A substantial number of articles have looked more in-depth into an organisation's advocacy role, particularly literature dealing with organisations in the United States. The ToC offers a rather

comprehensive overview of the dominant definitions and forms of advocacy, and we will not repeat this here. Rather, we limit ourselves to highlighting some concepts that will recur in our review. Advocacy can be defined as 'any attempt to influence the decisions of any institutional elite on behalf of a collective interest' (Jenkins, 1987, p. 127, in: Mosley, 2011, p. 436). Perhaps a more useful definition comes from Andrews and Edwards (2004), who define advocacy organisations as 'groups and organisations that make public interest claims either promoting or resisting social change that, if implemented, would conflict with the social, cultural, political, or economic interests or values of other constituencies and groups' (Andrew and Edwards 2004, p. 485, in: Minkoff, Aisenbrey, & Agnone, 2008, p. 526). This a broader definition that leaves more room for different kinds of organisations and strategies.

In defining political roles, it is helpful to consider the type of tactics involved. Mosley (2011) makes a useful distinction between direct, or insider, and indirect tactics, the latter including (but not identical to) outsider tactics. Mosley states that '[t]hey are not mutually exclusive groups; many organisations can and do participate in both types. The distinction between them is one of strategy and organisational posture, which likely are at least partially determined by an organisation's level of access, resources, and legitimacy' (Mosley, 2011, p. 439). This latter argument resembles the line of reasoning in the Theory of Change, stating that different capacities must be built for different political roles, as we shall see later on. *Insider* tactics entail working directly with policymakers and institutional elites in order to change policies and/or regulations. Activities are participation in government commissions and committees, giving information on policy issues, participation in the development or adaptation of policies and regulations. This requires both field expertise and connections to policy makers. *Indirect* tactics include activities such as public education, writing letters and petitions, working with advocacy coalitions, conducting research, writing policy reports, and organizing demonstrations. Finally, *outsider* tactics is one form of indirect advocacy, and refers to more radical tactics such as boycotts, protests, and demonstrations. The aim is to disrupt and visibility is one of its main aims (Mosley, 2011, p. 440).

Authors who write in the tradition of democracy, identify roles in terms of the different contributions they make to democracy. Generally, they boil down to a distinction between educational functions, coordinating or representational functions, and functions of resistance (Fung, 2003; Hadenius & Uggla, 1996; Kamstra & Knippenberg, 2014; Warren, 2003). Hadenius and Ugla (1996) distinguish two broad categories: a first one that serves to enhance *pluralism*, which refers to a more equal distribution of power, protection of interests of people, countervailing power to state institutions, and, second, an *educational* function, which concerns fostering support for democracy among citizens, and socializing them into democratic norms. Warren (2003), similarly, categorizes functions as follows: 1. Imparting citizens with democratic skills and values, such as deliberation and problem solving, as well as trust and tolerance; 2. Creating a public sphere where public deliberation can take place by giving out information to citizens and offering them a voice; 3. Institutional functions through the interaction with formal state institutions, including representation and resistance, alternative governance, coordination, and conflict resolution across different policy bodies. According to the authors, civil society organisations should have the following organisational characteristics to be effective: they should have a broad popular base, democratic structures, open recruitment, a broad voluntary membership, and they should be autonomous (from the state).

Fung (2003) elaborates on six contributions that fall within these broad categories: 1. The pure 'being' of associations as contributing to democracy; 2. Civic socialization and political education, whereby associations focus on the attitudes, skills and behaviour of people 3. Resistance and checking power 4. Interest representation 5. Public deliberation and the public sphere, enhancing an open communication process and setting a public agenda and 6. Direct governance, where associations play a direct role in service provision, policy formulation and regulation, or, even aim for a radical reconfiguration of government where a state cedes functions to associations.

Kamstra and Knippenberg (2014) build on the work of Warren (2003), Hadenius and Uggla (1996) and Fung (2003) to specify four distinct roles. The first one is an *educational* role, in which NGOs provide information, promote civic virtues and values and teach political skills, sometimes also bringing people together in collectives. They thereby enhance transparency and public accountability. The NGOs need to have a democratic structure, voluntary membership, and a popular support base to be successful. Members engage in interaction with one another, and thus learn political skills such as debating, and values like trust and reciprocity. This role resembles the second role as described by Fung (2003). A second role is the *communicative* one, where NGOs foster public deliberation by

providing a communication structure between state and society. They maintain relations with both the state and society. This role reminds us of the Fung's (2003) fifth role. A third role concerns *representation*. Similar to how Fung and Hadenius and Ugla treat this representational role, the authors regard this function as complementary to voting and political parties, as it offers more opportunities for citizens to influence policy. Within this role NGOs foster both 'voice' and 'resistance'. By facilitating 'voice', they advocate for government policy changes on behalf of constituencies (note the similarities with Fung's 'interest representation' role). There is also a more confrontational variation of this role, where NGOs oppose the state, acting as a watchdog, checking on abuse of power, or safeguard standards (similar to Fung's 'resistance' function). A large voluntary membership among citizens is crucial for this role, such that NGOs can rightly claim they represent a constituency, thus garnering their legitimacy. If members are actively mobilized, then NGOs also become a source of countervailing power. A necessary condition is that NGOs are not dependent upon the state. NGOs can choose a strategy, either confrontational or non-confrontational, but the bottom-line is opposition to the state. A fourth and final role is that of *cooperation*. Kamstra and Knippenberg use Warren's theory to break down this role into subsidiarity and coordination. Subsidiarity means filling gaps in the service provision of the government. By locating such service delivery within a particular political role, they break with the common distinction between service delivery on the one hand, and advocacy on the other. In their coordinating function, NGOs participate in, or organize, networks by connecting stakeholders, generate expert knowledge, mobilize support, and negotiate policy directions. For this to be successful, they need to have a strong network, a capacity to deliver services, and specialized knowledge (Kamstra & Knippenberg, 2014, p. 100).

Before moving on, it is useful to align Kamstra and Knippenberg's typology with the different types of tactics discussed earlier. The coordination function can safely be equated with insider tactics, whereas the representational function most likely draws upon outsider tactics, which can either be confrontational or collaborative. In order to keep track of the different roles, strategies and tactics discussed throughout this review, Table 2 (see pp. 43-44) provides an overview of the different categorizations and their relations.

3.2 Combining service delivery and advocacy

In this section we will examine to what extent different roles can be combined. A note of caution is warranted here, however. The fact that service delivery is included under one of the political roles of NGOs in Kamstra and Knippenberg's article, poses a conceptual challenge: when they state that different organisations are best suited to perform different functions, do they also hint at a distinction between service delivery NGOs and advocacy NGOs? And, by extension, do authors who point to the possibilities of combining service delivery and advocacy reject the idea of specialization in political roles? In order to avoid such confusion, we choose to treat the combination of service delivery and advocacy separately from their argument, as the latter is not cast in terms of service delivery roles specifically and, despite the suggestion that service delivery organisations could link up with social movements when they want to engage in advocacy, the ToC does recognize the possibility of combining service delivery and advocacy. Therefore, we will first explore the possibilities of combining service delivery and advocacy (or, the so called 'political' and 'apolitical' roles of NGOs). Thereafter, we will look more in-depth into political roles.

There seems to be an implicit but rather strictly adhered distinction in the literature between NGOs as instrumental service deliverers and political roles of NGOs. Authors such as Banks and Hulme, Bebbington, and Mitlin and Korten have lamented the shift in the development sector from more political towards instrumental NGOs, implying that these roles are not easily reconciled. Apart from the literature, the 'fence' between service delivery and advocacy is also often present in aid modalities designed by donors. A substantial number of authors, however, have demonstrated how NGOs combine both roles (Bukenya, 2018; Chhotray, 2005; Chin, 2017; De Wet, 2012; Fyall & McGuire, 2014; Kimberlin, 2010; Lister & Nyamugasira, 2003; Mosley, 2011). Minkoff (2002) and Yazidi and Doh (2009) reject the distinction between both types in their introduction of 'hybrid' organisations that combine both service delivery and advocacy. Child and Grønbjerg (2007) try to distinguish between '*core* advocacy non-profits' and '*peripheral* advocacy non-profits', but eventually conclude that 'it is misleading to think of the non-profit sector in terms of advocacy and non-advocacy non-profits—this dichotomy is too simplistic. Instead, there are different levels and types of advocacy

to which non-profits commit themselves' (Child and Gronbjerg, p. 277, 2007, in: Fyall & McGuire, 2014, p. 1277). Chin (2017) therefore proposes a 'more fluid, less binary understanding of the boundaries between case-level advocacy [i.e. related to service delivery] and higher level advocacy, (..)' (Chin, 2017). More firmly rooted in the tradition of development scholars, Chhotray (2005) connects the debate about service delivery NGOs and advocacy to the larger discussions on the 'de-politicisation' of aid, as described in the previous section. In her view, there is no such dichotomy between NGOs as 'development agents' and NGOs as 'political entrepreneurs' (Chhotray, 2005, p. 3). Lister and Nyamugasira (2003) observe that donors such as the World Bank and DFID have separated the two roles in the past and have thereby failed 'to appreciate a situation in which organisations play several roles simultaneously, and the vital synergy that can be created between roles' (Lister & Nyamugasira, 2003, p. 93).

Authors see several advantages in combining roles. Their presence on the ground gives them knowledge of the grassroots (Chin, 2017; Lister and Nyamugasira, 2003), such that they are able to voice demands from the grassroots directly because of intensive contact and identify gaps in the system (Chin, 2017). The constituencies of service delivery NGOs are oftentimes targeted by public policies because of their relatively marginalized status, and at the same time, these same NGOs have relationships with public policy officials, which gives them an important linkage function – as people 'on the ground' do not have such channels of access (Donaldson, 2008, in: Kimberlin, 2010).

Service delivery moreover grants NGOs legitimacy in their advocacy role. Non-profit organisations in the US signalled that their service delivery 'on the ground' provided them with legitimacy as progressive policy advocates. They perceived themselves as different from 'traditional national advocacy groups', as the latter were believed to be too disconnected from their constituencies (Chin, 2017). Knowledge of the grassroots is a strong asset for building legitimacy with the government (Lister & Nyamugasira, 2003). In some cases, government officials only invite CSOs to participate in policy formulation when they engage also in service delivery, as they see this as an advantage (Lister & Nyamugasira, 2003). Also, service delivery can be a 'point of entry' at local level for education, mobilization and capacity-building on rights-based issues (Lister & Nyamugasira, 2003).

Service delivery and advocacy activities can even be cyclical: it happens that organisations, from their service-delivery, formulate policy changes, advocate successfully for those changes, then present themselves as the implementing organisation, subsequently moving to service delivering again (Chin, 2017). Yet, not all NGOs go along with this cycle: some NGOs that engaged in advocacy work are afraid to be seen as 'insiders' and opt out after having reached their advocacy goal (Craig, Taylor, & Parkes, 2004). Nevertheless, evidence suggests that NGOs can switch between service delivery and advocacy quite flexibly over time and in function of their goals. Chin mentioned, for instance, that after a national law was accepted that the American NGO lobbied for, it moved back to state level to focus on implementation of the same. Its tactic became more incremental and insider, concerned with monitoring and shaping policy implementation through advisory board memberships and through policy review, legal analysis, formal meetings, and information sharing (Chin, 2017).

A political role can also be adopted more implicitly by service delivery NGOs, as the activities of the NGO are, as such, political statements, or because a given service is rather political in nature. Minkoff (2002) reminds us that the establishment of associations (in her case, women's groups and ethnic groups) to address inequalities, was an act of social change *in itself* The promotion of the farming of non-conventional crops and crop rotation in India was also a political act in itself, as intensive versus non-intensive agricultural practices is a politically contentious subject. When an inadequate response of the government led to a paddy crisis, the NGO mobilized farmers and organized public protests to hold the government to account, and organized public awareness consultations (Thomas, Muradian, de Groot, & de Ruijter, 2010). An example of service provision with political consequences can be found in the research of (Bukenya, 2018) in Uganda, which demonstrated that an NGO providing HIV/Aids-related health services had an impact on state-building, thus going beyond the mere 'technical' impacts of serving patients. Bukenya explains that NGOs in Uganda traditionally have difficult relations with the state, particularly 'watchdog' NGOs. Yet the government does welcome service delivery NGOs, realizing that the government itself cannot perform all functions adequately. The Ugandan AIDS Support Organisation (TASO) mainly focussed

on educating staff in public hospitals, facilitating service delivery, and later also social mobilization activities in communities, such as awareness raising. TASO was successful not only in training government health workers with technical knowledge, but also changing their attitudes towards HIV/Aids patients. As TASO had special departments in hospitals, patients had the feeling that government now awarded more priority to HIV/Aids. Moreover, it helped state officials to reach out to villages, which helped communities to get access to medical services from the state. In general, state officials became more receptive to NGO perspectives. Bukenya, however, also concluded that the gains were short-term; they ended when the project ended. Nonetheless, Bukenya states that the experience of TASO demonstrates that NGOs that collaborate with the state in delivering services can be seen as 'theatres of politics'.

3.2.2 Challenges in combining service delivery and advocacy

Although there are many advantages when service delivery CSOs foray into politics, authors point to multiple challenges as well. For example, the small scale and lack of political skills and experience of non-profits make it difficult to engage in both roles simultaneously (Chin, 2017; Kimberlin, 2010; Lister & Nyamugasira, 2003). Capacities, particularly at district level and below, are limited, and the ability to undertake policy analysis or to strategize can be weak (Lister & Nyamugasira, 2003). This is exacerbated by the fact that foundation funding for advocacy is scarce (Chin, 2017; Kimberlin, 2010) especially for locally focused advocacy efforts (Bass et al., 2007; in: Chin, 2017). There is yet another financial aspect to consider. Civil society organisations that want to engage in advocacy towards the government, are dependent upon that very same government (Kamstra & Knippenberg, 2014). Evans and Shields (2014) call this 'advocacy chill'. Or, as Kimberlin (2010) puts it, NGOs might be reluctant to 'bite the hand that feeds them' (Kimberlin, 2010, p. 171). This dynamic is contested, however, by Fyall and McGuire (Fyall & McGuire, 2014) and other authors (Chaves et al., 2004; Salamon, 2002; Child and Gronberg, 2007, in: Kimberlin, 2010, p. 178), which we will discuss later on.

3.3 Specialisation within political roles

We will now look at whether specialisation occurs within the political roles of organisations. Scholars of the 'democratisation school' (see section 3.1.2) argue that organisations with certain organisational characteristics are better suited to play specific roles. This strand of literature thus appears to have influenced the Theory of Change. Fung (2003) and Kamstra and Knippenberg (2014) elaborate most clearly on specialization, however. According to Fung (2003), associations that are horizontally organized and have close interactions among its members are better at the educating function than those associations that are vertically organized and where its members are little more active than by way of their financial support. And while, for instance, sports or cultural associations might be good at improving trust in society, they might not be effective in changing governments when they are authoritarian. Similarly, associations that resist authority typically take different forms than associations engaged in civic virtues, since the former oftentimes become intolerant themselves, as they sprout from activists that polarize against the state, and because these associations lack internal democracy. Further, associations that engage in interest representation are unlikely to perform well in an educational function, resistance, or public deliberations. Most organisations that have represented women and racial groups are large lobby organisations with non-active members. Associations with private or non-political purposes, such as sports clubs, will in turn not be active in the public sphere. Functions aimed at strengthening direct democracy will most likely rule out resistance associations and civic engagement associations, as it is not close enough to the 'common people'. In short, Fung argues that 'the forms, purposes, and memberships of associations determine the extent to which they make these various contributions to democracy' and 'the six contributions of associations potentially conflict with one another' (Fung, 2003, p. 517 resp 529).

As the assumption in the Theory of Change originates from Kamstra & Knippenberg (2014), a more in-depth review of this article is warranted. Similar to the ToC, the article states as follows: 'Comparing NGOs to each other reveals that none of them performs all roles simultaneously. They each specialize in certain roles, which is mainly due to contradicting organisational characteristics.' (Kamstra & Knippenberg, 2014, p. 599). It was found that none of the NGOs under study combined

different roles simultaneously, as each 'democratic role requires different and sometimes contradictory characteristics, which are difficult to combine within one organisation' (Kamstra & Knippenberg, 2014, p. 600).

They provide an example for each combination, based on their empirical findings. First, *cooperation* is difficult to combine with *confrontation.* The think tanks (typically in a cooperative role) refrained from confrontational strategies to protect their good relations with the state; for Abantu, a representational NGO, confrontational strategies became less common because it wanted to improve its relation with the state; and ISODEC's (also a representational NGO) confrontational approach resulted in a loss of access to the state. We can conclude that the authors expect difficulties in combining *cooperation* and *confrontation*.

Second, *cooperation* is difficult to reconcile with *representation.* The professional staff of the think tanks and their close (informal) relations with the state, enable the think tanks to educate and influence state officials. Yet they are vulnerable for criticisms of having an urban elite bias, being co-opted by political parties, and not representing ordinary citizens. Hence, getting too close to the government undermines their legitimacy in the eyes of the general public and thus their representational role. ISODEC's confrontational approach enabled them to independently voice the needs of the marginalized, but being too confrontational provoked the criticism of being anti-government, undermining its legitimacy (in the eyes of the government) and jeopardised access to the state.

Kamstra and Knippenberg situate service delivery in the cooperative role, therewith implying that combining service delivery with representation (which also could be interpreted as outsider advocacy), is problematic. The case of ISODEC illustrates this, as it lost government resources for their service delivery when starting to advocate in a confrontational way. At the same time, the Theory of Change recognizes that service delivery NGOs also engage in advocacy and even enjoy distinct advantages in doing so. Thus, a mixed message is sent out as to whether combining the *subsidiarity role* with *representation* is feasible.

Third, *the cooperative role of coordination* is difficult to combine with *representation*. Because the think tanks do not represent a certain constituency, they can bring together different stakeholders in policy debates. By contrast, because ISODEC and Abantu represent the voice of their constituency, they are more likely to be one of the stakeholders in such debates.

It is furthermore important to realize that Kamstra and Knippenberg base their specialisation claims on *roles* rather than *strategies,* even though these are easily mixed up. While Kamstra and Knippenberg claim that combining different roles is problematic, they do not make strong claims on combining confrontational and non-confrontational advocacy strategies *within* the representational role. They demonstrate that ISODEC combined confrontational and non-confrontational forms, usually starting with non-confrontation and following up with confrontational strategies such as demonstrations and mass mobilization.

However, combining a confrontational representational strategy with coordination seems problematic. When we 'translate' this to terms used in other articles, we could state that *insider* strategies are difficult to unite with *outsider* strategies. We will dwell on this combination here, as this is where most discussion revolves around – but are aware that we should be cautious to contrast conclusions with the ones by Kamstra and Knippenberg directly, as the concepts of 'outsider' strategies and 'representation', and 'insider strategies' and cooperation, are not completely interchangeable.

Minkoff et al. (2008), an author in a different, more US-based strand of literature, discusses and compares various association models, which leads to a counterintuitive observation. The so-called 'mature advocacy model', which is used to label organisations with broad but predominantly inactive members, outperforms the so-called 'federated model', which refers to decentralised organisations with strong and active support bases, where it concerns protest, activism and progressive social change. Following the line of Kamstra and Knippenberg, the prediction would go the other way. The study is quantitative in nature, however, and Minkoff acknowledges that case-study research would be needed to further disentangle the specific characteristics and strategies of an organisation.

Specialisation arguments can also be found in the literature dealing with service delivery NGOs engaged in advocacy (section 3.2). Here, the question is whether service delivery NGOs engage in insider or outsider tactics. Several authors assert that advocacy undertaken by service delivery non-profits will be mainly collaborative and insider (Chin, 2017; Evans & Shields, 2014; Mosley,

2011). Chin (2017) believes that, due to frequent interaction, policy makers and NGO employees become 'members of a collaborative multisectoral policy network (cf. De Leon and Varda, 2009) or 'issue network' (cf. Heclo, 1978), where all members have a common goal of maintaining the service system' (Chin, 2017, p. 30). Chin discovered a short engagement in outsider strategies (at the national level) when the organisation targeted national legislation, but as soon as this legislation was adopted, the organisation moved back to insider strategies again to monitor and shape the implementation of the law (at the local level).

Mosley (2011) provides further evidence on how organisational characteristics are congruent with strategic choices. His quantitative study on service delivery NGOs aims to predict which type of organisations are more prone to either insider or indirect/outsider tactics. In general, organisations with greater size and capacity, and with professional staff, are more likely involved in insider tactics. This brings Kamstra and Knippenberg's argument about the think tanks with professional staff that cooperate with the government into recall. Financial resources enable the organisation to engage in different kinds of tactics (including insider tactics), and its size can give it political clout. Its staff will be representative toward policy makers, communicatively apt and gifted with a political antenna, and not rarely, they have had prior careers in government functions. Dependence on government funding does not rule out advocacy, but it influences the strategy. It is more likely that funded organisations focus more on insider advocacy, and will focus less on those issues that could endanger the relations with its funders (Mosley, 2011, p. 441).

Mosley furthermore found that 'professionalization of leadership, greater collaboration, increased size, use of volunteers, and greater involvement of staff' were related to increased insider as well as increased indirect tactics (Mosley, 2011, p. 448). More government funding was associated with insider tactics, and being less formalized was related to indirect tactics. Outsider tactics were hardly found within these service delivery organisations, supporting the argument that service delivery organisations do not wish to endanger their relations with government.

More in-depth case studies about how different kinds of NGOs combine various roles are provided by De Wet (2012) and Ramanath (2009). De Wet, in his research on NGOs in South Africa, recognizes the inherent challenges of combining service delivery and advocacy. Indeed, he found that many NGOs in South Africa have not been successful advocates. In his analysis of two organisation that *did* succeed in combining service delivery and advocacy, they identify a number of organisational characteristics and specific strategies that enable NGOs to combine. The prime concern of the 'successful' NGOs was the aim to realize concrete gains for the poor, rather than acting solely as catalysts for protest or resistance. Their vision and mission included service delivery as well as acting as 'watchdogs': their successes in their watchdog roles therefore should translate into material gains. The NGOs furthermore were strongly grounded in grassroots communities. They made use of various strategies: they organized protests, but also engaged in dialogue with the government. When they co-operated with the government, however, they selected their 'friends' carefully to build the capacity of the 'good-willing', but excluded those civil servants that were not interested in the fate of the poor (see also next section for more on combining confrontation and collaboration). There was a certain level of interdependence between NGOs and government. They moreover diversified their sources of funding, and, lastly, the NGOs enjoyed strong leadership (De Wet, 2012).

Ramanath (2009) demonstrates that different types of NGOs tried to combine different strategies, but the success was limited because of differences in organisational characteristics in terms of legitimacy and grassroots engagement. In an insightful article on three types of NGOs working in the housing sector in Bangladesh, he demonstrates how different types of NGOs navigated between service delivery roles, consultation roles, collaboration with state and private sector, and outright confrontation One of the NGOs had a strong grassroots base and was a well-known opponent of slum relocation. When it tried to be a delivery agent to facilitate slum development, it could not legitimise this move among its constituency. A more 'gentle' NGO, however, moved rather smoothly to collaboration with government and private sector, as it did not have a history of direct confrontation. Yet another NGO, which had traditionally operated as a consultancy, did not encounter any difficulties when implementing relocation projects. This case study lends clear support to the specialisation argument.

3.4 No 'fences': combining confrontation and collaboration

There is no consensus in the literature, however, about the extent of specialisation. Notwithstanding the fact that the aforementioned authors recognize that CSOs can play several roles simultaneously, most of them assert that the ways in which they perform their roles differs according to organisational characteristics, most notably the extent to which they can be confrontational and collaborative at the same time. Other authors, on the other hand, take issue with specialisation arguments and consider the relation between certain type of organisations and their respective strategies as more fluid.

Fyall and McGuire (2014), for example, downplay stringent categorization altogether. In their reading of the literature on US advocacy activities, they reject the alleged 'black and white' reasoning that single non-profits are either 'insiders' or 'outsiders', or 'core' service providers or 'core' advocacy organisations. Furthermore, they regret the tendency to focus on single organisations, in isolation from similar actors. They assert that non-profits navigate between those roles, while operating in coalitions. They furthermore state that it is tricky to assign organisations exclusively to the policy or non-policy category. A reason is that a great deal of advocacy work is being undertaken by coalitions and networks.

Another 'dichotomy' that Fyall and McGuire encounter in the literature is that between organisations that rely heavily on government funding, which promotes 'insider' strategies, as against organisations that are financially more independent. The latter would have more freedom to choose their preferred approach. Fyall and McGuire argue that this is not a constant relationship, but varies according to context, policy goal or other circumstances. For example, operating in coalitions enables organisations to take tougher stances than they would otherwise dare to take.

The authors found in their interviews with policy advocates for affordable housing that hardly any respondent was of the opinion that insider and outsider strategies were mutually exclusive. Instead, they considered it important to combine the two approaches, each with its own goal. Outsider strategies such as media engagement or public education events aimed at raising awareness of the issue, whereas insider strategies served to discuss the details of policy or policy implementation. Virtually all respondents were convinced that outsider strategies alone will not make a difference – they considered the relationships with the politicians and the government staff as the central arena for influencing policy. Reversely, insider tactics also cannot go at it alone, as policy discussions about *how* to improve policy need input from a local understanding of *why* such a policy change is necessary in the first place. Interviewees therefore saw both strategies as mutually reinforcing.

Another 'false dichotomy' is the one of professional staff versus volunteer staff. The narrative in the literature is that professionals risk losing the activist grassroots orientation of the organisation. (e.g. Banks et al. 2015; Korten 1987). Fyall and McGuire reject this argument, finding instead highly passionate professionals articulating radical or activist goals. They however combine their activist orientation rather pragmatically with more 'gentle' insider strategies, as this can render the most effects.

Craig, Taylor and Parkes (2004) join Fyall & McGuire in their rejection of dichotomies between 'insider' and 'outsider'. Their respondents saw themselves as employing both insider and outsider strategies, simultaneously and at different times (Craig et al., 2004). A colourful example they recount concerns an environmental NGO where one member was arrested for damaging GMO crops, while the chair was a member of a government commission on GMOs (Craig et al., 2004). Interviewees told that the more 'sophisticated' politicians and government officials would understand the need for both approaches, and accept the different strategies targeted towards them (Craig et al., 2004). Wolford (2010) moreover asserts that organisations are most successful at influencing decision-making when they combine contentious or combative mobilisation with cooperation with institutions (Wampler, 2007, and Dagnino 2002, in: Wolford, 2010, p. 95).

NGOs can also move along a confrontation – collaboration continuum *over time*. In Uganda, Lister and Nyamugasira (2003) offer the example of an NGO that started to advocate on rights of child soldiers as 'pressurizers', then became 'invited participants' in policy formulation – thus moving from confrontation to collaboration. Another example is available for the Ugandan context: the Land Alliance first had to invite itself to participate but later started to received formal invitations (Lister & Nyamugasira, 2003). It can also be the other way around: NGOs first try a softer approach and when this does not work, they opt for more radical strategies (Razavi, 1999 and Kabeer, 1999, in Nabacwa, 2010).

The literature also shows that even 'conventional' service delivery NGOs can engage in confrontational tactics. We already briefly introduced the work by Chchotray and Thomas when making the argument about combining service delivery and advocacy. The same authors also demonstrate that the organisations moved from collaboration to confrontation and back. An NGO in India that provided services to the poor maintained friendly relations with state officials – however, when district government threatened to evict the local population from forest land, those friendly relations did not hold the NGO back to confront those same state officials when they illegally occupied the land, and engaged in research, exposure and support to families. This did not endanger the good relations with district officials, as SPS by now was already well entrenched in the area and had gained sufficient legitimacy. This case demonstrates that even though NGOs can employ confrontational tactics, they can continue to have friendly relations with the state. However, it must be noted that their foundational stance was a positive engagement with the state and not radical politics, as they primarily tried to tap into the state's sense of responsibility to engage with the poor instead of radically opposing the state.

This example shows how 'thin' the lines between confrontation and collaboration can be. 'Friendly discourses' towards the state, or, copying state arguments such as development arguments, can be used within confrontational strategies. This can also be observed in a case study from Laos, where an ethnic-minority Khmu community used the discourse of the state in favour of development in order to resist a concession to a Chinese company that would plant rubber trees over half of their territory. Using sabotage, work refusal, but also bonded with allies in the government, and invoking laws – all simultaneously – the Khmu were successful in their resistance (McAllister, 2015, in: Hall et al., 2015).

Similarly, Bawole and Hussain (2015) demonstrate how NGOs maintain friendly relations with the state, while these relations are at the same time superficial and loaded with antagonistic elements: collaboration and confrontation can thus happen at the same time – even though it is fair to note that the authors never witnessed a radical stance from the side of the NGO. In their case study from Ghana, they describe the relations between NGOs and the local government as 'friendly-foes' (Bawole & Hossain, 2015, p. 2075). They do invite each other to programmes and meetings, but there is hardly any trust. Both are accused by the other for lacking transparency and accountability. Local governments accuse NGOs of inciting the community, placing unrealistic demands to local governments. NGOs, however, see this as a proof of their effectiveness, as their advocacy aims to empower communities to make demands on local government (Bawole & Hossain, 2015, p. 2075). This also proves that for NGOs to be effective, they do not always need to be legitimate in the eyes of all partners. NGOs, for their turn, accuse local governments for creating the impression that NGOs are resource-rich, and being corrupt.

Having observed that the boundaries between different types and strategies of NGOs can be fuzzy, some authors take this a step further and even point to a blurring of the boundaries between state and society (Hall et al., 2015; Lewis, 2008; Mitlin et al., 2007; Thomas et al., 2010; Wolford, 2010). Hall et al. (2015) argue that the state, constituted by numerous individuals who have distinct relations with society, should be seen in terms of *relationships* instead of institutions. Wolford (2010) mentions authors such as Mitchell (1998), Sharma and Gupta (2006), Avritzer (2008) and Evans (1996), who counter the tendency to see the state as the defender of the status quo and civil society as area of resistance. Baiochhi (2005), for example, argued that 'people see themselves as both militant political activists and as ordinary citizens when they participate in the budgeting process in Porto Alegre (Baoiochhi, 2005, in: Wolford, 2010, p. 93). Similarly, Lewis (2008) and Hall et al. (2015) mention frequent job rotation between the NGO sector and the state.

3.5 Challenges to collaboration: co-optation

Notwithstanding the possibilities of combining different strategies, there are risks to cooperation, most notably the risk of co-optation: if (confrontational) NGOs 'become' collaborative, NGOs might become co-opted. Nabacwa (2010) describes various dynamics resulting in co-optation in Uganda. For example, the Uganda Land Alliance is a member of the technical committee on land in the Ministry of Lands and is therefore to some extent bound by its decisions. This makes it more difficult for NGOs to criticise government. NGOs could even 'internalise' norms imposed by the partnership. Mitlin and Bebbington (2006) state how a co-optation risk is augmented through state behaviour. As it has

learns to anticipate a movements' demand, rather than being responsive towards it, it installed bureaucratic rules with conditions how to access resources. The consequence is that movements and state come to debate about these rules, rather than the fundamental issues like poverty or injustice (Foweraker, 2001, p. 863, in: Mitlin & Bebbington, 2006, p. 14). Weyland (1995) describes a social health movement's venture into the institutional web of Brazilian politics, characterized by clientelism and patronage, and became entangled within it.

Similar to co-optation, Nabacwa (2010) demonstrates that governments have the tendency to 'non-decision-making', and NGOs adopt a reactionary role to go for 'whatever is possible'. There is also the possibility that the government 'advises' NGOs, such that NGOs subsequently adapt their campaigns in response, and the government is given an influential voice in the NGO's strategy. NGOs risk focussing more on 'ad hoc' results, losing their vision of long-term change out of sight.

Further, there might be different perspectives on the collaboration effort. Evans and Shields argue that, even though there sometimes is genuine will among policymakers to gather information to shape policy, in other cases, policy directions have already been agreed upon and then consultations are used simply to discover and overcome possible obstacles. NGOs wish to participate in an open consultation process, while government already has made the decision and sees the process rather as acquiring information. If the consultation is *late* in the process, this is almost always the case, they argue. Government officials still value the consultations but acknowledge they might have different *goals*. This leads to frustration with NGOs, as they realize all too well that policy was already 'pre-determined' (Evans & Shields, 2014, p. 122). Similarly, Nabacwa (2010) describes how government may start to see NGOs as formal institutions, whereas NGOs might still consider themselves 'watchdogs'.

3.5.1 Keeping autonomy

A number of authors bring nuance to the danger of co-optation when NGOs collaborate. They state that autonomy can well be kept while cooperating (Batley & Rose, 2011; Craig et al., 2004; Wolford, 2010). Craig et al. did not find evidence of co-optation in any form in their interviews with UK-based NGOs that were collaborating with the government. NGOs did not recognize the 'danger' of losing autonomy or their critical voice towards government. After all, as was argued, they could cooperate on those subjects where they chose to cooperate. Being part of a partnership did not mean they would abandon radical views (Craig et al., 2004). However, this is not to say there were no challenges: remaining autonomous and at the same time cooperating, required 'hard work'. It was essential for the organisation to be clear about their fundamental values and express these. Interviewees nevertheless believed they should not remain stubborn when opportunities to 'win' a certain objective would arise. Also, NGO employees should be able to identify opportunities, and exploit those – a good understanding of policy making was therefore essential, as well as a 'constructively' critical approach and readiness to let go of 'lost causes' (Craig et al., 2004).

Wolford (2010) observed how activists and local state officials in Brazil started to collaborate 'by default' in the process of agrarian reform through non-formal interaction, consisting of resistance, negotiations and responses, which eventually became embedded in the institutional culture. Activists can therefore be said to become incorporated in the state. However, contrary to the co-optation risks as observed before, Wolford states that the movement remained autonomous and still had the ability to protest (Wolford, 2010, p. 100).

Batley and Rose (2011) point to the agency that NGOs employ while making strategic choices – they are not passively letting themselves be co-opted by the state. They identify a number of factors that allow NGOs to maintain cooperative relationship with governments, while at the same time retaining autonomy. First, they refer to Bano (2008), Rose (2006), and Sansom (2006), who demonstrate that credibility is based on technical expertise. Second, already established contacts and networks in the state are important, such as elite connections, donor links, and professional affiliations. Furthermore, two preconditions for avoiding co-optation stand out. Bano (2008) stresses the importance of 'community embeddedness', including employing local staff and volunteers. Second, some minimum level of financial independence is essential (Batley & Rose, 2011).

3.5.2 Maintaining grassroots participation

A contentious question, however, remains whether advocacy NGOs can still be said to be locally embedded, i.e., whether it counts on a broad membership base. According to Kamstra and Knippenberg (2014), coordination functions, which can be equated with institutional advocacy (or, 'insider' advocacy), rule out the possibility of strong linkages with the grassroots. A number of authors demonstrate that this need not necessarily be the case, however (McFarlane, 2004; Onyx et al., 2010). Onyx (2010) draws a distinction between more radical advocacy efforts and what she calls 'institutional' ones in her study of twenty-four NGOs in Australia. Radical advocacy, such as protests, sit-ins, institutional tactics, is associated with grassroots mobilization and popular support; institutional advocacy, such as sitting in committees or giving policy advice, is associated with elitism, as it revolves around relations between organisations. This latter form is being criticised, as it presumably becomes professionalized and therefore depoliticized (Banks et al., 2015; Kamstra & Knippenberg, 2014; Korten, 1990). Onyx et al. (2010) therefore pose the question whether they maintain their linkages with the grassroots, while also engaging in institutional advocacy strategies. She found that, while NGOs in Australia distanced themselves from more radical advocacy strategies, 'elite' strategies, such as direct lobby, participating in committees, and preparing submissions were only moderately successful in changing policy; the most successful ones were described as 'campaigns' that relied on participation of grassroots and public visibility. These included activities such as meetings between Ministers and clients, helping clients to prepare and submit their own policy recommendations, training clients in advocacy skills, facilitating media access to constituencies, and helping people to become co-researchers in university projects. An interesting conclusion that Onyx derives from this is that participation by grassroots and elite advocacy activities do not rule out each other, thereby blurring the line between 'radical' and 'institutional' advocacy (Onyx et al., 2010, p. 56). Remarkably, Onyx is one of the few authors who explicitly writes about the capacity building of constituencies themselves, whereby NGOs act as facilitators instead of performing advocacy themselves.

McFarlane (2004) also suggests the possibility of NGOs being brokers or liaise with social movements or communities to build their own capacity for advocacy. Interestingly, this also allows them to decide for themselves whether to actually employ it. When residents in a slum area in Mumbai were threatened with eviction, local NGOs wanted to demonstrate and publicly fight the eviction, whereas local women's saving groups and cooperatives indicated they did not want the NGO to fight, because, 'whenever we fight, we lose' (McFarlane, 2004, p. 906). Moreover, local NGOs had been campaigning for pavement dwellers for their right to live on the pavement, while the dwellers in fact wanted to move and pull up their own houses. McFarlane observes how these gaps between NGOs and the grassroots inspired a new direction that the NGO network was about to take, namely, 'one that mobilises the poor around their own skills and capacities, and that seeks to build collaboration with government officials through demonstrating these capacities, rather than lobbying government officials to provide development or going on strike' (McFarlane, 2004, p. 907). However, McFarlan adds that this way of seeking social change focuses rather on symptoms than on underlying causes of poverty.

3.6 Coalitions

Coalitions are often mentioned as powerful vehicles for social change. For example, a very important variable whether service delivery NGOs engage in advocacy, or, are *effective* in advocacy, is the existence of coalitions. Coalitions can mitigate some of the challenges as discussed in section 3.2.2. For example, the challenge of scale can be overcome when non-profits bundle strengths. However, there is also a challenge, as the NGOs may enter into (financial) competition with each other (Evans & Shields, 2014, p. 124). In a coalition, non-profits have more leverage to demand system-level changes, and the leadership of experienced advocacy organisations can lead service delivery organisations that are unexperienced. National organisations then use the day-to-day experiences of the service delivery organisations (Chin, 2017). Fyall and McGuire place an even greater emphasis on coalitions: their research was based on a coalition of advocacy NGOs. They argue that coalitions are far more effective than when individual organisations go at it alone (Fyall & McGuire, 2014). Analysing the interplay between service delivery and advocacy in this way, lends support to specialisation arguments that service delivery and advocacy are difficult to combine, as the only way

for a service delivery NGO to be effective as an advocacy NGO is when they link up with 'core' advocacy NGOs – something that is also promoted in the Theory of Change.

3.7 Political context

No matter the agency that NGOs, whether in coalitions or not, can employ, context always matters. It's not always a 'free choice' for CSOs to opt for one or the other strategy. Contextual factors, such as the nature of the state and the quality of the institutional environment, influence the type of strategy that NGOs can adopt vis-à-vis the government. Consultation and consensus building (collaboration), for example, presupposes openness of the state and acceptance of non-profits (Evans and Shields, 2014).

For NGOs engaged in development, a distinction between liberal and authoritarian states is useful. For example, Fung (2003) observes that those associations that use resistance will be more likely to pop up (and be successful) in authoritarian states. Hadenius and Ugla (1996) describe a state's stance towards civil society as a continuum between hostile and benevolent, which determines how much space can be used by civil society, and thereby also influences their roles. Another relevant distinction concerns the level of (de)centralisation of the government. As decentralized governments are closer to citizens, and also oftentimes more dependent upon local constituencies to implement decisions, they tend to be more prone to collaborate with civil society organisations – on the other hand, decentralized government can be severely affected by clientelism (Hadenius & Uggla, 1996).

The individual factor should also not be ruled out. Comparing ActionAid's advocacy for women's rights in Nepal and Nigeria Chopra, Ekeoba, Nesbitt-Ahmed, Moussié, and Sherpa (2014) found that in Nigeria there was constructive engagement due to the presence of a 'champion' in the Ministry. In Nepal, there was only critical engagement in absence of such leadership.

Bratton (1989) delves a bit deeper and asserts that the different historical development of civil society in Africa and the West leads to different state-NGO relations. While voluntary associations were crucial in democracy-building in the West by nurturing active citizenship and providing a counterweight to powerful political entities, in Africa, the process of nation-building and democratization did not happen gradually - instead, an 'overdeveloped' state was transferred from the colonialists to nationalists. Arguably, the state did not 'need' civil society to develop, while, as Bratton describes, the participation of civil society proved crucial for Western nation states to gain legitimacy and build themselves. Bratton observes that the general trend in Africa has been toward political and administrative centralization, and independent organisations were generally not warmly welcomed. Another factor that set state-NGO relations in Africa apart from the West, according to Bratton, is the importance of foreign assistance. African governments wish to control resources to assert their sovereignty, which puts them in competition with NGOs that increasingly have become the targets for donor funding. Since African nations are rather young, they are still struggling to assert control and therefore trying to downplay independent organisations that might challenge their power, trying to co-opt them, or set up partisan NGOs.

4 CSO-private sector relations

The literature on civil society traditionally deals with state-society relations. More recently, academics started to engage in business-civil society research. Most of the literature stems from the new millennium, informed by Corporate Social Responsibility trends and the erosion of the state as the primordial institution, thereby shifting responsibility to companies to uphold social and environmental safeguards (Burchell & Cook, 2013; Den Hond & De Bakker, 2007; Scherer & Palazzo, 2007).

Before we move to describing the specific CSO-private sector relations, it is worth noting that the relations between CSOs and businesses share similarities with CSO-state relations. Drawing from social movement theory, King (2008) notes that both state and business apply varying levels of openness towards constituents and stakeholders, respectively. They are rather closed to outside interest groups, yet also need to manage them. They are both organized in formal hierarchies, yet informal processes are important as well. Finally, interest groups need to 'fight' to be recognised by both state and businesses. Towards both institutions, they need to engage in collective action in order to gain control over a public good. Considering these similarities, it is interesting to keep state-society relations in the back of our minds as a reference point.

We could divide business-NGO relations in service-oriented relations and CSR-oriented relations, which embody different objectives. NGOs engaging in service delivery seek funding and partnerships to leverage their material services (public-private-partnerships being the prime example), whereas advocacy NGOs will try to influence the business practice of companies.

4.1 Service delivery

Businesses that invest in developing countries have increasingly developed CSR programs, but there is no consensus in the literature about the motivations behind CSR. Does it concern sincere transformation of business, or should it rather be seen as 'greenwashing'? Nonetheless, scholars increasingly recognize that CSR practices or implementing social programs, even though these can have positive effects on livelihoods, are not sufficient to break poverty traps (Blowfield, 2007; Blowfield & Frynas, 2005; Dobers & Halme, 2009; Idemudia, 2009; Ite, 2004; Jamali, 2010; Prieto-Carrón, Lund-Thomsen, Chan, Muro, & Bhushan, 2006; Visser, 2007).

The distinction between 'negative injunction duties' and 'affirmative duties' (Simon et al., 1972, in: Idemudia, 2009) is useful in this respect. Affirmative duties entail the provision of social and public goods, i.e., philanthropic activities. Negative injunction duties, on the other hand, are about avoiding and correcting the negative social, economic and environmental impacts. Authors such as Simon et al. (1972) and Eilbert and Parket (1973) already asserted that while the provision of goods is voluntary, the first and foremost responsibility of a company is to prevent negative impacts (Simon et al., 1972, Eilbert and Parket, 1973, in: Idemudia, 2009).

However, Idemudia (2009) demonstrates in his exploration of CSR behaviour of oil companies in the highly volatile Niger Delta that businesses are taking up their negative injunction duties with less enthusiasm than their affirmative duties. Confronted with resistance, oil companies started social development programs in partnership with either government or civil society. There have been some successful examples of community programs, provided they were bottom-up and engaged the community, and were focused on community *development* (including capacity trainings and microcredit schemes) instead of *assistance* (only building schools or hospitals). Nonetheless, the core business of the same companies that pursued these development programs, continued to have negative effects in the form of oil spills, acid rain, water pollution and house vibrations. Oil companies refused to compensate the communities or engage in dialogue, and asserted that there was no scientific evidence for the negative damage – even though the community clearly saw and felt the damage done. Idemudia therefore argues that affirmative actions at best offer marginal contributions when companies fail to mitigate their negative social, economic and environmental impact.

This case study is useful for our research, as companies that invest in land in Kenya also increasingly adopt CSR programs for local communities. However, our research interest lies more

with civil society organisations that target the core business of a company. Having demonstrated the limitations of philanthropic partnerships, we therefore now turn to the advocacy roles of civil society organisations, where CSOs engage in different activities with, or towards, a company with the goal of changing a company's core behaviour.

4.2 Advocacy

There is a growing body of literature researching business-civil society relations in the realm of advocacy. Most authors observe that relations have evolved over time: whereas they used to be antagonistic, they have become more collaborative (Burchell & Cook, 2011, 2013; Murphy & Arenas, 2010; Mzembe, 2016; Valor & Merino de Diego, 2009; Van Huijstee & Glasbergen, 2010a). It has become substantially engrained that companies have a responsibility beyond their direct stakeholders and have an interest in engaging with CSOs, while NGOs are becoming more pragmatic and flexible (Burchell & Cook, 2011, 2013; Mzembe, 2016; Valor & Merino de Diego, 2009; Van Huijstee & Glasbergen, 2010a). However, some NGOs still squarely reject collaboration with companies (Ählström & Sjöström, 2005; Dawkins, 2015; Den Hond & De Bakker, 2007).

Amongst scholars researching corporations and their interaction with communities and activists, a popular entry point has long been that of 'stakeholder theory'. Traditional stakeholder theory, however, has increasingly become subject to critique that it takes an overly managerial approach and a narrow corporate perspective about why corporations would engage in stakeholder dialogue. Therefore, it is necessary to treat NGOs as stakeholders in their own right and look at their agency in terms of motivations and effects of their engagement with companies (Burchell & Cook, 2013; Van Huijstee & Glasbergen, 2010a). The critique seems to have broadened perspectives, as Scherer and Palazzo draw from Habermas' notion of deliberative democracy to propose a public sphere where civil society and business can negotiate roles, while Burchell and Cook (2013) combine social movement literature and stakeholder literature in their case study of UK based NGOs.

NGOs are cited to offer a range of reasons for shifting to a collaborative approach. For example, maintaining public support with communities, while at the same time demonstrating that campaigns can bring about change (Burchell & Cook, 2013). Moreover, they stress that it is important to also offer solutions instead of restricting themselves to 'naming and shaming' (Burchell & Cook, 2013). Dialogue, furthermore, offers different perspectives and better understanding (Burchell & Cook, 2013). NGOs realize that business has 'changed': to gain or keep their 'license to operate', companies can be genuinely interested in partnerships with NGOs (Burchell and Cook 2013; Van Huijstee 2010; Mzembe 2016).

4.2.1 Challenges to cooperation: co-optation

However, several challenges to collaborating with the private sector and/or combining cooperation and confrontation emerge. First, there is distrust in the relationship: NGOs can be cynical towards the motivations of corporations. Second, dialogue creates dilemmas for NGOs: what is the main goal? Are we going for small direct changes, or focus on systemic problems? Difficulties can also arise in maintaining grassroots support when adopting these 'insider strategies' with companies. NGOs may still feel the urge to voice the demands of their stakeholders, while dialogue diverts attention and resources away from more confrontational tactics (Burchell and Cook 2013).

An oft-cited challenge is co-optation. Baur and Schmitz (2012) discuss the potential risk of intended or unintended co-optation of advocacy or watchdog-NGOs, as a result of increased cooperation with, and therefore accountability to, corporations. The excessive accountability pressures exerted on NGOs, they argue, may inadvertently increase the risk of co-optation. Donors are known to focus on measurable outcomes, success stories, and financial reporting, and '[t]he emphasis on quantifiable results privileges outputs and distracts from questions of actual impact and democratic input' (Baur & Schmitz, 2012, p. 15). The authors argue that partnerships between NGOs and corporations tend to reproduce similar material inequality, as well as a market-driven logic.

Baur and Schmitz (2012, p. 10) define co-optation as 'the process of aligning NGO interests with those of corporations', which can manifest itself in the form of corporate sponsoring, NGO

labelling and certification of corporate products, and personal connections between NGO and corporate leadership. In social movement literature, co-optation is viewed as a way for powerful actors to demobilise and weaken opposition movements and their demands, while some view it as part of a broader process of increased influence of corporate capitalism (Baur & Schmitz, 2012, p. 11). Kraemer, Whiteman, and Banerjee (2013) describe how advocacy networks may be compromised by 'astroturf organising' of artificial grassroots groups (in their example a youth club but also a high-profile individual activist) by corporations that seek to disperse resistance to their activities, alongside attempts to co-opt existing activist networks. In their article they describe the 'elite defection' of an Indian activist who led the opposition to a bauxite mining project, but later changed sides and supported the mine.

The authors further distinguish between a strategic and a political conception of corporate social responsibility (CSR), and argue that corporations need to explicitly support an independent and political role for NGOs, in order to avoid undue accountability towards the corporation as opposed to the organisation's beneficiaries. Independence, in turn, is one of the primary ways in which advocacy NGOs seek to maintain their legitimacy. Corporations generally have more to gain from partnering with NGOs, as the partnership easily increases their legitimacy, without necessarily giving NGOs an influential role (Baur & Schmitz, 2012, p. 16). In this sense, a political conception of CSR allows NGOs to have a larger influence than a strategic conception, because partnerships based on the political conception are more open to conflicting interests. Some NGOs may choose to keep their distance from corporations in order to maintain their independence. Corporations, in turn, might be unable to identify the most important stakeholders, such as 'elusive' local CBOs or social movements, and instead choose to work with more moderate actors (Baur & Schmitz, 2012, p. 12).

Further, the sincerity of companies' motives to engage in partnerships is often questioned. In this line of critical authors, businesses are believed to (ab)use collaboration as a way of suppressing protest and mitigating critique for the sake of retaining legitimacy, without a genuine intention to change practice. Companies often expect NGOs to stop their campaigning activities once they agree on a dialogue (Burchell and Cook 2013). Business can also use stakeholder consultations as part of their management strategy, which does not imply genuine interest, but merely a way to manage relationships (Van Huijstee et al. 2010). This dynamic is often observed in developing country contexts (Mzembe, 2016). Finally, cooperation can also be a 'divide and rule' strategy by business. Mzembe describes how a company in Malawi created its own NGO of lawyers. Even though this NGO was distrusted by the anti-company coalition, it did have the ultimate effect of breaking down the NGO coalition that had been united in a campaign. Some NGOs continued protesting, others collaborated.

Attention should also be directed to the power imbalances at play, as companies have more resources to make a voice in dialogue (Burchell & Cook, 2013), and because companies are a more powerful actor in society, which inherently puts CSOs in a weaker position (Mzembe, 2016; Seitanidi & Ryan, 2007). Seitanidi and Ryan (2007) therefore argue that, unless these power imbalances are properly addressed, partnerships are doomed to fail.

On the other hand, as with state-NGO relations, NGOs are not passive. They actively manage risks, such as assessing the prospect of tangible outcomes and the risks for co-optation and containment, and choose strategies accordingly. They tend to screen the underlying motivations of business to engage in dialogue, and only choose those whose motives appear sincere. Before starting an engagement, they will write clear terms of engagement and threaten with withdrawal if companies prove non-responsive (Burchell and Cook, 2013).

4.3 Collaboration and confrontation: specialisation

This section revisits the issue of specialisation. Even though claims on the level of specialisation among CSOs with regard to the private sector are somewhat harder to spot than in the state-society literature, the same 'schools' emerge. Again, we can distinguish between authors who observe that strategies of confrontation and collaboration vary by type of organisation, and those who perceive a more fluid relation between strategies and organisational characteristics. We will first take a look at the former.

Some authors observe rather clear distinctions between confrontational and collaborative strategies. The strategy that a CSO adopts vis-à-vis the private sector is claimed to vary with ideology (Den Hond & De Bakker, 2007; Huijstee & Glasbergen, 2010; Yaziji & Doh, 2009), historical background and tactics (Ählström & Sjöström, 2005), membership base (King, 2008) and goal of the organisation (Bebbington et al., 2008).

Den Hond and De Bakker (2007), drawing from social movement theories, describe collaboration and confrontational strategies by applying a rather strict distinction between radical and reformist groups and their respective strategic choices. In the context of activism towards corporations, 'reformative groups are taken to believe that although companies are part of the problem, they can also be part of the solution' (Den Hond & De Bakker, 2007, p. 903), while radical groups lack such trust in corporate behaviour. In the authors' view, ideology is the principal determinant of a social movement's strategy, where ideology is defined as 'an interconnected set of beliefs and attitudes relating to problematic aspects of social and political topics that are shared and used by members of a group and that inform and justify choice and behaviour (Fine and Sandstrom, 1993; Zald, 2000, in: Den Hond & De Bakker, 2007, p. 903). The ideological stance, either reformist or radical, defines the choice of strategy, tactics, organisational form, and the level of accountability towards their constituencies that a group will take, even though the authors acknowledge that the relation between ideology and strategy is not completely rigid. Notwithstanding this qualifier, they stick to rather 'fixed' categories in their subsequent analysis.

Den Hond and De Bakker relate the movements' strategies to institutional change, distinguishing between 'de-institutionalisation', the decline or abandonment of an institution, and 're-institutionalisation', the replacement by another institution (Jepperson, 1991, in: Den Hond & De Bakker, 2007, p. 905). Institutions are understood as 'multi-faceted, durable social structures, made up of symbolic elements, social activities, and material resources' (Den Hond & De Bakker, 2007). De-institutionalisation precedes re-institutionalisation, as an institution first needs to be abandoned before an alternative can emerge. In those two different phases, radical and reformist groups will invoke different grounds of legitimacy to substantiate their goals, and put forward different arguments.

In the process of de-institutionalisation, radical groups will use arguments grounded in *moral* legitimacy, which the authors refer to as *structural* legitimacy, while reformist groups will use *consequential* legitimacy. While it is useful to recall the discussion in Chapter 2 on these types of legitimacy (and the classification shown in Table 1), the interpretation here is rather geared towards the legitimacy of the advocacy target rather than the CSO. Structural legitimacy is based on what an actor *is*, such that the radical group will denounce the company because of the very fact that it is a company – while consequential legitimacy is based on what an actor *does*, hence, reformist groups will consider that the activities of a company impact negatively on the welfare of society (Den Hond & De Bakker, 2007, p. 907).

In the process of re-institutionalisation, reformist groups will resort to *pragmatic* legitimacy alongside moral legitimacy. Pragmatic legitimacy targets the self-interested calculations of the firm. Activists will thus try to persuade companies to change because it will bring material benefits, market opportunities, or because it protects their reputation. This presupposes a cooperative stance towards firms, which at the same time introduces a risk of co-optation. Radical groups are keener to avoid this than reformist groups. In many instances, cooperation by reformist groups is being frowned upon by radical movements, as the latter are afraid that cooperation decreases their own legitimacy in the eyes of the private sector (Den Hond & De Bakker, 2007, p. 908).

According to the authors, radical groups will not use this form of legitimacy, because their ideological stance pre-empts the possibility of cooperation, since this implies accepting the very structures that radicals want to overthrow. Consequently, they stick to moral arguments, even though the authors assert that moral arguments alone will not persuade a company. Radical groups therefore will be primarily engaged with de-institutionalisation, whereas reformist groups lean more towards re-institutionalisation. Transparency and accountability are the main entry points of reformists, who tend to believe that this information will in itself create fair markets through the actions of, for example, consumers and investors. De-institutionalisation, or the targeting of firms directly to discredit them, is rare among this group (Den Hond & De Bakker, 2007, p. 908).

The authors subsequently move on to discuss specific tactics. In brief, the following four types are outlined: 1. *material damage*; making the costs for the firm so high that it is no longer profitable to keep the operation running; 2. *symbolic damage;* directed towards discrediting the reputation of the firm, with the use of (mass) media and protest; 3. *material gain;* increasing a firm's profit, such as by opening up new market opportunities for 'champions', and 4. *symbolic gain;* leveraging a firm's reputation for 'leading by example'. Each of these tactics can have high or low participation levels. Material damage can be done at scale, such as through a boycott, or by a smaller group of people in the form of blockades, sabotage, hacking, sit-ins, and lawsuits. Symbolic damage entails writing petitions, holding marches and rallies, protests, writing letters or emails, requiring a large number of people, but can also be small-scale, such as when doing research, mobilizing media, street theatre actions, shareholder activism, and organizing debates. Material gain can be induced by scores of people suddenly buying (more of) a certain product, or by a few who cooperate intensively with a firm. Finally, symbolic gain rests on voluntary action (high participation rate) and cooperation and positive publicity (low participation rate) (Den Hond & De Bakker, 2007, pp. 909-911).

These tactics likely change over time. Groups may start with tactics that are symbolic in nature and require low numbers of participation, requiring fewer resources, but, as a conflict escalates because firms are not responsive, more radical forms of protest will be applied. For example, writing petitions (low numbers, symbolic damage) may be followed by boycotts (high numbers, material damage). In this escalation process, the authors, again, observe differences between radical and reformist groups.

In the de-institutionalisation phase, radical groups will move from inflicting symbolic damage to material damage, as their threshold for damage is relatively low, given their distrust in the firm in general. This is much harder for reformist groups, being afraid of estranging their constituencies, but they will try to broaden their support base in order to gain leverage. Alternatively, when they are few in numbers, they might also opt for collaboration to provoke material or symbolic gain for a certain firm, in order to seduce other firms to abandon their destructive practices. For example, the World Wildlife Fund (WWF) has partnered with Unilever to establish the Marine Stewardship Council (MSC) to discredit traditional fishery practices, which caused reputation gain for Unilever (and perhaps even material gain).

In the re-institutionalisation phase, radicals, again, might not have so many options. However, they could propose radically different structures and alternative economies, which could inflict material damage once more people start to operate in these structures. The introduction of *Bitcoin* can serve as an illustration, as it originated to circumvent banks and to allow people who are living 'off-the-grid' to minimize their ecological footprint, but has grown beyond this niche. Reformist groups, in contrast, will try to persuade companies with promises of material and symbolic gain, which will have more impact, the more people are involved.

Apart from aiming to change the behaviour of individual firms, activist groups also work on field-level (sectoral) change in order to transform the structure in which firms operate. The state and politicians will be targeted here, for example by lobbying for regulations and standards. However, activists can also target individual firms one-by-one in order to change the entire field. Here, again, tactics of radicals differ from those of reformists. Radicals will target frontrunners: when they already perform poorly, the entire sector must be underperforming. Reformative groups can work with both frontrunners, in order to try to raise the bar, and challenge 'laggards' at the same time, in an attempt to broaden support for field-level change.

This analytical framework has been tested by Van Huijstee and Glasbergen (2010) in their research on Friends of the Earth International (FoEN) and WWF, and their engagement with Rabobank, where WWF can be considered the 'reformist' and FoEN the 'radical'. In line with Den Hond and De Bakker's predictions, WWF used a symbolic gain strategy, trying to foster cooperation and even allowing Rabobank to use its logo. In contrast, FoEN essentially used a symbolic damage strategy, with one exception when they co-wrote a letter to Rabobank. Collaboration between Rabobank and FoEn hardly took place. The only departure from Den Hond and De Bakker's analysis is the observation in the study that FoEN not only used de-institutionalisation tactics, but also engaged with re-institutionalisation in the form of promoting new norms such as climate policies and climate friendly products.

Yaziji and Doh (2009) similarly assume that an organisation's ideology, i.e., its degree of 'radicalism', affects its choice of target and strategy. They distinguish between 'institutional' and 'non-institutional' tactics. The latter comprise civil disobedience, disruptive actions, destruction of property and violence, whereas the former refer to lawsuits and lobby. An additional third category is coined 'institutionally neutral' tactics, which include media strategies, rallies and marches. The authors then assign different tactics to each CSO type: police and courts, or, institutional tactics, for the mainstream organisations, courts and legislators as well as media for the moderates, and protests and boycotts (counter-institutional tactics) for the radical organisations. Conform Den Hond and De Bakker (2007), more moderate, or, 'mainstream' organisations, will target the laggards. These companies best illustrate the violations to certain norms or regulations. Radical organisations target frontrunners instead.

Ählström and Sjöström (2005) categorise CSOs into *preservers, protestors, modifiers* and *scrutinizers.* These differ in terms of their radical or moderate stances towards changing business practices. Preservers will partner with business, either in the form of collaborating in projects, dialogue and advice, or starting a campaign. The other three categories will not engage in partnerships. Protestors will try to change business practices through confrontational means and public visibility. Modifiers, in turn, aim for a shift of paradigm and refuse to cooperate with business in rejection of the fundamental principles of neoliberal capitalism. Similar to protestors, they will use confrontational tactics such as demonstrations and media campaigns. Lastly, the scrutinizers seek to reveal malpractices of companies and therefore want to maintain their independence. They will partner with media to disseminate the results of their investigations. The authors state that businesses should be mindful about the type of organisation that they try to interact with, because partnership efforts might fail if these go directed towards CSOs that find themselves in the latter three categories. According to the authors, an organisation's background and its selected tactics define the categorization. Most 'preservers', for example, are well-established organisations that have been in operation for a long time and often have international presence.

King (2008) makes a similar distinction as Kamstra and Knippenberg (2014), Fung (2003) and Minkoff et al. (2008) between organisations that can rely on a large group of members and those that lack such a membership base. According to King, the latter are potentially more successful in institutional ways of influencing, such as lobby or direct negotiations with the company, at the expense of mobilizing new participants. On the contrary, grassroots organisations are more effective when the strategy hinges on mobilisation of members. King furthermore brings in the tactic of 'framing'. He states that 'stakeholders are more influential when they frame their claim in a way that resonates with the primary concerns of corporate executives' (King, 2008, p. 38). That is, when they use efficiency arguments, for example, they are perceived as more legitimate and are taken more seriously. A trade-off can arise, however, as these arguments may not align with the vision and identities of the activist stakeholders. King argues that stakeholders who are not dependent upon membership will more easily employ such arguments than those who have membership at their core. These stakeholders more likely opt for a more confrontational strategy through the use of media or by way of protests or demonstrations, with the goal to damage the reputation of the firm (King, 2008).

Bebbington et al. (2008) assert that the course of interaction between a social movement and a company depends upon the position or strategy that a movement adopts. Taking a 'land grab' issue as example, a social movement can completely reject the dispossession, and therefore unwilling to negotiate at all with the company, or, they can demand compensation for the dispossession as well as participation in decision-making on the management and distribution of resources. The latter movements will most likely be open to some form of engagement and dialogue. Bebbington does not address the question whether a combination of both strategies can occur, but rather theorizes further on the criteria of success: the former movements can stop a company or, adversely, be repressed when states and companies forcefully counter their resistance, whereas the latter's success is defined by the terms of compensation, or, adversely, those movements can be co-opted or corrupted.

4.4 Moving along a continuum between confrontation and collaboration

Other authors, however, observe that most civil society organisations combine confrontation and collaboration (Arenas, Sanchez, & Murphy, 2013; Burchell & Cook, 2013; Kneip, 2013; Murphy & Arenas, 2010; Valor & Merino de Diego, 2009). Recognizing the 'fence' that is drawn up in the literature between confrontation and collaboration strategies, Burchell and Cook (2013) distance themselves from such a dichotomy. For example, they stress that NGOs continued campaigning activities whilst in dialogue with a company.

According to Valor and Diego (2009), confrontation and cooperation operate together and even reinforce each other. In the public sphere, NGOs and business will oppose each other, as NGOs will call for stronger regulations and to show they have not been co-opted. At the same time, business will seek to avoid the NGO voice in policy making. However, in the private sphere they will tend to cooperate out of fear for binding regulation, thus proposing private and voluntary regulatory schemes. Hence, these processes are driven by fear. Confrontational tactics employed by NGOs will increase the companies' openness towards cooperation, as they are afraid of reputation damage (Valor & Merino de Diego, 2009).

Once a relationship has been established, there are different goals to that relationship (Valor & Merino de Diego, 2009), such as awareness raising and 'converting companies to CSR'; training and policy making; verifying implementation and auditing, and communication. Oxfam's 'Behind the Brands' campaign is a well-known illustration of the latter goal. [See Box 1 for the full range of strategies that Valor and Diego epitomise].

Box 1 Valor and Diego's (2009) classification of NGO strategies vis-à-vis business actors

1. *Adjudicator strategy*: Northern NGOs act as 'arbitrator': upon receiving information from Southern NGOs, Northern NGOs collect information from both the Southern counterparts and the company, which results in a research report: throughout the process, there is contact with the firm. The NGO mediates and the goal is not to prove 'guilt', but to solve the problem.
2. *Attorney strategy:* When NGOs think that the company made a serious offence, they will apply more forceful strategies: investigating, demanding documents, putting pressure, if necessary, by trying to threaten their reputation (press releases, distributing information on the streets, customer mobilization). The goal is not to 'solve' the problem, but to put blame on the company. Tactics used are local or national; short and midterm oriented; targeting brands and companies; instrumental and expressive, rather than punitive or catalyst and action requested. The authors label the tactics as confrontational. This tactic however only works if the target is a vulnerable brand (SustainAbility, 2005, in: (Valor & Merino de Diego, 2009).
3. *Plaintiff strategy:* NGOs think a company is always guilty, based on an ideological anti-neoliberal orientation, which causes unfair and unsustainable economic systems. They therefore continuously challenge corporate activities 'to eventually "prosecute" them'. Activities are: mobilization of public opinion. Not contacting the firm at any point. Present the courts (society) with their demands so they put pressure on the firms. They do not need to keep legitimacy towards government like the other strategies. It excludes any contact: 'To do that [informing consumers], I can't be partner with a company, I can't have a cooperative agreement of any kind, or I won't be able to tell the things I want to tell (..) We don't negotiate!' (Valor & Merino de Diego, 2009)
4. *Rehabilitator strategy*: teaching skills and procedures, not about guilt or offenses or research. The relationship is close.
5. *Lawyer strategy* (very rare).

There are several contextual factors that influence the type of strategy pursued by an NGO. Valor and Diego mention three. First, there is the legal type of a company: cooperatives are more susceptible to NGO demands, and listed companies are more vulnerable to confrontational tactics and thus tend to be more cooperative (Valor & Merino de Diego, 2009). Second, the personal factor matters: if there are 'champions' within a company, then NGOs might opt for collaboration instead of confrontation. Lastly, the 'operational legitimacy' of the NGO in the eyes of the company is important. This legitimacy depends upon rigour, expertise, access to media, the members they represent, independence (operational and political), and transparency.

Kneip (2013) examines the interplay between confrontation and collaboration, adding a layer in between, which she terms 'concealed counteraction'. The dynamic of action/reaction by the company and the CSO defines what type of conflict will ensue: these can be productive (leading to solutions), or, protracted, where the company and organisation do not reach a solution. Over the course of a longer time period, the interactions can move along the continuum of confrontation and collaboration, even being confrontational and collaborative at the same time.

Murphey and Arenas (2010) have built a model for relationships with fringe stakeholders and corporations, based on Austin's (2000) work on the nature of relationships between business and civil society. The authors leave room for variations across time by adding that '[a]s relationships develop, or CSR orientations evolve, collaborations may advance from one stage to another without passing through intermediate phases' (Austin, 2000; Seitandi and Ryan, 2007, in: Murphy & Arenas, 2010, p. 108).

Strikingly, there is only scant literature discussing civil society and business partnerships in the context of the Global South, but some insights may be gained by combining the literature on cross-sector collaboration with local case studies where indigenous people are affected by private sector investment, notably in the extractive sector (Murphy & Arenas, 2010). Indigenous people are considered 'fringe stakeholders' here, i.e., those who are 'typically disconnected from or invisible to the firm because they are remote, weak, poor, disinterested, isolated, non-legitimate, or non-human' (Hart and Sharma, 2004, p. 10, in: Murphy & Arenas, 2010, p. 104). Multi-stakeholder partnerships have grown and engagement with fringe stakeholders has been promoted (Gardetti, 2007; Gupta and Westney, 2003; Hart and Sharma, 2005; Tennyson, 2003, in: Murphy & Arenas, 2010, p. 107).

Based on Austin (2000) and the Social Enterprise Knowledge Network (SEKN, 2004), the authors point to four factors that are important for successful collaboration: 1) *value creation*, such as access to new knowledge or networks, financial and technical resources, reputation gain, and increase of sales and employee morale, 2) *alliance alignment*, referring to overlapping missions, values and strategies, 3) *alliance management*, fostering commitment and trust at management level) and 4) *relationship development*. Relationship development consists in turn of the following six principles: 1. The organisation needs to respect individuals as representatives in the collaboration; 2. Those people need to have strong communicative skills, socially skilled and open-minded; 3. Outcomes need to be validated using verification standards that can be understood by all participants in the collaboration; 4. Agreements need to be embedded in the communities and the CSOs that are affected by the collaboration; 5. Social institution that are embedded in the communities and civil society organisations need to be included in the cooperation; 6. Third party organisations should be involved as facilitators where there is power asymmetry between the parties or where there has been previous conflict (Murphy & Arenas, 2010, pp. 108-109). Fringe stakeholders, who seem powerless at first, may become powerful and legitimate stakeholders for corporations, especially in the context of a global civil society and increased network linkages between activists.

The authors apply this model in four case studies, which we will only briefly summarize here. A success case is the one of *BHP Hilton* in Peru, where, after complaints of land expropriation, BHP Hilton committed itself to a dialogue process for over three years. Indigenous institutions were incorporated in the dialogue, there was a clear motivation of the company to address grievances, and Oxfam functioned as a broker to mitigate power imbalances. In contrast, in Guatemala, the Canadian company *Goldcorp* started to collaborate with the community driven by risk aversion and adopting a managerial perspective only. It created a Guatemalan NGO that involved CSR-related activities, such as creating health facilities and giving out microloans. However, they did not gain support from the community who continued to contest the operations. The reason was that the dialogue was characterized by a lack of transparency and trust, and a neglect for the local institutions and local verification processes of the environmental impact of the company. There were no shared values and interests, and weak support at management level. The World Bank, one of the sponsors, and the government, however, asserted that the consultations were adequate and blamed NGOs for spreading rumours. Murphey and Arenas conclude that the 'license to operate' granted by the World Bank and the government, offered the company a weak incentive to start a genuine dialogue with

the community (Murphy & Arenas, 2010, pp. 111-113). Concerning the role of this CONGO, i.e., a company-created NGO, the authors state that 'when some NGOs are funded solely by corporations who wish to gain access to resources in the community and other pursue objectives which may be more aligned with their own missions rather than local concerns, communities risk becoming pawns in a game where third parties distort the interests of the communities rather than represent them' (Murphy & Arenas, 2010, p. 113). The contrasting case studies suggest that the six principles in the relationship development model need to be present for a partnership to be genuinely transformative.

Arenas et al. (2013) observe that most of the literature on interactions between civil society and business have either focused on collaboration or confrontation, but, save for a few exceptions, have not paid attention to interactions between the two. They intend to fill this gap by looking at the transition from conflict to collaboration. They find that CSOs and companies can start on adversarial terms, but this relation can, through dialogue, develop into a collaborative one. Furthermore, collaboration and conflictual dynamics can exist alongside each other. For example, Oxfam's Spanish affiliate advised *Repsol*, an extractive company active in South America, to become responsive towards local communities and helped the company to understand its risk, but, at the same time, they continued to publicly condemn the human rights record of the company in press releases and at annual shareholder meetings. This dynamic is coined as 'critical cooperation' (Covey & Brown, 2001).

4.5 Moving beyond 'dyadic' relationships: coalitions and third party stakeholders

4.5.1 Coalitions

As could be appreciated from the state-society literature, also here the importance of coalition building is brought to the fore. Den Hond and De Bakker mention that coalitions can increase a social movement's leverage, while it enables radicals and reformists to engage in tactics they normally – for ideological reasons- would not engage in. Hence, it can engage reformists more in de-institutionalisation, and radicals in re-institutionalisation, perhaps even symbolic and material gain tactics, without them needing to make 'their hands dirty' themselves. It enables NGOs who wish to remain autonomous and not be seen as cooperating with business, to still engage in collaborative efforts that may lead to pragmatic solutions (Idemudia, 2017).

However, for NGOs to complement each other's efforts, they do not necessarily need to 'sit together' within a coalition. NGOs that use confrontational tactics will make companies more receptive towards collaboration with civil society, but the cooperation itself can be undertaken by NGOs deploying non-confrontation tactics. Activists have stated that it is very useful that there are NGOs 'outside' a dialogue framework that keep the pressure on companies, as this helps negotiations to move forward (Burchell & Cook, 2013). This is referred to as the 'radical flank effect' (van Huijstee & Glasbergen, 2010b), or 'the good cop and the bad cop' (Valor & Merino de Diego, 2009). Van Huijstee and Glasbergen (2010b, p. 611) state that: 'When conducted simultaneously toward the same company and/or sector of industry, contrasting NGO strategies will interplay', and 'When conducted simultaneously toward the same company and/or sector of industry, an effective symbolic gain and symbolic damage strategy will reinforce each other in creating institutional change: the symbolic damage NGO strategy will de-institutionalise the status quo and provide the company/sector with an incentive for re-institutionalisation, while the symbolic gain NGO strategy will guide the process of re-institutionalisation.'

At this point is it important to note that the authors whom we have aligned with the 'specialisation' school versus those who see merit in 'combining' roles and strategies, both use similar arguments, but the difference, however, is that some authors believe that these roles can be combined within one CSO, while others assert that it is better to operate in coalition with each CSO specialising in a specific role. This is also a dynamic that can be observed in the state-society literature.

However, coalitions are potentially prone to conflicts (Den Hond & De Bakker, 2007). This conflict is problematized by Bebbington et al., who observed that in Ecuador, a group of CSOs was able to rally behind a common strategy and goal, while in Peru, the movement was scattered as

there was no agreement between the different organisations and individuals on strategy and goal, and no strong leadership was assumed. Idemudia (2009) does not signal intra-coalition conflict to be a problem. Insider and outsider NGOs worked together in a coalition and the creative tension within the coalition reduced the vulnerability to co-optation. Rather, coalition building served a critical distance function, as organisations balanced each other out.

Likewise, Berry (2003) points to the importance of coalitions, explaining how professional and grassroots organisations benefited from each other. The grassroots organisations gave the professional organisations a new priority and on-the-ground knowledge, while the professionals helped the community with their financial resources, legal and scientific knowledge and networks. This also resembles the role of organisations as 'third parties', as we will see below.

4.5.2 Third parties

A number of authors explicitly move beyond 'dyadic' relations between civil society organisations and business, and note the presence of other stakeholders that define the strategies or successes of a movement. Arenas et al. (2013) come to a typology of third party roles. They can either be allies of civil society, or neutral actors. As allies, they add value to the social movement, or civil society, because they exercise some degree of control over the company and stand closer to the company, as they are positioned in the same work discipline, and thus enjoy more access. In Arenas' case studies, labour unions and shareholders perform such a role. In this first role, they can be a 'facilitating ally' that is not involved in the solution, or a 'participating ally' that is involved in the solution. In their neutral role, they can be either mediators, or solution seekers, the latter implying that they actively take part in designing a solution. As a neutral party, they add value to the interaction because they have expertise, are considered as being 'fair', and have regular interactions with the company, whilst being able to speak their language (Arenas et al., 2013). Even though the authors see some value in conflictive relations, they view collaboration as the ideal outcome of business-CSO interaction.

Van Huijstee and Glasbergen (2010a) also put other stakeholders at the centre of their analysis. The context, made up of other stakeholders, influences whether NGOs-business relations are confrontational or collaborative. In their study on the interaction between Friends of the Earth Netherlands (FoEN) and Rabobank, they investigate two cases: one on palm oil in Indonesia and another on soy bean in Brazil. In an extensive description of the interaction, they demonstrate convincingly that the type of interaction is dependent upon the context, and that one NGO can have both conflictual as well as non-conflictual relationships with the same company, dependent upon the case (Van Huijstee & Glasbergen, 2010a). The palm oil case in Indonesia developed in an antagonistic fashion, while in Brazil relations remained 'friendly'. The clients of the Rabobank in Indonesia were big powerful companies, whereas in Brazil it concerned smallholder farms. The international branch of Rabobank Indonesia was vulnerable, as it operated in a highly competitive context, whereas the Brazil branch was powerful, as they were the only lender (Van Huijstee & Glasbergen, 2010a). They conclude that, even though some authors argue that collaborative interactions are the most effective, a restrictive environment forces NGOs to adopt confrontational strategies (Van Huijstee & Glasbergen, 2010a). Contextual stakeholders thus shaped how the relationship evolved.

4.6 Conflict is inevitable

Some authors have theorized business-society relations using the so-called *consensus model* (Scherer & Palazzo, 2007). These authors tend to lean towards collaboration, emphasizing the shift from antagonistic relations to collaborative relations, and appear to value collaboration, or some kind of a working relationship, as the ultimate outcome, provided that there are conditions in place that safeguard against co-optation (Arenas et al., 2013; Burchell & Cook, 2013; Kneip, 2013; Van Huijstee & Glasbergen, 2010a). However, Dawkins (2015) disagrees with the consensus model. According to Dawkins, theories on stakeholder engagement have been wrongfully concerned with deliberative democracy, focussing on consensus, thereby ignoring the inherent unequal power relations in stakeholder dialogue. He therefore employs the 'agonistic pluralism' framework, that places struggle,

contestation and conflict at its centre. Consensus, in this view, is the 'victory' of the hegemonic powers, oppressing dissent, while dissent can restructure the dominant system. Consensus risks masking the marginalized. The aim of antagonism, then, is to contest existing structures and to establish new – more egalitarian - institutional forms, values and practices.

Relating this to stakeholder-business relations, Dawkins asserts that conflicts between stakeholders are inevitable, that stakeholder engagement consists of unequal power relations, that it includes contestations over discourse, and also relates to aspects of passion and identity. Despite their antagonistic relationship, they still both can have a belief in the free market, yet differ on the processes of distribution (Dawkins, 2015).

Dawkins concludes that conflict should be valued. Dialogue may occur, but the possible outcomes need not be fully embraced. Second, there is a need to include a countervailing voice in stakeholder interactions to check the (undemocratic) power of the hegemon (that is, the corporate). Unlike Baur and Palazzo (2011), who assert that it is only legitimate for society stakeholders to opt for radical resistance once dialogue has been tried, Dawkins argues that these countervailing voices can opt for radical resistance even before undertaking discussions. He provides the example of Oxfam that during the AIDS pandemic painted a picture of the pharmaceutical industry as morally bankrupt, while still keeping their legitimacy. Finally, there is the notion of 'a fair fight'. Less powerful stakeholders should not be in a disadvantaged position because they have fewer resources than the corporation. For example, after labour unions gained more power during the mid-1900s, union violence against employers was diminished (Dawkins, 2015).

When the firm and stakeholders fail to reach an agreement, Dawkins sees arbitration as an option to settle the dispute. Dawkins goes on in detail about how this arbitration, which should have a non-legal yet binding character, could materialise. Interestingly, he contrasts Mouffe's preference for 'voice' with more radical notions of 'exit' and relates this to how certain civil society actors prefer to opt for an 'exit' while seeing others – that prefer 'voice' – as being co-opted once they engage with business. Drawing on authors such as Coy and Hedeen (2005), Jaffee (2012) and Morgan (2007), he refers to co-optation when actors 'are caressed into routinizing and codifying their claims in lieu of more disruptive forms of activism that threaten the established order' (Dawkins, 2015). She thus warns to be cautious with arbitration: it is effective only in a limited number of situations and should be accompanied by other agreements.

Relating his theory to our inquiry into roles and relations, we can conclude that Dawkins (2015) regards corporate-stakeholder relations as adversarial, yet dialogue and conflict pound each other, resulting in a mix of cooperation and confrontation. The ultimate outcome is not dependent upon reaching consensus, rather, it will come about when corporations realize they cannot dominate their stakeholders and therefore opt for a different approach.

4.7 Context

We already learnt that NGO strategies are influenced by other stakeholders. In general, business-CSO interaction should be analysed within the specific institutional context of a country. Bebbington et al. found that the social movement in Ecuador succeeded in halting the mining operations, whereas in Peru, such an attempt failed. The stance of the company itself was, obviously, important: in Peru, the company had significantly more resources than in Ecuador to carry out CSR programs and thus actively trying, and succeeding in, winning the 'hearts and minds' of the population. In Ecuador, these CSR programs did not come about, and instead, the social movement developed alternative income generating alternatives. Bebbington et al. point to context, similar to the governance aspects as described in section 3.7. In Ecuador, the local government was neither pro, nor anti-mining, yet open to citizen participation, whereas in Peru the government was strongly pro-investment, depending also more heavily on the mining industry than Ecuador (Bebbington et al., 2008).

In the same vein, Idemuda (2009) asserts that, inasmuch that effective partnerships between business and companies are a factor in how these partnerships are managed, they are also heavily influenced by their 'enabling environment'. In many contexts in Sub-Saharan Africa, even good management practices of a partnership will not render effects when more fundamental issues are not taken up. For example, local capacities can be built to monitor compliance with environmental regulations, but when governments continue to lower environmental standards to attract foreign

investments, this capacity building will not solidify. On the other hand, King (2008) demonstrates that state interference can also positively influence the process of activist influence on companies, with regulations or laws, for example, thereby also creating a level playing field, which can in turn enhance a company's receptiveness towards CSR. Strict environmental regulations can make corporations more open towards activist groups that leads to adopting environmental measures (Buysee and Verbeke, 2003, in: King, 2008).

Özen and Özen (2009) claim that most of the literature concerning CSO-business relations is preoccupied with liberal policies in Anglo-Saxon contexts and therefore problematic when applying it to a different political context – such as Turkey. In their analysis of the *Eurogold* case, where a German-Australian multinational wanted to extract gold reserves in Bergama, they demonstrate how an authoritarian developmental state (as opposed to liberal states in Western contexts), influenced the success of the social movement, the counter-strategies of the MNC and the legitimacy of the movement as defined by media and public opinion. The state sought to repress and delegitimize social movements that pose a threat to the neoliberal order as envisioned by the state, claiming that the movements are being steered by 'foreign' forces and invoking promises of national development and employment. In addition, as a reaction to the Bergama protests, the state enacted a new law which was even friendlier towards investors. This example shows that in non-liberal states, the unintended consequence of a movement's action can be exactly the opposite of what they are fighting for. Multinational corporations keep functioning even when social movements pose a real challenge to their operations, because they do not necessarily need a social license to operate, as they already enjoy state support.

By way of concluding Chapters 3 and 4, in which several classifications of roles, strategies and tactics have passed in review, an overview table is included on the next two pages (see Table 2).

Table 2 Roles, strategies, and tactics: an overview

	Explanation	Types
ROLES		**Development literature:** 1. Service-delivery 2. Catalyst 3. Advocacy 4. Watchdog 5. Broker 6. Hybrid *Sources: (Banks et al., 2015; Korten, 1990; Minkoff, 2002; Mitlin et al., 2007; Yaziji & Doh, 2009)*
		Democratisation literature: 1. Education 2. Communication 3. Representation (resistance and voice) 4. Cooperation (coordination and subsidiarity) *Sources: Kamstra and Knippenberg (2014)*
		Business-literature: 1. Reformative 2. Radical *Source: Den Hond and Den Bakker (2007)* 1. Preservers 2. Protestors 3. Modifiers 4. Scrutinizers *Source: (Ählström & Sjöström, 2005)*
STRATEGIES	Even though Mosley defines insider and outsider in terms of 'tactics' and not 'strategies', we nonetheless define them as strategies for analytical reasons	**Most used in state-society:** 1. Insider strategies 2. Indirect strategies 3. Outsider strategies *Source: Mosley (2011)* 1. Confrontation 2. Non-confrontation 3. Cooperation *Source: Kamstra and Knippenberg (2014)*
	Ramanath (2009) derives strategies in terms of an organisation's relations with the state: we follow their example	**In terms of relations with the state:** 1. Confrontation 2. Cooperation 3. Complementarity 4. Co-optation *Source: Najam (2000)* 1. Repression and rivalry; 2. Competition; 3. Acceptance of institutional pluralism; 4. Contracting; 5. Third Party Government; 6. Cooperation; 7. Complementarity; 8. Collaboration *Source: (Coston, 1998)*
	Den Hond and De Bakker (2007) also define their category as tactics, but for conceptual reasons we place them in strategies	**Most used in private sector-society:** 1. Collaboration 2. Confrontation 3. Concealed counteraction *Sources (Kneip, 2013)* 1. Material gain 2. Material damage 3. Symbolic gain 4. Symbolic damage *Source: Den Hond and De Bakker (2007)*

Table 2 c'td

TACTICS Sources: (Ählström & Sjöström, 2005; Den Hond & De Bakker, 2007; Kamstra & Knippenberg, 2014; Onyx et al., 2010; Ramanath, 2009; Ramanath & Ebrahim, 2010; Yaziji & Doh, 2009)	'Tactics are actual interventions (action-forms) that fall within the broad category of a strategy' (Ramanath, 2009, p. 57)	**Divided by level of confrontation**	**Congruent strategies**
		Coordination of multistakeholder partnerships, participation in multistakeholder dialogue, advise, dialogue, program implementation, workshops, green and white papers, participating in government committees, consultation, writing research reports, contacting parliamentarians, training, 'buycott', setting up certification schemes, handing out positive 'awards'	Cooperation, insider strategies, material and symbolic gain, contracting, Third Party Government, complementarity, collaboration
		Protest, sit-ins, mass mobilization, media, lobby, awareness-raising, monitoring, certifying, campaigns, organizing lectures, press-releases, publications, letter writing, opinion pieces, petitions, shareholder activism, street theater, 'confrontative dialogue', handing out cynical 'awards'	Repression and rivalry, confrontation, acceptance of institutional pluralism, indirect strategies, concealed counteraction
		Violence, boycott, blockades, court cases, law suits, occupation, hacktivism	Repression and rivalry, confrontation, competition, outsider strategies
		Divided by level of institutionalism	
		Institutional: 1. Government and/or companies: Green and white papers, participating in government committees and company committees, multistakeholder dialogues, consultation, writing research reports, contacting parliamentarians, training of government and/or business, employees, court cases, legal action, shareholder activism, certification 2. Civil: Educational outreach, awareness raising, campaigning, organizing lectures, press-releases, publications, letter writing, opinion pieces, petitions, awards	1. Non-confrontational, collaboration, insider, confrontational, cooperation, complementarity 2. Indirect strategies, non-confrontational, confrontational
		Non-institutional: Protests, sit-ins, blockades, sabotage, occupation, hacktivism	Confrontational, outsider strategies
		Divided by having grassroots participation or not:	
		Non-grassroots: 1. 'Elitist': Lobby, advising, research, committees, stakeholder dialogue, shareholder activism, setting up certification schemes, research reports, press releases 2. 'Radical few': Violence, blockades, sabotage, occupation, hacktivism	1. Insider and indirect strategies, non-confrontational, confrontational, cooperation, complementarity 2. Outsider, confrontational
		Grassroots: Protest, demonstrations, sit-ins, big stakeholder dialogues, educational outreach, awareness raising, campaigning, skill trainings, organizing lectures, press-releases, publications, letter writing, petitions	Indirect and outsider strategies, non-confrontation, confrontation, repression and rivalry, competition, acceptance of institutional pluralism

Notes:
1. Roles and strategies are directly derived from the literature; tactics is our own categorization based on the literature.
2. Lobby can be placed in tactic group 1 and tactic group 2.
3. The third category within tactics is contested, as we saw in the literature. Activities such as lobby can still be undertaking with grassroots support. However, we can distinguish between the two by the actual participation (and not its support).

5 Land ownership and CSO advocacy for land rights in Kenya

5.1 History of land disputes in Kenya

Prior to colonialism, Kenya's land system was based on customary law. Writing about the Rift Valley, or, the 'white highlands' as it is called because of the many 'white' settlers for its abundant land resources, Kanyinga (2009) describes how many of the roots of current land conflict, land injustices, and land grievances can be traced back to Kenya's colonial history, and the way the land question was tackled after Kenya gained independence. Even before the British established their colony, they started with land expropriation and alienation. This was then legalised within British property laws. A division was made between land for Africans ('native reserves') and 'scheduled land' for European settlements. These 'native reserves' were predominantly organized based on ethnicity, and because the British laid firm boundaries between the reserves, their establishment prevented inter-ethnic interaction (pp. 327-328). Africans, in this way, did not have any land rights, while the European settlers' land rights were protected by British law (Okoth-Ogendo, 1991). Africans, largely Kikuyu, migrated to the highlands to look for jobs at the European farms and were labelled as 'squatters'. However, individual land rights were later also granted to Africans, mainly Kikuyu (Kanyinga, 2009).

After colonialism, Kenyan politics was divided on how to address the land question. One party (led by the late Odinga, the father of Raila Odinga) proposed pre-colonial land division in the Rift Valley, favouring mainly Maasai, Kalenjin, Turkana and Samburu, while the governing political party, led by Kenyatta, and representing mainly the interests of the Kikuyu, wished to respect the current property rights, thus protecting Kikuyu and British settlers. The government of Kenyatta started land reforms in line with their wish for stability. Landless squatters were resettled through a mechanism where the government bought farms from settlers willing to sell their land. However, many, predominantly non-Kikuyu, remained landless – although also Kikuyu were left aggrieved. From 1965, the government initiated a land purchase programme, leading to competition and inter-ethnic tensions, but also to heavy rivalry among elites in politics and business (Kanyinga, 2009).

Land developments at the Coast followed a similar line of conflict, although the land question there had been complicated already before colonialism because of the slave trade and the fact that it was under the control of the Sultan of Zanzibar. The British granted sovereign rights to the Sultan over a coastal strip, and later also to Arabs and Swahili Muslims, but denied this to the 'indigenous' inhabitants, mainly constituted of Mijikenda. Similar to developments in the Rift Valley, the president after independence preferred the status quo, which left the Mijikenda as squatters, or as tenants of Arab and Swahili land owners. Again, land purchases, and later on also individual land rights, were promoted in order to try to solve the land question, but it failed to adequately address landlessness of many Kenyan poor (Kanyinga, 1998).

These historical land developments interact with current land investments by the private sector and public-private partnerships, which is the subject of our study. A scoping exercise of contentious land investments has been performed, resulting in the list of cases attached in the **Annex**.

5.2 Ethnic politics of land ownership

In Kenya, the centrality of land and other natural resources has basked in the keen attention of the state. As various scholars argue, rights to land and other natural resources not only determine control over economic sources of livelihoods but, for states and governments, have meant political control over African populations (Benjaminsen & Lund, 2012; Chanock, 1985; Mamdani, 1995). The right to settle disputes, accept immigrants and redistribute holdings can prop up a leader's political power and authority (Shipton and Goheen, 1992). In Kenya, politics and territoriality are in tandem. Most political figures in rural areas are members of the ethnic groups who predominate in the constituency. Individuals who hail from regions other than the dominant ethnic groups of a given region are considered minorities and seldom stand for political office. Usually, an indigenous candidate is deemed fit to stand for a political slot when his/her family originates from the region.

Ethnic conflicts have had a direct impact on the political atmosphere and have gone a long way to undermine Kenya´s nascent democracy. Both the leaders and the populace are polarised on political issues, including those that seem to be for the greater good, such as for instance the 2005 Constitutional Referendum of Kenya. The governments of former presidents Daniel arap Moi and Mwai Kibaki had been entangled in similar dilemmas. Both were accused of lacking decisive action regarding citizens' security, and land policy, and of neglecting the state's role as an arbitrator. The ethnic hostilities of 1992 left the people of Kenya feeling unsafe to purchase land that is occupied by ethnic groups to which they do not belong, especially in rural setups. These clashes increased ethnic suspicion and prejudice and made ethnic politics a crude reality. Thus, national issues are more and more being analysed against the ethnic backbone. This means that even in multiparty elections, fragmentation along ethnic lines is apparent. The opposition has become a coalition of ethnic parties fighting for their ethnic interests and an avenue to accessing the 'national cake', whilst those in government are another coalition, struggling to eat the cake as it is still their turn, for they are in power (Burgess, Jedwab, Miguel, Morjaria, & Padró i Miquel, 2015). Nevertheless, in 2002, the National Rainbow Coalition (NARC), under the leadership of former president Mwai Kibaki, made it its mandate to investigate and ensure the recovery of all public lands illegally allocated by the then outgoing Kenya African National Union (KANU) led by former president Daniel Toroitich arap Moi.

Bratton and Kimenyi (2008) argue that although Kenyans resist defining themselves in ethnic terms, their actions in making electoral decisions reflect a country where voting patterns are largely ethnically aligned. There is a direct correlation between election outcomes and the number of registered voters, the population number of the ethnic group and the area of representation. The physical, political and social 'space' has collapsed – ethnicity being the most prominent signifier more than any other group identifier. Thus, for a candidate to emerge an election winner in a certain region, (s)he needs to belong to the majority ethnic grouping.

In this light, competition is not only over land use, but over political inclination of the people settled on that land. This explains why electoral constituencies in Kenya are periodically re-adjusted toward the outcome of national general elections. On the importance of land in Kenya, Shipton and Goheen (1992) concur with the statement that:

> No other issue is so political or so explosive. Who has land, who gets land, who buys and sells land – and when and for what price – are the perennial sources of discussion at all levels of society. The deep-seated consciousness about land is based on land shortage, landlessness and social inequalities bred by land problems. Land offers basic survival opportunities in an insecure world. Land is welfare when there is no welfare system. Land is wealth when no other forms of wealth are available (p. 389).

Or, as Miller (2018) puts it:

> [..] Kenyans have for so long been preoccupied with hunger for land, land struggles and an unrelenting pursuit of territoriality. For centuries, a central theme running through the Kenyan experience has been the intense scramble and competition for prime farming land, land to give to kindred and to be withheld from strangers. Now, as in the past, Kenya's quest for prosperity is intimately linked with the land (p. 6).

5.3 Land access and social relationships

Land, like a good job and other scarcities, qualifies as a 'positional good'. In order to establish one's place in hierarchy, one needs to acquire position, money and land. Land has always been viewed as the key to many doors (Dietz, 1996; Hirsch & Scurrah, 2015; Kanyinga, 2000). It is, thus, crucial to recognise how changes in socio-political institutions regulate access and use of land in Kenya. Social identities and other non-market factors play an important role in regulating access to resources (Berry, 1997). In Kenya, relationships between social identities and land have always been intimately connected. Shipton and Goheen (1992) observe that as practices over land change, people recall varied versions of history and assert various rights associated with social identity to validate their claim to land. Berry (1997) further argues that access to resources is largely dependent on the influence that one brings in negotiations over property rights, an influence that is enhanced by having followers and the necessary social networks.

In a majority of African societies, Kenya included, tenure systems must be seen as part of the broad socio-political and economic context of society. Access and use of natural resources in most cases has been a social act, in which people mitigate and cooperate, but with different positions of command, with different rewards, and often involving institutions at different government administrative levels between which power relation exist (Benjaminsen & Lund, 2012).

Land is important not only for its economic, cultural and ritual value, but also for the numerous functions attached to it by the state, the elite and the communities at large. Land continues to be at the centre for the formation of political and group consciousness. Scarcity of prime land has led to the construction of ethnic identity by the communities to aggravate against past injustices, justify their rights to specific territories, and create a barrier against 'foreign' competitors. There are, however, certain circumstances where a 'foreigner' can gain access to community land or a land-holding group, namely through marriage, fostering, capture, or by placing oneself under the protection and authority of that particular community's leaders (Okoth-Ogendo, 1989, p. 151).

5.4 The social protection value of land in Kenya

Land is not only an economic asset, but acts as a socialising agent and a social safety net. In Kenya, access to rural land is one means by which rural residents as well as seasonal and long-term migrants maintain local and descent group affiliations. The new affiliations are crucial for handling new economic opportunities and risks associated with the spread of commercialisation. In Kenya, current sources of wealth through trade, commercial farming and wage employment have paved the way for access to land with skyrocketing commoditisation of land (Muraoka, Jin, & Jayne, 2014; Nolte & Väth, 2015; Zaehringer, Wambugu, Kiteme, & Eckert, 2018). Thus, the ambition for those employed in urban areas to own a piece of land in their rural setup is rising for Kenyans. Land ownership in rural areas, which are referred to in Kenya as 'reserves' - adopted from the colonial times, is not viewed as incompatible with urban life. Residents in urban centres know that when they are older or lose their jobs, they can always turn to the land. This rural land, for many, is also their burial soil. For the newly employed Kenyans, investment is usually done on land before securing another piece of land or a house in the urban centres. This is termed as 'security' because ownership of even a small piece of land is considered an act of survival, if not prosperity (Haugerud, 1989).

In view of this, Berry (1997) states that investment in land adds a dimension of *class* where people seek avenues to new sources of wealth and power through existing institutional channels, and use their acquired wealth to influence institutions and social relations. Moreover, rural Africans do not just own land simply as individuals. Land claims are often put forward by groups rather than individuals. These groups manifest themselves in various forms; extended homesteads, families, lineages, villages, chiefdoms, ethnic sections or other group networks.

5.5 Women's access to land

Women farmers control the bulk of smallholder agriculture, which employs about 70% of the labour force. Women do 80% of the agricultural work and yet the majority of them have no legal rights to the same land. While the written laws do not discriminate against women in matters dealing with rights in land, a number of customary laws and traditions do so when it comes to inheritance rights to land. Under customary land law, women generally have inferior land rights relative to men, and their access to land is indirect and insecure (Davison, 1987). Traditional provisions which used to protect women's land use rights have been eroded over time. Women are usually given only usufructuary rights (i.e., rights of use) over landed property, which are not 'absolute'. This in effect denies them the freedom, for example, to later sell or mortgage property, which may have been acquired by both husband and wife during their married life. In the land adjudication process, for example, the land adjudication committees (which are predominantly male in membership), have largely continued to discriminate against women by allocating land to heads of households who are usually male (Musangi, 2017).

5.6 The land question in Kenya two decades on: still a political quagmire?

Land in Kenya is owned by four types of entities: the government, county councils, individuals and groups. Different legal documents govern different categories of land and land ownership. There are two different types of land registration: document registration and title registration. The Land Registration Act of 2016 was intended to be the overall land law commitment to the private/modern tenure system. The objective of putting all land in Kenya under this act is yet to be achieved. This section explores the developments in land policy over the past two decades.

It is important to make note of the political instability that culminated in the ethnic clashes of 1992-1993, where politicians of the Kenya National African Union (KANU) manipulated land rights to mobilise supporters and punish opponents (Boone, 2011). To counteract this situation, in 1999, the KANU government took note of the land problem in Kenya, particularly in the coastal region, and formulated a commission to look into the issue of land. This commission was known as the Commission of Inquiry into the Land Law System in Kenya. Its functions were to review the land issues in Kenya, analyse the legal and institutional framework for land tenure, and make recommendations to changes in laws and policies to cater for some land questions, including the incorporation of customary tenure into statute law (Okoth-Ogendo, 1989). This commission, which was chaired by former Attorney General Charles Njonjo came up with a document that was informally referred to as the Njonjo Report. The report, which was presented to the then president Daniel arap Moi, indicated that the land problem can be attributed to the abuse of the land laws that existed at the time. The Government Land Act, Cap 280 and the Trust Land Act, Cap 288 were exploited to grant land to cronies as a means to secure patronage and loyalty. This report, however, did not alter the status quo on land.

In December 2002, the defeat of KANU that had ruled Kenya since 1963 brought new changes to the country. The victorious National Alliance of Rainbow Coalition (NARC) party headed by Mr. Mwai Kibaki had anchored its campaign on an anti-corruption platform. Therefore, it did not come as a surprise when the new government set up a commission chaired by lawyer Paul Ndiritu Ndun'gu to inquire into illegal and irregular allocation of public land. This culminated into the infamous Ndun'gu Report of 2003, which documented that

> more than 200,000 illegal titles were created between 1962 and 2002; illegal allocations were done on the orders of the then Presidents in power, other senior public officials and politicians or businessmen; and beneficiaries of grabbed land included ministers, senior civil servants, politicians, politically connected businessmen, and even churches and mosques. Despite these findings, outcry from the public, some high-profile sackings and resignations from government, successful prosecutions are far from near (Ndungu, 2006, pp. 5-6).

Needless to say, the 2007/2008 post-election violence that ensued between various ethnic communities was linked to land ownership (Kanji & Braga, 2002; Kanyinga, 2000). The country´s violence and instability subsequently led to the National Accord and Reconciliation Act brokered by former United Nations chief Kofi Annan and authenticated in February 2008. Agenda 4 of this act stressed on the need for Kenya to have lasting solutions to its problems, including land. Within the same year, another commission set in motion by an act of parliament after the post-election violence was the Truth, Justice and Reconciliation Commission (TJRC) report, whose mandate was to investigate fraudulent acquisition of land, design and implement measures to revoke illegally obtained titles[4], to restore peace among Kenyans, and reparations for historical land injustices between 12th December, 1963 and 28th February, 2008. Authorities of related departments were given a 36-month notice prior to commencement of the investigation.

While the Mwai Kibaki regime finally inaugurated a Constitution in August 2010, the required land reforms as stipulated in Chapter 5 of the Constitution of Kenya (2010) on land and environment still remain unfulfilled promises. Only in April 2012 did Kenya approve its new land laws. After years of deliberation concerning land legitimacy, there were two significant outcomes: the approval of a National Land Policy in 2009, and the land policy in the 2010 Constitution of Kenya, which is chapter six: land and environment.

[4] See Kanyinga (2000) on titling of land in Kenya´s rural areas

In 2012, the Land Act, the Land Registration Act, and the National Land Commission (NLC) Act were passed by parliament in a bid to minimise land conflicts in Kenya. The passing of these acts, however, led to the beginning of new struggles amongst Kenyans (Boone, 2011). Land grabbing in Kenya formed part of the major issues discussed in the 2013 Presidential Debate, with the coastal region getting much of the attention. Other issues addressed during the Presidential election campaign were the politics of resettlement, struggles over public and private land, politics of land tenure reform, and community land politics. These issues continue to trigger stimulating debates in Kenya mostly because of the involvement of the state in regulating access to public land, which has increased rather than decreased. Consequently, this has contributed to the deepening of the land question rather than solved it.

Indeed, the difficulties that accompany the Constitution of Kenya (2010) on land reform arise because of the centrality of land allocation to the maintenance of power in the country (Bassett, 2017). The NLC's potential to transform land relations – by addressing historic injustices and grabbed land, effecting land redistribution, and ensuring land access by historically marginalized groups – is limited (Bassett, 2017, p. 539).

The 'land question' in Kenya continues to remain a political battle that leads all political parties to prioritise it at the centre of their manifestos. In 2013, the Jubilee political party (which is in power till date) anchored its land reform manifesto 2013-2017 on reforming land registration and management, processing illegally acquired land, and adjudicating and titling community land. In 2016, it was presented at a workshop convened by the NLC that in 2015 approximately 64% of land in the Kenyan coastal region was owned by either the State or influential politicians, and only the remaining percentage was community land, which is hardly adjudicated. This scenario can be deduced to apply to land ownership across the country. In a 2014 rally at the Coast, the Prime Minister, Mr. Raila Odinga – also the leader of the opposition party, National Super Alliance (NASA)- stated:

> The only way for the problem to be resolved once and for all is for those who grabbed the land [during the Jomo Kenyatta regime between 1964 and 1978] to return it [-] The solution is in the Truth, Justice and Reconciliation Commission Report. Just implement it (The Star Newspaper 14th July, 2014).

After the 5-year lapse of the 2013 Jubilee manifesto, these processes were not accomplished. In the 2017 manifesto, the Jubilee alliance categorically indicated that in the next five years it will digitise all land registries to facilitate easier and cheaper land transactions, and to facilitate faster acquisition of free public land for developing houses. Klopp and Lumumba (2017) argue that Kenya's powerful networks of beneficiaries, especially politicians, create a strong system of control and exclusion around land, producing a path that is biased against land reform.

5.7 Kenya's civil society landscape

During the last decade, civil society organisations (CSOs) in Kenya have grown rapidly in response to the increasing demand for their services (Hershey, 2013; Molyneux, Hutchison, Chuma, & Gilson, 2007). The numbers suggest as much; while 4,200 NGOs were registered in Kenya in 2007 (NGO Coordination Board 2007), a more recent source puts the number at over 6,500 officially registered organisations (ICNL website[5]). The number of CBOs has grown even more impressively, although a registration drive may be partly responsible. Whereas Kenya's National Council of Community Based Organisations (NCCBO) counted a total of 26,027 registered CBOs in 2006, its website today makes mention of 52,350 member organisations. Since the nature of CBOs is likely more country-specific than the more universal NGO, we dwell on this CBO category in the next section.

Civil society organisations in Kenya often take the shape of community based organisations (CBOs), which Mulwa and Mala (2000, p. 4) define as 'organisational entities made of people whose membership is generated by special common bond, which can be, among others, residential, geographical, occupational, social, cultural, political, and religious, and their sole purpose is to voluntarily come together to achieve a certain goal'. Ideally, these CBOs are initiated, owned and managed by the members therein. They are meant to provide strategies for empowering and meeting

[5] http://www.icnl.org/research/monitor/kenya.html, last updated February 2018.

the needs of communities (Karanja, 1996; Wanjohi, Gitao, & Bebora, 2010). Two types of CBOs are distinguished by Kenyan authors: the independent primary CBOs that do not have external interventions or aid, and those that are formed for the sole purpose of attracting donor funds (secondary CBOs). The former CBOs entail activities that revolve around mutual support, or what Kopiyo and Mukui (2001) refer to as the 'moral economy of the peasant'. The primary independent CBOs may get external support but they seldom change their core activity even after getting involved in activities of an external agency. The latter type of CBOs has been referred to by Kopiyo and Mukui (2001) as secondary CBOs, which are a form of social infrastructure started by external agents to manage community activities at the local level. These CBOs have sometimes been termed 'make-shift groups', as they often disband either immediately after the funds are secured or when the members realise that external aid is diminishing (Mulwa and Mala, 2000). These make-shift groups are usually formed for the satisfaction of a temporary situation (ibid.). The Kenyan government has made several attempts though history to document the funding and activities of the numerous CSOs in the country, yet failed because of the daunting effort that would be required (Bonnel et al., 2013, p. 67).

Worth noting, the concept of CBOs is not an entirely recent development in Kenya. Although the term may have been different back then, the concept remains the same. Chitere (1994) indicates that community development work in Kenya started as early as the colonial period and was carried out by social welfare organisations. In 1954, the Social Welfare Organisation became one of the departments of the then newly created Ministry of Community Development (ibid.). Progressively, in 1963 when Kenya gained its independence, Mzee Jomo Kenyatta urged Kenyans to come together and return to cultivate the farms. The purpose of this was for Kenyans to toil together for agricultural productivity to boost the Gross National Product (GNP). In turn, individual achievement would lead to community achievement. With the emergence of the concept of CBOs as early as the 1950s, Kenyans have since adopted the practice to date and introduced the term CBO in the 1990s. Currently, the CBOs engage with a wide variety of themes and are no longer limited to the agricultural sector.

5.7.1 The political role of civil society in Kenya

Returning to the NGO section of civil society, Ndegwa (1994) argues that the NGO community can be seen to have successfully challenged repressive legislation that has imposed restrictions on their functioning. This 'therefore demonstrates how NGOs have contributed to the wider political reform movement in Kenya' (p.19). Yet it is not just in advancing their own rights and freedoms that NGOs have contributed to the movement of political reform in Kenya. Reflected in the literature is the significant success NGOs appear to have achieved in the advancement and improvement of human rights alongside citizen political awareness and knowledge regarding such rights. A report by Icon Group International (2000) has drawn attention to the recent proliferation of national human rights NGOs in Kenya alongside an array of legal organisations. Several of these NGOs are reported to maintain comprehensive files on human rights abuses and a number of attorneys to represent the poor and human rights defendants without compensation. A report by Human Rights Watch (2003) notes the success of these organisations, particularly their tenacious work in providing civic education, shelter and other basic needs, representation in legal proceedings, small-scale lending programs, women-owned housing cooperatives, and advocating for legislative and social change.

The activity and success of these national NGOs in relation to human rights issues is seemingly reflected by the larger, international NGOs. Conducting an in-depth assessment of the work of such NGOs regarding rights and participatory development, Nyamu-Musembi and Musyoki (2004) find them to have achieved considerable success. Indeed, the explicit recognition of international human rights standards is found by the authors to be 'almost the exclusive reserve of international organisations such as ActionAid, CARE, PLAN, and Oxfam' (p.9). Success in advancing the recognition of these rights is noted. For example, Oxfam successfully lobbied the government to increase pastoralist representation on the District Development Committee and ActionAid similarly increased representation of sugar farmers on the Sugar Board from a minority to a majority. ActionAid is highlighted as having made the most significant achievements, programming its work around specific rights campaigns and explicitly attributing poverty to unequal power relations and

therefore articulating it as a violation of rights. As well as their success in empowering sugar farmers, ActionAid is reported to have secured better compensation and a proper environmental impact assessment for communities in Kenya earmarked for titanium mining by a Canadian (and currently an Australian) firm, namely *Base Titanium* in Kwale (see the Annex for more details on this case).

The emphasis by international NGOs on rights has also started to improve their own accountability to clients. For instance, demands from farmers involved in a CARE-supported horticultural initiative in Makueni district resulted in the farmers gaining the right to inspect CARE's books of account relating to the initiative. This action instigated by the rural farmers in Makueni district is reflective of the observation made by (Orvis, 2003) that the work done by NGOs in advancing awareness of rights is beginning to have a tangible impact at the grassroots level. By examining the work of four NGOs that have used civic education and paralegal programmes in rural Kenya, Orvis concludes 'that although the programmes are relatively new, they have begun to have a measurable impact on citizen understanding of politics' (p. 247). Orvis finds the NGOs' clients to be 'generally representative of the population as a whole' (p. 254). Moreover, as well as reaching rural citizens, their work is found to be making a positive difference in citizens' awareness and knowledge regarding rights issues.

5.7.2 State-society relations

State-society relations in Kenya have been characterized by serious tensions between the NGO community and the Kenyan state (Chemengich, 2009; Kanji & Braga, 2002; Radley, 2008). During the Moi regime in particular, antagonistic relations intensified. The government and NGOs were even in competition which each other over donor funds, when many donors started to shift funds from governments to NGOs (Brass, 2012). Since African nations are rather young, they are still struggling to assert control and are therefore trying to downplay independent organisations that might challenge their power (Bratton, 1989). Indeed, the Moi government feared their legitimacy in the eyes of the citizens would wane down because of the NGO operations, fearing NGOs would become a strong force (Brass, 2012).

The tensions between the state and civil society eventually culminated in the adoption of the NGO Coordination Act of 1990 which created a self-regulatory body for NGOs - the National Council of NGOs -and a government oversight body - the NGOs Coordination Board. The NGOs Coordination Board was established to oversee the registration, coordination, and monitoring and evaluation of NGOs in the country and their role in national development. The government felt the need to do this in response to the threat posed by NGOs' vast resources and their open criticism of government practice. In 1989 the government called for the deregistration of GBM and for more stringent controls on NGOs in general. Within a year, the NGO Coordination Act had been passed (Ndegwa, 1994). More recently, intimidation by government officials threatening to disrupt the work of human rights NGOs has been reported (Icon Group, 2000, p. 132).

Brass (2012) describes the differing NGO-state relations, varying across time and type of organisation. Relations during the Moi government were tense, while with the new Kibaki government in 2002, relations become more open and collaborative – even for the more politically oriented NGOs. Even though Brass mentions that the initial optimism waned after the 2007 election violence when democratization, governance and human rights NGOs were restricted, the author was, at the time of writing, clearly optimistic on Kenyan state-society relations. She describes the close relationships, and how NGOs and government officials, notably at the local level, have a seat in each other's committees and implement policy programs together. Human rights NGOs have actively helped to develop the new Constitution in 2010. Brass mentions how the government also worked together with watchdog NGOs. In brief, she sees a 'blurring of lines of authority, decision making, and governing between NGOs and government' (Brass, 2012, p. 229).

As well as highlighting the political nature of NGOs in Kenya, Hearn (1998) also points to the highly financially dependent nature of the Kenyan NGO sector, with the vast majority of Kenyan NGOs relying 'on foreign aid for more than ninety per cent of their funds' (p.98). She furthermore argues that overdependence on external funding also raises questions about the artificiality or contrived nature of the supposed pluralisation of the Kenyan society. Little seems to have changed, with more recent literature frequently citing the same limitation of external donor dependency

amongst the NGO community (Kanji & Braga, 2002; Okuku, 2002). These authors reflect that this exorbitant dependence severely limits the capacity of NGOs to act as agents of democratisation. A supporting study to this effect was conducted on rural-area NGOs in Kenya and found the NGOs to be heavily dependent on donor funding with virtually no sources of domestic support (Orvis, 2003, p. 250).

5.8 A seemingly endless conflict: CSOs attempt at land rights advocacy in Kenya

The uneven political platform on land laws that has characterized Kenya, even before independence, renders representation by civil society organisations (CSOs) for land rights a vigorous tussle marred with various challenges (Chemengich, 2009; Wanyande, 2009). Chemengich (2009) indicates that 'the activities of civil society organisations, whether development- or more activist-oriented, have tended to be reactive to the policies and actions of the government in power rather than pro-active. The nature of engagement varied between collaborative or confrontational' (p. 28).

Many CSOs in Kenya continue to forge forth in collaboration with the Government from time to time so as to establish protection and promotion of human rights within the country (Kenya CSO Forum on the African Charter 2015). These rights include the right to access and ownership of land by all citizens and non-citizens that meet stipulated criteria. NGOs experience a relatively hostile policy environment related to the intense pressure on land (Kanji & Braga, 2002; Mitlin, 2001). Despite this fact, there are several NGOs in Kenya that are involved in land rights advocacy (Mitullah, 2001). According to the Institute for Development Research (IDR, 2000), there are several ways in which NGOs aid in the advocacy of land rights in Kenya. They act as consultation agencies, provide information as well as skills to the government and other stakeholders when dealing with land, and ensure that stakeholders make decisions that are in the interest of Kenyans. These organisations also have a close relationship with Community Based Organisations (CBOs). Through this channel, NGOs gain access to grassroots land issues as experienced by Kenyans. Additionally, NGOs may help to ensure that internally displaced persons in the country get resettled. An example of an influential forum of NGOs is the *shelter forum*, which is an umbrella organisation of NGOs and individuals who facilitate sustainable access to affordable and decent shelter for all, particularly for vulnerable groups (IDR, 2000). Most importantly, CSOs participate in the making of land laws and policies as well as projects that involve land and even go further to monitor the implementation of the said laws, policies and regulations (Kanji & Braga, 2002; Sihanya, 2009).

Kibugi, Mwathane and Makathimo (2016) emphasize that the mechanisms for community participation during the process of land acquisition are critical, flowing from identification of land as project-suitable, feasibility studies, environmental assessments, and the process of verification and valuation for compensation. Participation in this case will lack meaningful impact if the affected people do not have knowledge of the details of the investment at hand, or clarity on the acquisition procedures or valuation methodology. A national conversation is necessary to debate the crucial question of how to provide safeguards to protect the interests of local communities directly affected by these investments, including compensation of land that is taken, and their place in the socio-economic and environmental continuum of investment projects from design to implementation.

The great duties bestowed on CSOs come with great challenges. A case in point is the study of Kanji and Braga (2002), which presents an assessment of the impact of NGOs on land policy processes and encountered the following challenges for Kenya: difficulties in implementation of formulated policies when local level power relations become critical, overdependence of communities on NGOs to solve their problems because of the top-down approaches to policy and programmes, the heterogeneity of communities (such that leaders do not necessarily represent the views of more marginalised groups), the artificial division between community level work and policy advocacy, hostility if NGOs are seen to threaten government power and authority (especially in distribution of land), overreliance on donor funding that result in inappropriate time frames and unrealistic expectations, and assessment approaches to the impact of NGO advocacy activities do not maximise learning experiences nor do they reflect the quality of the NGOs.

Despite the controversies enshrined in the operations of CSOs, particularly the NGO community in Kenya, CSOs are poised to play a significant role in determining the direction and future of the country by providing a civic platform for expression of aggrieved Kenyans.

6 Concluding remarks

This literature review has proven helpful in further operationalising the concepts and ideas put forward in our proposal. The overall impression after in-depth consultation of the literature is that we touch on a number of complexities, some of which were anticipated, but others are new. We were surprised to learn, for instance, that legitimacy can be approached from so many angles. We thus suspect that CSOs will justify their advocacy actions by referring to multiple legitimacy criteria, depending on the case and the constituency and/or advocacy target involved, but also depending on the role, strategy and tactics assumed. The multiplicity of legitimacy offers CSOs the option to 'frame' their involvement differently to various audiences, for example, if they feel that this makes their targets more responsive to their message, or to keep their constituency engaged. A further complication in this respect concerns potential divergence in *perceptions* of legitimacy between stakeholders, which feeds back into role and strategy selection (recall how CSOs strategize vis-à-vis the private sector depending on whether they believe foreign land investments are (il)legitimate ventures). Concerning the issue of specialisation and labour division, our proposal foreshadowed that nuances to the ToC are warranted, which this literature review corroborates. Since this goes at the core of our proposal, selected insights on this theme are bullet-listed below.

6.1 Insights

- There is no consensus in the literature on the desirability of combining roles and strategies. Some authors place rather rigid 'fences' between different roles and/or strategies, whereas others find that roles and strategies combine rather fluidly. While contributors to the literature about state-society relations build their specialisation arguments on organisational characteristics, legitimacy, and membership base, the private sector literature points to ideology, goals, and, membership base. We purport to further investigate the extent to which goals, ideologies, membership base and legitimacy influence an organisation's strategy.

- There is rather wide consensus on the possibilities of combining service delivery and advocacy, as authors cite the many advantages if service delivery NGOs engage in advocacy, most notably the grassroots experience they can bring to the table because of their presence on the ground. Also, service provision can be a political act in itself. However, considering challenges such as scale and lack of skills, authors point to the importance of certain preconditions for success, such as being strongly rooted in grassroots communities and translating advocacy gains in concrete material gains for communities, or, alternatively, organisations can opt to work in coalitions instead of trying to combine roles within one organisation.

- Both the government-society literature and private sector-society literature point to the dangers of co-optation by the government and companies, respectively. Whether this fear also plays into civil society's decisions to cooperate or not, needs further scrutiny.

- Some authors are inclined to believe that, in order to maintain good relations with the state, and thus be considered legitimate in the eyes of the state, advocacy roles need to be non-confrontational in their strategy. There is evidence, however, of civil society organisations that were able to confront the state while at the same time keeping their legitimacy, and sometimes even a financial support base from the state. A factor in this could be that these particular civil society organisation are not extremely radical in nature, and derive their legitimacy from different sources, such as technical expertise. Also, it is important that organisations should be clear in their goals and values and exploit opportunities strategically with 'allies' in government entities.

- Some authors likewise believe that certain types of organisation are better placed to cooperate with companies than others. When cooperating with business, legitimacy in the eyes of the private sector is an important asset for CSOs. Some authors identify sources of legitimacy, such as specific knowledge, a pragmatic approach (speaking their 'language'), commitment to nonviolence, a consensus orientation, and a dedication to the public interest. We are interested to know whether there are other forms of legitimacy for CSOs from the perspective of business, as these all lean towards collaboration and consensus. Even though authors have found instances where organisations were able to cooperate with a company while also confronting them, we found more arguments in the literature that suggested that 'radical' or 'confrontational' NGOs would best work in coalitions when they wish to engage in some form of cooperation with a company. On the other hand, cooperation does not need be ideal for every organisation: 'radical flank' tactics are often regarded as particularly effective.

- There is some disagreement in the literature whether organisations best start with a confrontational approach, and then eventually move to collaboration, or first start to collaborate to gain legitimacy, and then move to confrontational approaches in a kind of 'escalation' ladder. We will further examine this sequencing in the field.

- There is no consensus in the literature about what happens to grassroots support when civil society organisations engage in different roles and strategies. Some authors tend to believe that grassroots support will diminish when organisation focus predominantly on 'insider strategies' such as consultations and dialogue with private sector and government. However, instances have also been found where professional organisations try to train their local constituencies in effective dialogue. Further, organisations can maintain their grassroots relations when they employ local staff and volunteers. Active substantial grassroots support is especially essential in indirect and outsider strategies including tactics such as protest, petitions and letter writing. The question is therefore whether, and under what conditions, the support of local constituencies will wane once an organisation opts for insider strategies.

- More radical tactics such as blockades and boycotts, and violence, are associated in the literature with grassroots mobilisation rather than with funded organisations. We are curious how organisations will relate to these 'non-civic' tactics and what this implies for the perception of their legitimation in the eyes of less radical constituencies and their relations with state and private sector.

- It becomes clear from the review that the behaviour of a company or state greatly influences the range of strategies an organisation can choose from. Regarding a company, it needs to be open to reflect on their negative effects (instead of being only enthusiastic to take on so called 'affirmative duties'), be serious about the dialogue and willing to link up with local communities in order to make decisions (or eventually implement social projects). Regarding governance context, likewise, a government needs to be open for dialogue as well in order to make a dialogue with CSOs possible in the first place. Further, regarding contextual factors, we hope to identify the influence of the different dynamics of local governance versus national governance, the influence of a repressive state and 'the shrinking space' and the neoliberal context of attracting investments that perhaps leads to a de-legitimation of civil society organisations.

6.2 Research design

Our research will focus on the different types of roles, strategies and tactics undertaken by civil society organisations advocating for fair and inclusive land deals in Kenya. Based on the literature review and initial conversations with relevant stakeholders, we expect to encounter a vibrant but polarised civil society sector dealing with increasing political hostility and a continuing dependency on foreign funding. Since land is at the centre of ethnic, religious and political identity in Kenya, its distribution and ownership has long been a topic of contestation, and civil society has played a

prominent role in securing a more solid legal framework on land rights. Yet the country's recent economic development, the corresponding influx of foreign business, and the increasing Western focus on international trade (frequently paired with aid policies) have further marginalised certain communities that lost access to land. Consequently, competing land claims play a prominent role both on the level of local resistance, and in (trans)national advocacy efforts by professional civil society organisations and networks.

In terms of roles as well as perceived legitimacy, we will distinguish between various stakeholders including the state, the private sector, and the communities or beneficiaries that CSOs seek to serve. In line with a social constructivist view, these stakeholders are not considered uniform entities, but will be deconstructed according to dynamics encountered in the field. When dealing with local communities, for example, we will explicitly examine the perspectives of various gender, generational, and educational groups, as well as urban and rural populations.

Finally, the literature review has sharpened our research questions in terms of CSO labour division and legitimacy as follows:

- 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?
    - To what extent do they make conscious decisions on roles, strategies and tactics based on the perceived impact on various stakeholders?
    - 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?
    - What are the conditions and constraints influencing these decisions?
- 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?
    - To what extent do different advocacy targets require different CSO approaches?
    - 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?
- 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?
    - 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?
    - To what extent do they perceive a tension between insider/collaborative strategies and their role as independent representatives of marginalised groups?
    - 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 ?
- What are the implications of our findings for the ToC assumptions on role differentiation within and between CSOs?

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Annex 1: Overview of controversial land investments in Kenya (shortlisted cases)

Location	Type of investment (resource)	Public investor	Private investor	Groups claiming right violations	CSO involvement
Northern Kenya					
Lamu - South Sudan - Ethiopia (LAPSSET) corridor	Infrastructure (port; railway)	Governments, LAPSSET Corridor Development Authority (LCDA), Kenya Ports Authority (KPA)	China National Petroleum Corporation, Toyota Tsusho	Hunter-gatherers (Awer, Sanye), pastoralists (Orma, Wardei, Samburi, Borana, Turkana), fishermen (Elmolo), urbanites	UN Permanent Forum on Indigenous Peoples, Pastoral Women for Health and Education (PWHE), Lamu Port Steering Committee, Save Lamu Coalition, Haki Jamii, Kenya National Commission on Human Rights (KNCHR), Sierra Club, Greenpeace, Natural Justice – Lawyers for the Community and Environment
Lamu	Extractives (coal)	Amu Power Company, Standard Bank of South Africa, Industrial and Commercial Bank of China	Gulf Energy, Centum Investments, Sichuan Electric Power Design and Consulting Company Limited		**Action Aid,** Oxfam, deCOALonize, Save Lamu, Sierra Club, 350.org
Turkana	Extractives (oil)	IFC	Tullow Oil (50%), Africa Oil (25%), Total (25%)	Pastoralists	Friends of Lake Turkana (FoLT), Alemun Pastoralist Empowerment Initiative, Catholic Diocese of Lodwar, Turkana Basin Institute, Turkana Natural Resources Hub, Danish Demining Group, Oxfam, Cordaid
Lake Turkana (Marsabit)	Renewable energy (wind farm)	FMO IFU Finnfund Norfund AfDB	KP&P Aldwych Vestas	Pastoralists (Turkana, Samburu)	Sarima Indigenous Peoples' Land Forum, International Workgroup for Indigenous Affairs (IWGIA), Indigenous Peoples National Committee on Climate Change (IPNCCC), DanWatch
Western Kenya					
Webuye	Factory (paper mill)		Rai Group	Urbanites	Kenya Union of Printing, Publishing, Paper Manufacturers and Allied Workers, local journalists

Western Kenya (c'td)							
Yala Swamp	Agriculture (rice)			Dominion Farms		Farmers	Institute for Law and Environmental Governance (ILEG), Kenya Land Alliance (KLA), Ujamaa Centre, Kituo Cha Sheria, Community Initiative Action Group Kenya (CIAG-K), Kenya Organisation for Environmental Education (KOEE), Resource Conflict Institute (RECONCILE), Seeds of Peace Africa (SOPA), Ugunja Community Resource Centre (UCRC), Bondo Residents Association (BORESA), Kenya Wetlands Forum (KWF), **ActionAid**
Kericho (Nandi, Bomet)	Agriculture (tea)	NTZDC (Nyayo), British colonial government		KTDA, Williamson, Finlays, Unilever Tea		Talai, Kipsigis and Ogiek ('Squatters')	KHRC, Nandi county government, individual Kenyan and international human rights lawyers, community leaders, local church leaders
Lake Naivasha	Renewables (geothermal), horticulture (cut flowers), conservation, tourism (national park)	KenGen (public-private), Kenya Wildlife Service, EIB, AFD, JICA, KfW		OrPower4 (geothermal), various flower companies (e.g. van den Berg Roses), , game ranches, tour companies		Pastoralists (Maasai), fishermen	KHRC, Kenya Land Alliance, Lake Naivasha Growers Group, Lake Naivasha Boat Owners Association, Lake Naivasha Friends Association, Lake Naivasha Riparian Association, Narasha Community Development Group, Mainyoito Pastoralists Integrated Development Organisation (MPIDO), Haki Jamii, Indigenous Peoples National Committee on Climate Change (IPNCCC), Maa Civil Society Forum, Jamaa Resource Initiatives, Natural Resources Alliance, Friends of the Earth, Both Ends
Embobut Forest	Conservation (forest, water), infrastructure	EU, Kenya Forest Service				Hunter-gatherers (Sengwer)	Forest Peoples Programme, National Land Commission (NLC), Conservation Watch, Amnesty International, UN Special Rapporteurs, Survival International
Baringo (Kerio Valley)	Extractives (oil), conservation (national park),	Kenya Wildlife Service, national and local government, Geothermal Development Company (GDC)		Tullow Oil		Farmers (Marakwet) and pastoralists	Kamnarok Farmers Group, Baringo Women Small Scale Farmers Movement (BAWOSFAM), Kenya Civil Society Platform on Oil and Gas (KCSPOG), Kerio Valley Community Organisation (KVCO), International Seniors Lawyers Projects (ISLP), Justice and Corporate Accountability Project (JCAP), **ActionAid**
Baringo (various lakes)	renewables (geothermal, hydro-electric)	KfW (German development bank), World Bank, Kenyan government		KenGen		Pastoralists (Masai) and farmers	Kenya Land Alliance

Western Kenya (c'td)							
Mau Forest Complex	Forest resources (logging), eco-services (water)	Central government				Hunter-gatherers (Ogiek)	Minority Rights Group International (MRG), Forest Peoples Programme, Ogiek Peoples Development Program, Namati, International Land Coalition
Kakamega	Mining (gold)			Acacia Mining		Farmers	GROOTS Kenya, Haki Madini, KHRC
Laikipia	Agriculture, pastoralism	Local politicians, Agricultural Development Corporation (Mutara ranch)		various European-owned ranches / game farms (plus a few Maasai-owned group ranches (Tassia, Il Ngwesi)		Pastoralists (Maasai, Samburu, Potok), farmers	GROOTS Kenya, Manyoito Pastoralists Organisation (MPIDO), Kenya Land Alliance, Northern Rangelands Trust (NRT) , anonymous analyst ("Cattle Barons" report), local militias (Samburu Defence Forces), Laikipia Farmers Association, Laikipia Wildlife Forum, IMPACT, Save the Rhino
Central Kenya							
Kitui , Mui Basin	Mining (coal, limestone)			Fenxi Mining Group, HCIG Energy Investment Company, Liketh Investments Kenya Ltd, ARM Cement		Farmers	KHRC, Haki Madini, Kenya NGO Council, Centre for Human Rights and Civic Education (CHRCE), 350Africa.org, FIDA, deCOALonize, Law Society of Kenya, Institute for Law and Environmental Governance, Liaison Committee, Katiba Institute, Centre for International Environmental Law (CIEL), Dhaatri, Keystone Foundation, KeNRA, Center for Justice Governance and Environmental Action, MUHURI Muslims for Human Rights, Both Ends, **ActionAid**
Thika	Agriculture (nuts & fruits)	Local officials		Kakuzi Plc		Various, incl. IDPs	Kenya Land Alliance, KHRC, SOMO
Coast							
Dakatcha Woodlands	Biofuels (jatropha)			Nuove Iniziative Industriali (Kenya Jatropha Ltd.)		Farmers	Royal Society for the Protection of Birds (RSPB), Natura Kenya, Site Support Group for the Dakatcha Woodlands, East African Wildlife Society, Birdlife International, **ActionAid**
Kwale	Mining (titanium)	Vision 2030 Delivery Board (VDB)		Base Titanium, (previously Canadian-based firm Tiomin)		Farmers, squatters	Kwale Farmers Movement, Haki Madini, Haki Jamii, Coast Rights Forum (CRF), **ActionAid**

Coast (c'td)							
Taita Taveta	Mining (gemstone, iron ore), conservation, tourism (national park), agriculture	Kenya Wildlife Service, local officials, *mungiki* gangs		Several small-scale (ASM) mining operations, large-scale mining companies (Bridges Exploration/ Tsavorite USA Inc.), Kisima farm		Farmers, squatters	Center for Justice Governance and Environmental Action, Kenya National Commission on Human Rights (KNCHR), Taita Taveta Human Rights Watch, Mukitina wa Mbulia, Sauti ya Wanawake, Kishushe Ranchers Cooperative Society, People for Peace in Africa (PPA), **ActionAid**
Mombasa	Urban housing (resettlement)	County officials				IDPs	**ActionAid,** Centre for Justice Government and Environmental Action
Kilifi	Salt mines			Krystalline Salt Company, Kensalt Limited, Malindi Salt Limited, Krystalline Salt Limited, Kurawa Industries Limited and Kemu Salt Packers Limited		Farmers, 'squatters'	**ActionAid**, Malindi Human Rights Forum, various women's groups, lawyers, Haki Madini, Coast Rights Forum, Centre for Justice Government and Environmental Action, Fahamu, Haki Jamii, Sauti Ya Wanawake,