

How to promote transnational accountability in relation to “land grabbing”?

Insights from a brainstorming event



Global Legal Action Network (GLAN), International Institute for Environment and Development (IIED) and Centre pour l’Environnement et le Développement (CED)

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Introduction

This note summarises insights from a meeting convened by the Global Legal Action Network (GLAN) in collaboration with the International Institute for Environment and Development (IIED) and the Centre for Environment and Development (CED). The meeting aimed to kick-start a GLAN-led process aimed at exploring collaborative options to support communities in harnessing the law for promoting transnational accountability in the context of agricultural investments occurring in the Global South and involving EU based or linked companies and investors.

A recent wave of large-scale land deals in low and middle-income countries has compounded grassroots demand for accountability, including through legal recourse. At the same time, constrained access to justice at the domestic level has prompted advocates to explore options at the international and transnational level (e.g. human rights bodies, transnational court litigation, grievance mechanisms attached to certification bodies). Yet rural people have limited access to the resources, expertise and support needed to access these options. The GLAN-led exploration process will identify avenues to link grassroots demand for accountability with the necessary technical and financial means.

During the meeting, an initial brainstorm mapped the landscape of past and ongoing initiatives, distilled lessons learned and started exploring scope for synergy and collaboration in light of complementary added value. The meeting began with three short spark talks presenting examples of efforts to address “land grabbing” through legal action at the international or transnational level. Attendees then had an opportunity to discuss these and other experiences, pool intelligence and lessons learned, and explore gaps and complementarities.

Key lessons

Connecting legal support to local demand: consider the full range of options. Demand for support may range from help in scrutinising contracts to helping citizens engage with community development agreements or law reform processes. Innovative advocacy has activated multiple pressure points along the investment chains – for example, lobbying authorities in export markets to reconsider trading preferences, mobilising UN Special Rapporteurs, bringing OECD complaint proceedings and taking cases to courts and human rights commissions in third countries.

Litigation may have a role to play, but it is not always a helpful strategy and its pros and cons need to be carefully weighed. Transnational civil liability suits are particularly difficult, because the costs can be very substantial. Most law firms would struggle to finance the huge costs involved – and if the case fails, activists may need to pay the legal costs of the other side too. “Hand over and get out” strategies – submitting communications to a prosecutor’s office, for example at the International Criminal Court (ICC), who would then run the litigation themselves – are more time-bound and easier to manage.

Working with communities. Communities need to be in the driving seat of any intervention. Taking this seriously means recognising that community processes can take up as much time and resources as any formal legal process. Also, communities are often divided and getting cohesion is often a challenge, especially when companies use “divide and rule” tactics. Effective communication is key to ensure expectations are aligned, including on what can realistically be achieved and “what is in it” for the pro bono lawyers. Alliances with national and local organisations are key, and national-level coalitions and platforms of organisations working on “land grabbing” could play a useful role in connecting local communities to international expertise.

Gathering evidence. A considerable amount of evidence is likely to be required in any legal proceedings. The evidence may be difficult and costly to collect, particularly after advocacy has started and where political space is restricted. Some contexts may be more conducive, for example, because evidence has already been gathered. In Cambodia, NGOs have produced numerous reports on “land grabbing”, and UN Special Rapporteurs have published their own reports and cited the evidence gathered by NGOs (thereby increasing its perceived credibility). This vast body of evidence helped prepare a communication to the prosecutor’s office of the International Criminal Court (ICC).

At the same time, there is sometimes little coordination between organisations gathering evidence in a particular location. This may send confusing messages to communities and create inefficiencies. Also, the resulting raw data is not always analysed in systematic terms. There is therefore a useful role to play in coordinating data collection efforts and producing rigorous analysis of the resulting evidence so it can be more easily used in recourse strategies.

Imaginative legal thinking is crucial, including in identifying relevant fora and in framing the legal case in the most appropriate ways (for example, by mobilising “old” laws in a new context). Selecting the most appropriate advocacy targets may require addressing complexities – for example, because ultimate ownership of the business venture may not be publicly known. Also, corporate structures often change over time. “Discovery procedures” could help communities gain access to information not in the public domain. Another issue is linking liabilities to the companies: it is often government authorities, rather than the companies, that evict people, which requires thinking through complex legal issues e.g. on possible liability for complicity or “legacy” issues.

Safety of local actors. International organisations are often removed from the local site, but actors on the ground may be exposed to intimidation and repression – including suspension of NGOs licences, legal actions (“strategic lawsuit against public participation”), physical violence, arrests and even murder. Political space can change – and shrink – over time, leaving activists exposed to future evolutions that may be hard to foresee. Interventions would need to fully consider and address these risks.

Build on advances made. Businesses are becoming more aware of the imperative to uphold minimum standards of conduct and of the need to comply with certain laws having extraterritorial dimensions, such as anti-corruption laws. This is due to the rise of national laws on issues such as anti-corruption and due diligence (e.g. the UK Modern Slavery Act

2015 and the UK Bribery Act 2010; and in France the 2017 law on the “devoir de vigilance” of parent companies). This changing landscape could create new opportunities for effective engagement.

Create alliances and collaborations. Law firms specialising in human rights may have no specialist expertise in “land grabbing” issues. There is value in linking up with NGOs to identify potential cases and understand issues and contexts. National and international NGOs can bring complementary insights. For example, some NGOs focus on in-country work, and could partner up with activists working on parent companies or downstream buyers in their home countries. On the other hand, law firms and legal NGOs can contribute expertise on how to fund potential cases. Lawyers from different jurisdictions should collaborate, including sharing intelligence on related cases. Centres attached to research institutes and universities can contribute e.g. through analysis, legal clinics and lesson sharing.



Next steps

A follow-up event will be organised in early 2018 with the aim of further consolidating this network and moving towards the identification and pursuit of concrete actions that promote transnational accountability.

The organisers

GLAN is a non-profit organisation that identifies and pursues innovative legal actions in the 'Global North' aimed at protecting the human rights of individuals and communities in the 'Global South'.

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