

Submission to the Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression re: Gender Justice and the Right to Freedom of Opinion and Expression

Submitted by the Indigenous Human Rights Defenders & Corporate Accountability Program, Water Protector Legal Collective, and the Business & Human Rights Resource Centre

June 14, 2021

Question 2: Can you provide examples or information on ways in which freedom of opinion and expression has been abused or appropriated to undermine women's human rights?

### **SLAPP Suits as a Tactic of Silencing Indigenous Women and Indigenous Human Rights Defenders**

Since 2015, the Business & Human Rights Resource Centre (Resource Centre) has recorded more than 3,100 attacks worldwide<sup>1</sup> against community leaders, farmers, workers, unions, journalists, civil society groups, and other defenders who have voiced concerns about abusive business practices. These attacks include threats, beatings, judicial harassment, and killings, among others. While human rights defenders of all genders experience similar types of attacks, women often face additional gender-specific threats and violence, including stigmatization, higher levels of sexual violence, and a greater incidence of threats against their family members. Women human rights defenders are attacked because of who they are and what they do: Women who challenge power and traditional gender norms. In addition, between 2015-2019, attacks on women human rights defenders related to business increased every year for those five years<sup>2</sup>, with 137 attacks recorded in 2019. Almost half of all of these attacks (48%) were against Indigenous women and affected rural communities' leaders and members.<sup>3</sup>

More than 40% of the attacks the Resource Centre has tracked to date have been forms of judicial harassment, which includes the use of a range of legal tactics, such as criminal and civil lawsuits, arbitrary detention, abusive subpoenas, and fabricated charges by governments and business actors. Many defenders endure unfair trials and are detained in inhumane or degrading conditions.<sup>4</sup>

Strategic lawsuits against public participation (SLAPPs) are one tactic used by business actors within this broader context of judicial harassment.

The term SLAPP - Strategic Lawsuit Against Public Participation - was first coined by Professors George W. Pring and Penelope Canan in their 1996 book 'SLAPPs: Getting Sued for Speaking Out'.<sup>5</sup> It generally refers to a lawsuit filed by a corporation against non-government individuals or organizations (NGOs) on a substantive issue of some political interest or social significance. SLAPPs aim to shut down critical speech by intimidating critics into silence and draining their resources. In the

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<sup>1</sup> *Human Rights Defenders & Civic Freedoms Programme*, Business & Human Rights Resource Centre, <https://www.business-humanrights.org/en/from-us/human-rights-defenders-database/> (last visited June 6, 2021).

<sup>2</sup> *Human Rights Defenders & Business: January 2020 Snapshot*, Business & Human Rights Resource Centre (Jan. 2020), <https://dispatches.business-humanrights.org/hrd-january-2020/index.html>.

<sup>3</sup> *Human Rights Defenders & Business: January 2020 Snapshot*, Business & Human Rights Resource Centre (Jan. 2020), <https://dispatches.business-humanrights.org/hrd-january-2020/index.html>.

<sup>4</sup> *SLAPPed but not silenced: Defending human rights in the face of legal risks*, Business & Human Rights Resource Centre (last visited June 14, 2021), <https://www.business-humanrights.org/en/from-us/briefings/slapped-but-not-silenced-defending-human-rights-in-the-face-of-legal-risks>.

<sup>5</sup> George William Pring & Penelope Canan, *SLAPPs: Getting Sued for Speaking Out* (1996).

process, they distract and deflect discussions on corporate social responsibility, and – by masquerading as ordinary lawsuits - convert matters of public interest into technical private law disputes.

SLAPPs can also have both personal and collective consequences since they can deter organizations' human rights work. They often come after defenders have expressed a critique of business actors by publishing a report, participating in an event or interview, launching a campaign, organizing a demonstration, or posting on social media. SLAPPs can have a “chilling effect” on the exercise of freedom of expression if others are afraid to speak out because they might be sued. They also put significant pressure on public resources and cause judicial systems to waste their time on superfluous legal processes. SLAPPs threaten advocacy activities and therefore undermine the ability of civil society actors to effectively exercise their rights to freedom of expression, of assembly and of association.<sup>6</sup>

Companies use SLAPPs to target a wide range of dissenting voices to suppress criticism. SLAPPs target acts of public participation related (but not limited) to human rights, social justice, and environmental protection, including public interest or opposition campaigns. In many instances, the defendants are Indigenous leaders or community members protecting their land and territories from large-scale projects, such as mining or oil pipelines, or even journalists covering companies' harmful activities. Often based upon ambiguous and elastic provisions of law, SLAPPs use a range of tactics to exhaust resources, campaign capacity and morale:

- They resort to motions, injunctions and other procedurally onerous processes (particularly the expensive and resource-intensive discovery/disclosure process) to impose heavy burdens on activists and civil society organizations.
- They often target individual campaigners, as well as the organizations they work for, to maximize the SLAPP's capacity to intimidate.
- They generally include exorbitant claims for damages and allegations designed to smear, harass and overwhelm the campaigners.<sup>7</sup>

Through recent research, the Resource Centre identified more than 355 cases that bear the hallmarks of SLAPPs. This research specifically covered lawsuits brought or initiated by a private party since 2015 against defenders and/or groups focused on business-related activities for exercising their rights to participate in, comment on, or criticize matters of public concern. Information about the amount of damages sought was publicly available in 82 of these cases, totaling more than 1.5 billion USD.

SLAPPs have been brought in every major region in the world, despite differences in legal traditions and judicial systems. The highest number of SLAPPs took place in Latin America (39%), followed by Asia and the Pacific (25%), Europe & Central Asia (17%), Africa (10%), and North America (9%). Sixty three percent of cases in this research involved criminal charges, the majority libel or other defamation charges.

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<sup>6</sup> Annalisa Ciampi, *SLAPPs and FoAA rights*,

<https://www.ohchr.org/Documents/Issues/FAssociation/InfoNoteSLAPPsFoAA.docx> (last visited June 11, 2021).

<sup>7</sup> See generally, *Indigenous Peoples Law and Policy Program, Criminalization of Human Rights Defenders of Indigenous Peoples Resisting Extractive Industries in the United States: Report to the Inter-American Commission on Human Rights* (June 24, 2019),

[https://www.ohchr.org/Documents/Countries/LAC/HRDAmericas/University\\_of\\_Arizona\\_IP\\_Law\\_Policy\\_Program.pdf](https://www.ohchr.org/Documents/Countries/LAC/HRDAmericas/University_of_Arizona_IP_Law_Policy_Program.pdf).

The other most common criminal charges were illicit association, usurpation of land, threats, and instigating a strike. In addition, companies sometimes bring other charges specific to the jurisdiction in which they are filing or initiated the lawsuit, such as charges related to computer crime laws (Thailand), anti-boycott laws (Israel), and racketeering and conspiracy (USA).<sup>8</sup>

## **SLAPP Case Studies**

### **Energy Transfer Partners (ETP) SLAPP Suit Against GreenPeace International and Subpoena on the Water Protector Legal Collective (WPLC)**

Water Protector Legal Collective (WPLC), an Indigenous and women led legal non-profit organization, was served with a subpoena on March 1, 2021, by attorneys for Energy Transfer Partners, Inc. (hereafter “ETP”) in a lawsuit filed by ETP against Greenpeace, Inc. regarding the prayerful peaceful protests against the Dakota Access Pipeline in North Dakota during 2016-2017.<sup>9</sup> The subpoena seeks a voluminous and broad range of documents including records of communications with clients, other organizations and Tribal nations, which arise from or are related to their opposition to the Dakota Access Pipeline.

Water Protector Legal Collective filed objections against the subpoena on March 10, 2021, asserting that ETP made multiple significant errors of law and procedure. These errors include seeking a broad range of documents to which they are not entitled in violation of the attorney client privilege, the First and Fifth Amendments to the United States Constitution, failing even to meet the requirements of the form of a subpoena under North Dakota law.

This subpoena is a transparent attempt by ETP to seek to intimidate a non-profit organization that provided legal support and representation to Water Protectors during and after the Standing Rock protests, but it will not work.

### **Background of ETP SLAPP Suit and Freedom of Expression**

In August 2017, Energy Transfer (formerly Energy Transfer Partners), the operators of the Dakota Access Pipeline, filed a lawsuit<sup>10</sup> against Greenpeace, Inc., Greenpeace Fund, Inc., Greenpeace International, BankTrack, the movement Earth First!, and individual defendants accusing them of unlawful and fraudulent speech intended to harm the company and cause it to lose investments in its pipeline. With treble damages available under the Racketeer Influenced and Corrupt Organizations Act (RICO), the company sought close to \$1 billion in damages. In 2019, a federal court dismissed the federal claims against the defendants but declined to rule on the state claims.<sup>11</sup>

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<sup>8</sup> *SLAPPED but not silenced: Defending human rights in the face of legal risks*, Business & Human Rights Resource Centre (last visited June 14, 2021), <https://www.business-humanrights.org/en/from-us/briefings/slapped-but-not-silenced-defending-human-rights-in-the-face-of-legal-risks>.

<sup>9</sup> *Water Protector Legal Collective Challenges Energy Transfer Partners/Dakota Access Pipeline’s SLAPP Subpoena*, Water Protector Legal Collective (Mar. 13, 2021), <https://waterprotectorlegal.org/water-protector-legal-collective-challenges-energy-transfer-partners-dakota-access-pipelines-slapp-subpoena/>.

<sup>10</sup> *US Federal Court dismisses \$900 million pipeline company lawsuit against Greenpeace*, GreenPeace International (Feb. 15, 2019), <https://www.greenpeace.org/international/press-release/20993/us-federal-court-dismisses-900-million-pipeline-company-lawsuit-against-greenpeace/>.

<sup>11</sup> *Federal Court Dismisses \$900 Million Pipeline Company Lawsuit Against Greenpeace*, GreenPeace (Feb. 15, 2019), <https://www.greenpeace.org/usa/news/federal-court-dismisses-900-million-pipeline-company-lawsuit-against-greenpeace/>.

After this lawsuit was dismissed in federal court, the company brought another lawsuit<sup>12</sup> in North Dakota state court against the Greenpeace entities, Red Warrior Society, and other individual defendants. The complaint includes similar state claims alleged in the prior federal action, but also adds property-based claims related to the protest against the Dakota Access Pipeline in North Dakota. As part of this lawsuit, Energy Transfer has issued subpoenas against several individuals and groups involved in the resistance movement at Standing Rock, including Water Protector Legal Collective<sup>13</sup> and Unicorn Riot.<sup>14</sup>

ETP filed suit against Greenpeace and other defendants, not including Water Protectors Legal Collective, in federal court alleging that Greenpeace, Inc. sought to defame ETP by asserting that the pipeline crossed land of the Oceti Sakowin, that ETP destroyed sacred sites in construction of the pipeline, that Greenpeace aided and abetted trespass onto the pipeline easements and destruction of equipment and delay of construction.

However, the pipeline does cross unceded territory of the Standing Rock Sioux Tribe, the Oceti Sakowin, as established in the treaties of 1851 and 1868, which have never been abrogated by Congress and which grant to the Standing Rock Sioux Tribe the right to “roam and occupy” and to hunt and fish on the unceded territory. This has long been recognized under federal case law. This territory encompasses much of North and South Dakota.<sup>15</sup> As ancestral land, the unceded territory contains innumerable sacred sites, which have been ravaged by ETP, in their thirst for money with no regard for the environment or the rights of Indigenous people. This pipeline was held to be illegal, operating without a proper easement to go under Lake Oahe a federal district court in Washington, D.C. in July 2020 and that decision was upheld in the appellate court in December 2020.<sup>16</sup>

The lawsuit filed by ETP against Greenpeace was originally filed in federal court in 2017, dismissed in federal court in 2019 and then filed in North Dakota state court in 2019.<sup>17</sup>

### **Indigenous Women and Indigenous Human Rights Defenders Subpoenaed by Corporate Actor**

WPLC is a legal organization comprised and led by Indigenous women, some of whom were present in North Dakota, where they witnessed and were victims of the use of excessive force and were inhumanely arrested and detained by law enforcement and private security actors hired by ETP.

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<sup>12</sup> *Greenpeace Files Motion to Dismiss in North Dakota State Court in Energy Transfer Case*, GreenPeace (June 11, 2019), <https://www.greenpeace.org/usa/news/greenpeace-files-motion-dismiss-north-dakota-state-court-energy-transfer-case/>.

<sup>13</sup> *Water Protector Legal Collective Challenges Energy Transfer Partners/Dakota Access Pipeline’s SLAPP Subpoena*,

<sup>14</sup> Alleen Brown & Sam Richards, *Pipeline Company Issues Broad Subpoena to News Site the Covered Protests Against It*, The Intercept (Apr. 3, 2021), <https://theintercept.com/2021/04/03/unicorn-riot-dakota-pipeline-energy-transfer-subpoena/>.

<sup>15</sup> Water Protector Legal Collective Correspondence with U.S. Army Corp of Engineers (Sept. 10, 2020), <https://waterprotectorlegal-org.nyc3.cdn.digitaloceanspaces.com/production/app/uploads/2020/09/9.10.20-WPLC-Public-Comment-KXL-water-permit-Plus-5-Exhibits.pdf>.

<sup>16</sup> *The Standing Rock Sioux Tribe’s Litigation on the Dakota Access Pipeline*, Earth Justice, <https://earthjustice.org/features/faq-standing-rock-litigation> (last visited June 13, 2021).

<sup>17</sup> *U.S. court dismisses Energy Transfer Partners lawsuit against Greenpeace*, Business & Human Rights Resource Centre, <https://www.business-humanrights.org/en/latest-news/us-court-dismisses-energy-transfer-partners-lawsuit-against-greenpeace/> (last visited June 13, 2021).

The Inter-American Commission testimony of Kathryn (Casey Camp) Horinek, Councilwoman, Ponca Tribe of Oklahoma and Board Member of Water Protector Legal Collective describes the firsthand account and experience of being arrested at the Dakota Access Pipeline,

On October 27th of 2016, I was attending a THPO (Tribal Historic Preservation Office) meeting in Fort Yates, N.D. as an elected official of the Ponca Tribe of Oklahoma. Before the forced removal to Oklahoma, the Ponca Tribe had lived along the Missouri River since time immemorial and felt that it was necessary to protect our ancestral territory from potential harm if the Dakota Access Pipeline was allowed to proceed with drilling under the Missouri River. As a prayer for lunch was being said on that day, we learned that a militarized police force of hundreds of individuals, tanks, helicopters, planes, and private security personnel were approaching the unarmed encampment of Indigenous Water Protectors at nearby Treaty Camp close to Cannonball N.D. We voted unanimously to caravan to the Treaty Camp to act as Observers and ensure that no harm would be inflicted on unarmed men, women and children. Once we arrived at the Treaty Camp, we observed hundreds of police in riot gear slowly approaching the encampment with armed personnel vehicles, ATVs, percussion grenades, Tasers, pepper spray, sound cannons, guns, helicopters, planes and it was terrifying to see and hear the chaos they were creating.

Our people stood or sat in prayer. Some chanted, some sang, some observed and filmed the assault that happened. We were violently overcome. None of us were armed with anything more than our prayers and Sacred Pipes and Eagle Feather Staffs. Several of us were Elders of our Nations, 70 and above. Many were our Sacred Youth. We were pepper sprayed in our faces, struck down, tazed, then hands zip-tied behind us, thrown to the ground and eventually 142 of us were taken by bus to jail. Before we were put on the bus, each of us had a number written on our arm. It felt like when the Jews were taken to be gassed. Eventually, we were taken to the basement of the jail in Bismarck, N.D. where we were strip searched and placed in chain link dog cages.

I'll always hold one image in my mind. When I had last seen my oldest son, he was being assaulted and dragged away by 5 police in riot gear because he was asking for the Elders to have the zip-ties removed or at least placed in front of our bodies. The next place I saw him was in the basement of that jail, he was injured and in a dog cage, but alive. Our cages, the women's, was separated from the men's by a tarp. There were 37 women in one cage and 34 in the other. We were on a bare cement floor and the cages were about the size of a 15 passenger van. There is more, this is only part of what happened.

As a result of all that happened at Standing Rock in 2016-2017, many of us still deal with PTSD and physical injuries. Additionally more severe laws have since been enacted by states like Oklahoma that put a huge

monetary fine on individuals that protest against the extractive industry, as well as imposing unreasonable imprisonment terms.<sup>18</sup>

### **SLAPP Impacts on Indigenous Women and Indigenous Human Right Defenders**

WPLC has been subpoenaed and its Indigenous women members like Casey Camp who were injured and adversely impacted during DAPL operations in Standing Rock, North Dakota in 2016, are meant to be silenced and intimidated from sharing what they witnessed and experienced firsthand. Indigenous women and Indigenous human rights defenders should not be silenced by multinational extractive industries for simply telling their truths as victims and survivors of human rights abuses by state and/or non-state actors. The predatory nature of SLAPP suits and the use of subpoenas against Indigenous led-legal human rights organizations is an intentional weaponization of the legal system by monied corporate interests to stifle and to silence extractive industry opponents at the expense of Indigenous women's rights of freedom of expression and truth-telling.

Testimony of the arrest has been given to the Inter-American Commission on human rights by WPLC board members in June 2019.<sup>19</sup>

Additional information regarding criminalization of Indigenous women and Indigenous human rights defenders can be found at:

Indigenous Peoples Law and Policy Program, *Stakeholder Report to the UN Human Rights Council, Universal Periodic Review Working Group*, Indigenous Peoples Law and Policy Program, University of Arizona (Oct 2, 2019), <https://law.arizona.edu/sites/default/files/IPLP%20and%20WPLC%20UPR%20Report%20on%20USA%20-%202019.pdf>;

*Indigenous Peoples Law and Policy Program, Report to the Inter-American Commission, Criminalization of Human Rights Defenders of Indigenous Peoples Resisting Extractive Industries in the United States*, Indigenous Peoples Law and Policy Program, University of Arizona (June 24, 2019), [http://www.sfbla.com/wp-content/uploads/2019/06/FINAL-IPLP-WPLC-Report-to-IACHR-6-24-19.pdf?fbclid=IwAR2STDis5dZl6S6vLpDch8tsv2JF175UufXK0L0D91fZa9smORLREP6oex4](http://www.sfbla.com/wp-content/uploads/2019/06/FINAL-IPLP-WPLC-Report-to-IACHR-6-24-19.pdf?fbclid=IwAR2STDis5dZl6S6vLpDch8tsv2JF175UufXK0L0D91fZa9smORLREP6oex4;);

Indigenous Peoples Law and Policy Program, *Report to the United Nations Special Rapporteur on the Rights on Indigenous Peoples, Victoria Tauli-Corpuz, Indigenous Resistance to the Dakota Access Pipeline: Criminalization of Dissent and Suppression of Protest*, Indigenous Peoples Law and Policy Program, University of Arizona (March 16, 2018), <https://law.arizona.edu/sites/default/files/Indigenous%20Resistance%20to%20the%20Dakota%20Access%20Pipeline%20Criminalization%20of%20Dissent%20and%20Suppression%20of%20Protest.pdf>

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<sup>18</sup> Divest Invest Protect, Indigenous Women Testify on Criminalization of Human Rights Defenders, Youtube (June 23, 2019), <https://www.youtube.com/watch?v=UeZzpizDpB4>.

<sup>19</sup> Divest Invest Protect, Indigenous Women Testify on Criminalization of Human Rights Defenders, Youtube (June 23, 2019), <https://www.youtube.com/watch?v=UeZzpizDpB4>.

## **Additional examples of SLAPPs against women human rights defenders**

### **Indigenous defender sued for opposing the Dakota Access Pipeline**

In December 2018, Energy Transfer Partners (ETP) and its parent company Energy Transfer Equity sued Ms. Krystal Two Bulls, alleging that her “calls to action” opposing the Dakota Access Pipeline (DAPL) amounted to “racketeering” under the Racketeer Influenced and Corruption Organizations (RICO) Act. The Dakota Access Pipeline transports crude oil from the Bakken fields in North Dakota to terminals in Illinois, passing along the lands of the Standing Rock Sioux Tribe. Ms. Two Bulls is one of many activists in the movement to stop DAPL considering the health and safety dangers that the project poses to nearby communities. She is an Oglala Lakota/Northern Cheyenne woman, a veteran of the U.S. Army, and an organizer who helps to communicate to the broader public about the campaign. On February 14, 2019 a Judge from the U.S. District Court of North Dakota dismissed Energy Transfer’s lawsuit against Krystal Two Bulls. All the claims were dismissed, and the RICO claims were denied with prejudice—which means that Energy Transfer cannot refile RICO claims against Ms. Two Bulls. The Resource Centre invited Energy Transfer to respond; it did not.<sup>20</sup>

### **Women Garífuna leaders facing criminal charges in Honduras**

On 31 July 2017, four Garífuna leaders, Miriam Miranda, Madeline Martina David, Neny Heydy Ávila and Lety Bernáñez, were accused<sup>21</sup> of libel and slander by a businessman with a tourism and hospitality company. The Garífuna leaders are members of the Black Fraternal Organization of Honduras (OFRANEH) that was defending Garífuna ancestral land from tourism projects.<sup>22</sup>

### **Two lawyers and an environmental activist sued by a mining company in South Africa**

In May 2017, the mining company Mineral Commodities Ltd (MRC) and its local subsidiary in South Africa sued former attorneys of the Center for Environmental Rights, Tracey Davies and Christine Reddell, and the community activist Davine Cloete for defamation related to their statements during presentations at the University of Cape Town's Summer School in January 2017. Davies, Reddell, and Cloete gave presentations about environmental harms associated with the Tormin mineral sands mine situated on the West Coast, approximately 350 kilometers north of Cape Town, operated by the Mineral Sands Resources (MSR), a subsidiary of MRC. The company claimed R250 000 (US\$16,000) in damages from each defender. In February 2021, the High Court (Western Cape Division, Cape Town) dismissed the defamation charges. The Resource Centre invited Mineral Commodities Ltd to respond; it did not.<sup>23</sup>

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<sup>20</sup> *SLAPPed but not silenced: Defending human rights in the face of legal risks*, Business & Human Rights Resource Centre (last visited June 14, 2021), <https://www.business-humanrights.org/en/from-us/briefings/slapped-but-not-silenced-defending-human-rights-in-the-face-of-legal-risks>.

<sup>21</sup> *Criminalizan a defensoras garifunas del territorio integrantes de OFRANEH*, Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos (Aug. 6, 2017), <https://im-defensoras.org/2017/08/alertadefensoras-honduras-criminalizan-a-defensoras-garifunas-del-territorio-integrantes-de-ofraneh/>.

<sup>22</sup> *SLAPPed but not silenced: Defending human rights in the face of legal risks*, Business & Human Rights Resource Centre (last visited June 14, 2021), <https://www.business-humanrights.org/en/from-us/briefings/slapped-but-not-silenced-defending-human-rights-in-the-face-of-legal-risks>.

<sup>23</sup> *SLAPPed but not silenced: Defending human rights in the face of legal risks*, Business & Human Rights Resource Centre (last visited June 14, 2021), <https://www.business-humanrights.org/en/from-us/briefings/slapped-but-not-silenced-defending-human-rights-in-the-face-of-legal-risks>.

### **Civil defamation lawsuit against Thai defender Sutharee Wannasiri**

Thai poultry company Thammakaset requested around US \$160,720 (5,000,000 Thai Baht) in compensation for alleged damage to the company's reputation and demanded a public apology. The lawsuit came after Sutharee posted a campaign video produced by Fortify Rights on her Twitter account, which detailed labor conditions at the Thammakaset farm and called on Thai authorities to drop the lawsuit against 14 Myanmar migrant workers. On 28 August 2019, after a mediation, Thammakaset dropped the civil complaint. Sutharee has also faced two criminal defamation complaints brought by Thammakaset for the same posts made on Twitter. One of the complaints was filed in October 2018 with the police and halted by the prosecutor in August 2019. The other criminal complaint was dismissed by the Criminal Court on 8 June 2020. Thammakaset appealed the court's ruling in October 2020. The case is now pending before the Appeal Court. The Resource Centre invited Thammakaset to respond; it did not.<sup>24</sup>

### **Lydian Armenia CJSC sued environmental advocates for defamation**

Lydian Armenia CJSC operates the Amulsar Gold Project in southern Armenia. The company sued at least 14 people for defamation, including environmental activists, community leaders, and journalists because they questioned the legitimacy of the company's operations and opposed the construction of a gold mine.

One of these individuals is Nazeli Vardanyan, a licensed advocate, member of the fact-finding Working Group (WG) on the Amulsar mine established under the Armenian Prime Minister's order, and author of a legal report about the mine. On 21 December 2018, Lydian Armenia filed a complaint<sup>25</sup> against Vardanyan (Court Case No. ED/30203/02/18) on the grounds of discrediting its business reputation. The lawsuit is based on questions Vardanyan asked during a WG session about suspected corruption related to the transfer of money from Lydian Armenia to the Jermuk Foundation that operates in the town near the mine. Lydian demanded that Vardanyan retract her question and pay Lydian 1 million AMD (US\$2,000). On 12 December 2019, the court held a hearing, but Vardanyan was not notified because Lydian Armenia gave the wrong address for her in its court filings. The court of first instance ordered Vardanyan to retract in a newspaper and pay 100,000 AMD (US\$200). The court of appeal ordered her to pay 50,000 AMD (US\$100) without a retraction. Vardanyan appealed the decision to the Court of Cassation. The Resource Centre invited Lydian Armenia to respond; the full response is available [here](#).<sup>26</sup>

### **Community members sued for \$30 million in damages in the United States**

In 2008, Arrowhead landfill in Uniontown, Alabama began accepting coal ash after a dam broke at the Tennessee Kingston Fossil Plant, unleashing millions of gallons of coal ash slurry. After community members of Black Belt Citizens Fighting for Health and Justice, a community organization working to stop racial and environmental injustice, began voicing health and environmental concerns about the landfill on Facebook, the owners of the landfill, Green Group Holdings LLC and Howling Coyote LLC, sued Esther Calhoun, Ben Eaton, Ellis Long and Mary Schaeffer for libel and slander. They asked for \$30

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<sup>24</sup> *SLAPPED but not silenced: Defending human rights in the face of legal risks*, Business & Human Rights Resource Centre (last visited June 14, 2021), <https://www.business-humanrights.org/en/from-us/briefings/slapped-but-not-silenced-defending-human-rights-in-the-face-of-legal-risks>.

<sup>25</sup> *Armenia: Judicial harassment and defamation campaigns against several environmental defenders*, International Federation for Human Rights (May 24, 2019), <https://www.fidh.org/en/issues/human-rights-defenders/armenia-judicial-harassment-and-defamation-campaigns-against-several>.

<sup>26</sup> *SLAPPED but not silenced: Defending human rights in the face of legal risks*, Business & Human Rights Resource Centre (last visited June 14, 2021), <https://www.business-humanrights.org/en/from-us/briefings/slapped-but-not-silenced-defending-human-rights-in-the-face-of-legal-risks>.



million in damages. The magistrate judge recommended that the court grant the defendants' motion to dismiss but allow Green Group Holdings to file an amended complaint. In February 2017, Green Group Holdings LLC and Howling Coyote LLC released a joint statement announcing that they have engaged in discussions which have led to the “voluntary and permanent dismissal of the litigation” and that they are “hopeful that, in the future, matters of concern to the community can be resolved through dialogue rather than lawsuits.” The Resource Centre invited Green Group Holdings to respond; the full response is available [here](#). The defendants also sent rejoinders; they are available here. The defendants [Esther Calhoun](#), [Ben Eaton](#), [Ellis Long](#), and [Mary Schaeffer](#) sent rejoinders to Green Group Holdings’ response.<sup>27</sup>

### **Garment factory worker and union leader in Cambodia arrested for “incitement”**

On April 2, 2020, garment factory worker and union leader Soy Sros was arrested in Cambodia for incitement and provocation after Superl Cambodia Ltd filed a criminal complaint with the police. The complaint came after posting a message on social media criticizing the planned dismissal of union members, including a pregnant woman, from Superl Cambodia Ltd. The factory produces luxury handbags for brands including Michael Kors, Tory Burch, and Kate Spade (Tapestry). Soy Sros – local president of the Collective Union of Movement of Workers (CUMW) – wrote about the company’s actions on Facebook, stating it violated an appeal from the Cambodian government that the pandemic should not be used as a pretext to discriminate against union members. She was held in prison until May 28. The case against is still pending, with charges carrying a potential penalty of up to 3 years. The Resource Centre invited Superl Cambodia Ltd to respond; it did not.<sup>28</sup>

### **Recommendations**

**We call upon the Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression to urge the United States government to implement the recommendations of these international bodies and to:**

1. Protect and facilitate the rights to freedom of expression, assembly and association to ensure that these rights are enjoyed by everyone by, inter alia, enacting anti-SLAPPs legislation, allowing an early dismissal (with an award of costs) of such suits and the use of measures to penalize abuse.
2. All US state actors - legislative, judiciary, executive, regulatory – at any level should work towards facilitating an environment where criticism is part of a healthy debate on any issues of public or societal relevance.
3. Investigate, punish, and provide appropriate reparations for human rights violations in relation to DAPL and other extractive industries and businesses in the United States that operate on Indigenous peoples’ traditional lands and territories without the Free, Prior, and Informed Consent (F.P.I.C) of Indigenous peoples and their representative institutions;
4. And/or to convene a truth commission with Indigenous representative institutions; a) Adopt a regulatory framework to supervise and monitor activities of extractive industries and energy companies, private security firms and other non-state actors to prevent future violations against Indigenous peoples and their lands; b) Provide training to businesses, law enforcement, and private security on best practices for managing peaceful demonstrations; the right to free

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<sup>27</sup> *SLAPPED but not silenced: Defending human rights in the face of legal risks*, Business & Human Rights Resource Centre (last visited June 14, 2021), <https://www.business-humanrights.org/en/from-us/briefings/slapped-but-not-silenced-defending-human-rights-in-the-face-of-legal-risks>.

<sup>28</sup> *SLAPPED but not silenced: Defending human rights in the face of legal risks*, Business & Human Rights Resource Centre (last visited June 14, 2021), <https://www.business-humanrights.org/en/from-us/briefings/slapped-but-not-silenced-defending-human-rights-in-the-face-of-legal-risks>.

expression and assembly; and Indigenous peoples' rights under international law; c) Implement national measures to protect Indigenous human rights defenders in compliance with the UN Declaration on Human Rights Defenders, the Declarations on the Rights of Indigenous Peoples and other international standards to ensure the full enjoyment of their rights to free expression and assembly.

**We call upon the Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression to urge these stakeholders to take action on the following recommendations:**

**Governments:**

1. Pass anti-SLAPP legislation and laws protecting human rights defenders and civic freedoms, including procedures that allow early dismissal of SLAPPs, recovery of court costs for the defendants, and penalties for SLAPP users.
2. Protect the rights to freedom of expression, assembly, and association in the context of activism in business and human rights. This includes avoiding any measures which criminalize non-violent advocacy and protest, as well as holding businesses accountable for acts of retaliation against defenders.
3. Facilitate an environment where criticism is part of the healthy debate on any issue of public concern through the legislative, judiciary, executive, and regulatory branches.
4. Work towards the elimination of laws that criminalise or penalize in any way (including civil laws) the freedom of expression, assembly, and association, such as defamation laws.
5. Promote the active involvement of defenders and civil society organizations in the discussion on implementing strategies to prevent and sanction the use of SLAPPs.
6. Ensure that all justice actors – judges, prosecutors, law enforcement, and public defenders – have the legal framework to dismiss SLAPPs quickly and to impose sanctions to SLAPPs perpetrators.
7. Ensure the protection and immunity of expert witnesses and lawyers who are required to testify in courts and provide assistance and legal aid to defenders facing SLAPPs.

**Companies:**

1. Commit to a clear public policy of non-retaliation against defenders and organizations that raise concerns about the company and its business practices and adopt a zero-tolerance approach on reprisals and attacks on defenders in their operations, value chains, and business relationships.
2. Refrain from and commit to not using SLAPPs or other forms of judicial harassment to stop public participation and advocacy.
3. Communicate expectations for their business partners, suppliers, and contractors not to bring SLAPPs with the intention of silencing critics, continuously monitor their use and act consistently on their findings.
4. Implement due diligence procedures in accordance with the UNGPs for the prevention of harm and human rights abuse of individuals, communities, and the environment, which explicitly recognize the risks to defenders. Companies investing or working in districts and/or sectors with high levels of attack must prioritize the risks to defenders in their human rights due diligence and act consistently on their findings.
5. Raise the problem of SLAPPs with governments in the countries where they are based and operate in their regular engagement, encouraging the enactment of anti-SLAPP legislation and measures which will help level the playing field for responsible companies.
6. Engage stakeholders to address criticisms and protest, instead of suing them.
7. Embed their stance and approach on SLAPPs into a wider preventative approach towards risks to defenders.

**Investors:**

1. Publish a public human rights policy that recognizes the important role of human rights defenders in identifying risks associated with business activities and has a clear policy of zero tolerance on attacks against defenders.
2. Undertake rigorous human rights due diligence and review potential investees for their history of SLAPPs, or other forms of judicial harassment, and avoid investing in companies with a track record of SLAPPs.
3. Clearly communicate human rights expectations to portfolio companies, including direction not to bring lawsuits which silence critics.
4. Asset owners should incorporate human rights expectations, which respect the rights of defenders and refrain from bringing SLAPPs, in their investment policy statements to guide asset managers in their investment decision-making.
5. Asset managers should communicate their human rights expectations for portfolio companies with asset owners, including respecting the rights of human rights defenders by not bringing SLAPPs.
6. Encourage portfolio companies to (1) engage with peers and policymakers, especially through multi-stakeholder initiatives that could increase their understanding of the importance of defenders' work and industry best practice; and (2) not be part of organizations and lobby groups that target or otherwise undermine civil society organizations and individual defenders.
7. Engage in discussions regarding public policy on this topic whenever this is appropriate and supported by local civil society. This includes raising the importance of anti-SLAPP legislation with government bodies.

**Law firms:**

1. Undertake rigorous due diligence to ensure the cases they take on are not SLAPPs and refrain from representing companies in SLAPP suits against defenders.
2. Advise their clients to abstain from using SLAPPs.<sup>29</sup>

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<sup>29</sup> *SLAPPed but not silenced: Defending human rights in the face of legal risks*, Business & Human Rights Resource Centre (last visited June 14, 2021), <https://www.business-humanrights.org/en/from-us/briefings/slapped-but-not-silenced-defending-human-rights-in-the-face-of-legal-risks>.