Check against delivery

Statement by Ms. Anita Ramasastry

Member, UN Working Group on the issue of human rights and transnational corporations and other business enterprises

UN-EU High-level Policy Dialogue "Protecting the safety of journalists, Media freedom and pluralism in the European Union: challenges and opportunities"

Brussels, 24 February 2022

(via videoconference)

Excellencies, Distinguished Delegates, Ladies and Gentlemen,

It is a pleasure to join you today for this important dialogue. I am pleased to be able to offer an overview of the relevant work with which the UN Working Group on Business and Human Rights, of which I am a member, and past Chair, has been involved over the past year.

We have increasingly seen strategic lawsuits against public participation (SLAPPs), being brought, or initiated, by business actors against those who seek to question them. This includes human rights defenders and investigative journalists. Indeed, journalists can be human rights defenders themselves, not merely people who document the work of defenders in standing up to corporate misconduct.

SLAPPs divert time, energy, and resources away from human rights defenders' vital work and infringe upon a range of human rights, including the rights to freedom of expression, and of assembly and association. The increasing use of SLAPPs to intimidate and criminalize defenders is aimed at silencing human rights defenders' critical voices, restricting their access to remedy, and dampening the appetite of others to speak out about human rights abuses. Weak regulatory frameworks protecting human rights defenders, and the use of criminal laws such as defamation and other libel laws are increasing the risks of SLAPPs. Recent research by the Business & Human Rights Resource Centre shows that SLAPPs are a global problem; the analysis identified 355 cases that bear the hallmarks of SLAPPs brought or initiated by business actors since 2015. According to this research, the highest number of SLAPPs took place in Latin America (39%), followed by Asia and the Pacific (25%), Europe & Central Asia (18%), Africa (8.5%), and North America (9%). Also, 63% of cases involved criminal charges. Most individuals and groups facing SLAPPs (65% of cases) raised concerns about projects in four sectors: mining (108), agriculture and livestock (76), logging and lumber (29), and palm oil (20).

Under the UN Guiding Principles on Business and Human Rights, which the Working Group is charged with disseminating, business enterprises have a responsibility to respect human rights and to identify, prevent and mitigate human rights risks to human rights defenders. This includes stopping the use of SLAPPs to silence and intimidate critical voices. In June 2021, the Working Group released Guidance on Ensuring Respect for Human Rights Defenders

(A/HRC/47/39/Add.2) which included recommendations to States and businesses to address the problem of SLAPPs.

The Working Group outlined in its guidance the illustrative actions that States should take to ensure that SLAPPs are not used to silence the voices of human rights defenders, for example:

1. Introduce law reforms to prevent cases of criminal libel being pursued against human rights defenders, and prevent business enterprises from demanding huge sums for alleged damage to their reputation through alleged criminal libel.
2. Sanction business enterprises for engaging in SLAPPs as they are an abuse of process, and are not a legitimate tool for a business to use to advance its own ends.
3. Cease collusion between States and businesses in which businesses call the police to ask for action to be taken against human rights defenders who then they find themselves arrested in connection with an alleged criminal offence, which is really aimed at silencing their protests about corporate activity.
4. Introduce stronger laws and institutions to protect whistle-blowers, and to prevent SLAPPs through strong anti-SLAPP laws.
5. Ensure that judges and prosecutors are trained to recognise SLAPPs, identify frivolous complaints against human rights defenders, and put procedures in place to handle and respond to this occurrence.
6. Give a court powers to dismiss or decline to accept a case if the court considers that the intention of the claim/prosecution is to distort facts concerning the work of a human rights defender, or harass or take advantage of the defendant. In such cases, the plaintiff/claimant could be prohibited from filing the same case again.

The Working Group also said that businesses should:

1. Not expose human rights defenders to undue risks, for example by initiating frivolous legal proceedings, including SLAPPs, or reporting them to authorities as a means of intimidating them.
2. Recognise that SLAPPs are not only misguided as far as operating on a principled basis is concerned, as they are incompatible with responsible business, but also that engaging in them reflects poor strategic sense, as they destroy any credibility of corporate commitment to respect human rights at large.

The Working Group's guidance on ensuring respect for human rights defenders was presented in English to the Human Rights Council in June 2021. It has since been (unofficially) translated into French and Spanish. It has been formatted into an accessible document in long form in all three languages. There is also an executive summary and key recommendations document available in the three languages. These resources can all be found on the Working Group's webpage hosted by OHCHR.

At the annual Forum on Business and Human Rights, held in November 2021, the Working Group, together with the Special Rapporteur on the situation of human rights defenders (who we have just heard from) and a group of civil society organisations, held a session that presented the global trend of SLAPPs including an overview of the problem in terms of the defenders most affected, the business sectors most commonly involved, the types of proceedings brought, and the common charges lodged against defenders. The session was addressed by defenders being targeted by SLAPPs, and there were discussions of promising initiatives from States and business enterprises to address this growing and urgent issue.

The session also underlined the role that the legal community plays in addressing the use of SLAPPs and called on them to refrain from representing business enterprises in SLAPPs cases. The session heard about attempts to build resilience when dealing with SLAPPs in Europe through the work of CASE, the Coalition Against SLAPPs in Europe, and also in other regions, such as through Protect the Protest in the USA, and Asina Loyiko in South Africa. These organisations are working to raise awareness about SLAPPs at the local, regional and international levels, and are pushing States and business enterprises to take action.

The Working Group, together with the Special Rapporteur on the situation of human rights defenders released a statement earlier this month highlighting a key message from the session that States and business actors must take action to prevent the use of the judicial system to silence and intimidate defenders through SLAPPs. It flagged that although some States have already enacted anti-SLAPPs legislation, more action is needed. It said that States should continue enacting anti-SLAPPs legislation and introducing policies and law reforms to prevent criminal laws, such as criminal libel and defamation laws, from being used against human rights defenders who are simply doing their work. They should sanction business actors for using SLAPPs. States should ensure that judges and prosecutors are trained to recognise SLAPPs, identify frivolous complaints against human rights defenders, and put procedures in

place to handle and respond to them. They should also give courts powers to dismiss a case if they consider the intention of the claim/prosecution is to distort facts concerning the work of a human rights defender, or harass, intimidate, threaten or take advantage of the defendant.

Business actors should also commit to a clear public policy of non-retaliation against defenders. Last year's statement by the Investor Alliance for Human Rights is a case in point. It called on companies to adopt a zero-tolerance approach on reprisals and attacks on defenders in their operations, value chains, and business relationships and refrain from and commit to not using SLAPPs or other forms of judicial harassment to stop public participation and advocacy. We need to see more such statements from the business sector. Business enterprises should not be demanding huge sums for alleged damage to their reputation through alleged criminal libel. Furthermore, business enterprises should be exercising human rights due diligence to prevent any attack on, or reprisals against, human rights defenders.

States, companies, investors and the legal community have a responsibility to prevent, and protect against, SLAPPs. It is time to take immediate action to create and facilitate a safe and enabling environment for human rights defenders in which criticism of business-related human rights abuse is understood as an important part of seeking accountability and remedy. The real issue is that SLAPPs should not be happening in the first place. Human rights defenders need to be seen as key partners who can assist businesses in identifying key human rights impacts. They should be part of a business enterprise's stakeholder engagement and due diligence processes, instead of being seen as annoyances, troublemakers, obstacles or threats to be disposed of.

In conclusion, it is clear that States, and businesses need to take multiple steps to mitigate and eliminate the use of SLAPPs against human rights defenders. Better protecting journalists against attacks and legal harassment through SLAPPs will require determination, political will and reform of domestic legal systems if we are to see progress on the ground. The Working Group plans to hold an expert roundtable meeting in May to document good practices in addressing SLAPPs so that all actors involved might start from the same understanding of what is needed to achieve real progress in addressing this terrible scourge, as well what actions need to be taken by way of mitigation and redress.

Thank you for the opportunity to participate and I wish you well for your discussions today.