Special Rapporteur

on the promotion and protection

of the right to freedom

of opinion and expression

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**Input for the report on FOE and sustainable development**

**SLAPPs threatening freedom of expression**

Strategic Lawsuits against Public Participation (SLAPP) are a [growing trend worldwide](https://www.article19.org/wp-content/uploads/2022/03/A19-SLAPPs-against-journalists-across-Europe-Regional-Report.pdf). According to the [European Commission](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2652), they are now one of the biggest threats to media professionals and non-governmental organisations (NGOs) - after physical and psychological violence.

NGOs as well as media professionals (especially investigative journalists) play an important role as public watchdogs. Journalists and NGOs are hindered in their work by proceedings that sometimes last for years. SLAPPs can mean financial and existential ruin for those affected, as the [case of the Maltese journalist Daphne Caruana Galizia](https://www.ibanet.org/Freedom-of-expression-Europe-tackles-abusive-lawsuits-against-public-watchdogs) impressively shows.

The purpose of SLAPP cases is to silence criticism and deter future opposition to a company’s projects through intimidation. Where such suits occur, they exploit the power imbalances that exist between companies, politicans and oligarchs on the one hand and journalists, NGOs and human rights defender on the other hand. They are leaning in particular on the substantial financial disparities between the parties, given the costs of fighting such cases in court and the size of the damages often sought. This is an existential problem especially for individuals such as human rights defenders, investigative journalists from small newspapers or smaller NGOs. This is also a reason why the [UN Special Rapporteur on Human Rights Defenders](file:///C:/var/folders/w2/psb38ws128x57mn9zsgc16f00000gq/T/com.apple.mail/com.apple.mail.SavedAttachment-T0x60000d173700.tmp.OyagDI/UN%20Special%20Rapporteur) reported for example on a SLAPP case against the Malaysian NGO Save Rivers in Sarawak, Malaysia on 2nd November 2022.

Also in Switzerland SLAPPS become more and more a problem for NGOs and journalists. A [MediaLex article](https://medialex.ch/2022/03/08/slapp-und-slapp-back-goliath-und-david/) by the Swiss lawyer Regula Bähler published in March 2022 shows that SLAPPs also restrict the freedom of expression and media freedom of NGOs in Switzerland. [A survey of 11 Swiss NGOs](https://www.bmf.ch/upload/Kampagnen/SLAPP/220505_SLAPP_Faktenblatt_deutsch.pdf) conducted by the NGO HEKS in April 2022 found that SLAPPs against Swiss NGOs are on the rise: while only one Swiss NGO was affected by a SLAPP lawsuit before 2018, six NGOs have been hit with 12 lawsuits since 2018. Several NGOs are also facing threats of legal action. Media professionals are also affected by SLAPPs, as recently announced by the [Swiss Media Association (VSM](https://www.schweizermedien.ch/home)) in its October 2022 newsletter. According to the VSM, smaller Swiss media in particular are at risk from SLAPPs and are potentially forced to withdraw their contributions due to the threat of legal proceedings. The VSM, together with an alliance from the media industry, is therefore campaigning for better protection against SLAPPs.

So far, Swiss legislation does not apply to SLAPPs, or only insufficiently. Art. 2 para. 2 of the Swiss Civil Code states that a manifest abuse of a right is not protected by law. To date, however, no SLAPP action has been dismissed on this legal basis.

Protection against SLAPPs would be an enormous relief for journalists and NGOs and would support them in the exercise of their role as public watchdogs, which is important for a democracy, and would save their resources and the resources of the courts.

Switzerland should take the problem of SLAPPS seriously, and - analogous to Anglo-Saxon countries or the EU - adopt an anti-SLAPP regulation to prevent or limit such lawsuits at an early stage.

**Article 47 of Switzerland's Banking Act**

As UN Special Rapporteur for Freedom of Opinion and Expression Irene Khan is very well aware of, Article 47 of Switzerland’s Banking Act «[paralyses freedom of expression and media freedom»](https://www.swissinfo.ch/eng/politics/swiss-parliamentarians-refuse-to-overhaul-banking-secrecy-laws/47574910) as she wrote in a letter Reuters reported. Today, on the 2nd of February 2023, Tagesanzeiger, the biggest Swiss daily newspaper reported again on this existing muzzling of media professionals and the weak protection of whistleblowers (in [German](https://www.tagesanzeiger.ch/bundesanwaltschaft-ermittelt-wegen-datendiebstahl-bei-der-credit-suisse-153274552072)).

**Lack of whistleblower protection**

In Switzerland, investigative journalists and whistleblowers are only minimally protected. While internal whistleblowers in the European Union now enjoy special protection through legislation, there is no Swiss law. The canton of Geneva ist he only one of 26 cantons with a legislation on whistleblowers (<https://ge.ch/grandconseil/data/odj/020308/L12261.pdf>).

Johanna Michel, Bruno Manser Fonds, 2nd of February 2023