

**Submission by the Business and Human Rights Resource Centre to the Special Rapporteur on the independence of judges and lawyers for the next thematic report on the undue influence of economic actors on judicial systems**

**13 June 2024**

The Business and Human Rights Resource Centre welcomes the opportunity to contribute to the open call for inputs on “the next thematic report on the undue influence of economic actors on judicial systems.” In response to the guiding questions, we aim to provide information regarding the use of Strategic Lawsuits against Public Participation (SLAPPs) by business actors, as well as recommendations on how to address this issue.

**I. About us**

The [Business and Human Rights Resource Centre](#) is an independent non-profit organization that promotes greater awareness and informed discussion about human rights issues relating to business. Our website covers over 10,000 companies in over 180 countries. With an audience of more than 2 million users per year, our digital platform links to reports about positive initiatives by companies as well as reports about concerns that have been raised by civil society. During the past five years we have been undertaking research on strategic lawsuits against public participation (SLAPPs) and analyzing the use of these lawsuits to stop or slow the work of human rights defenders and civil society groups who are engaged in public participation focused on business-related activities. More information about our work on SLAPPs is available [here](#).

**II. Context where SLAPPs take place**

SLAPPs occur within a broader context of attacks against people engaged in public participation. Since 2015, the Resource Centre has tracked attacks against people raising concerns about business-related human rights risks and harms across the globe. Since January 2015, we have recorded more than 5,300 attacks, with [630 in 2023](#) affecting an estimated 20,000 people. This is part of a **consistent, ongoing pattern of attacks against human rights defenders protecting our rights and planet globally**. We also know that this is just the tip of the iceberg. Our research is based on publicly available information and because many attacks, especially [non-lethal attacks](#) (including death threats, judicial harassment and physical violence), never make it to media sources and there remains a [significant gap in government monitoring of attacks](#), the problem is even more severe than these figures indicate.

Non-lethal attacks, including intimidation, threats, surveillance, smear campaigns and judicial harassment, are often precursors to killings – which is why it is vital States collect data on attacks against human rights defenders and strengthen their protection mechanisms. Close to half of the attacks we have tracked to date constitute judicial harassment that includes the use of a range of legal tactics, such as criminal and civil

lawsuits, arbitrary detention, abusive subpoenas, SLAPPs and fabricated charges by governments and business actors.

Many attacks involve collusion between state, private sector and other non-state actors, such as organised crime, occurring in contexts where there are high levels of impunity. This often makes it difficult to identify perpetrators. [In 2023](#), direct perpetrators of attacks were largely state actors, with police and judicial systems being the most common perpetrators, followed by the military/armed forces.

### **III. Use of SLAPPs by private actors to stifle advocacy on issues of public interest**

SLAPPs masquerade as ordinary lawsuits but in essence constitute an abuse of the legal system, brought or initiated by private actors, targeting acts of public participation. This includes action related (but not limited) to human rights, social justice, and environmental protection, including public interest or opposition campaigns. SLAPPs have significant adverse effects on those working in the public interest, including slowing their activism and draining their resources through long legal processes. Private actors bringing or initiating SLAPPs also often seek high compensation for damages. 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, initiating a legal action, or posting on social media. SLAPPs can have a "chilling effect" on the exercise of freedom of expression. The fear of facing costly and time-consuming litigation can discourage individuals and organizations from expressing their opinions or engaging in advocacy.

SLAPPs put significant pressure on public resources and cause judicial systems to waste their time on superfluous legal processes, diverting judicial resources away from legitimate legal disputes. This can lead to increased case backlogs and longer wait times for the resolution of other cases. The misuse of the judicial system by using SLAPPs can undermine public confidence in the fairness and integrity of the judicial process. If courts are seen as tools for powerful entities such as businesses to silence critics, trust in the judiciary can erode. In addition, when judicial systems do not take measures to push back against SLAPPs, they can contribute to a harmful narrative that these lawsuits are a legitimate use of the legal system.

The Resource Centre have been collecting information on SLAPPs brought or initiated by a private party 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. In many instances, the defendants are Indigenous leaders or community members protecting their land and territories from large-scale projects, such as mining or logging, or even journalists covering companies' harmful activities. Our research includes civil suits, as well as criminal cases when and if a company or individual connected with the company has initiated the criminal complaint. This also includes cases brought against individuals and organizations. More information about our methodology is available [here](#).

Since January 2015, we have tracked **474 lawsuits bearing the hallmarks of SLAPPs** globally brought or initiated by more than **150 business actors**. According to our data the highest number of cases occurred in **Latin America (170)**, followed by **Asia and the Pacific (126)**. Countries with the highest number of SLAPPs identified in our research include **Thailand, Honduras, Peru, the United States of America, and Cambodia**. A database capturing many examples of SLAPPs brought across the globe is available [here](#).

**Although SLAPPs can differ depending on legal frameworks and local proceedings, the Resource Centre has identified that at least 68% of cases involved criminal charges with nine in 10 occurring in the Global South.** Most of these cases used libel and defamation laws and arguments based on damages, incitement to commit a felony, instigating a strike, computer-related crimes, anti-boycott laws, racketeering and conspiracy. The penalties for such crimes often involve lengthy prison sentences and allow for pretrial detention measures incarcerating human rights defenders during proceedings, which can last for years. Many defenders are detained in inhumane or degrading conditions while awaiting their trials.

More than a quarter (**28%**) of the cases we tracked included **civil legal arguments**, many seeking large damages and most occurring in the Global North. Most individuals and groups facing SLAPPs raised concerns about **mining (143), agriculture and livestock (100), logging and lumber (35) and palm oil projects (29)**. This demonstrates a pattern of vexatious litigation by business actors in sectors heavily dependent on natural resources which are also linked to environmental harm and the climate crisis. SLAPPs are partly made possible by law firms and lawyers agreeing to bring and represent these cases on behalf of business actors. Nonetheless, the legal community has an [ethical responsibility](#) and an important role to play in stopping the abuse of the law to silence peaceful dissent. Lawyers should advise prospective or current clients not to bring SLAPPs against defenders and refuse to provide legal representation in such cases. Lawyers can also provide critical support to individuals and groups facing SLAPPs, who are significantly under-resourced compared with the plaintiffs, through pro-bono legal advice and representation.

In some jurisdictions, companies engage in forum shopping, choosing to file SLAPPs in places that are more likely to be favorable to their interests or have fewer protective regulations for human rights defenders. This can lead to unfair advantages for well-resourced plaintiffs and put more pressure on defendants who must face proceedings in jurisdictions that they are not familiar with. Also, companies often exploit procedural tactics to delay proceedings, increase costs for defendants, or achieve more favorable decisions. This includes filing frivolous motions, requesting excessive discovery, and using other dilatory tactics.

#### **IV. Recommendations to deter SLAPPs, or limit their detrimental impact**

Preventing the use of SLAPPs and safeguarding freedom of expression and association involves numerous actors, including governments, judges, investors, and companies.

These actors can take important steps to protect human rights defenders by taking the following actions (more detailed recommendations are available [here](#)):

### **Governments should:**

- 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.
- 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.
- 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.
- Work towards the elimination of laws that criminalise or penalize in any way (including civil laws) the freedoms of expression, assembly, and association, such as defamation laws.
- 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.
- 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.
- Provide training to the judiciary about the nature and impact of SLAPPs.

### **Judges should:**

- When existing, use anti-SLAPPs or any other law that allows early dismissal of cases that bear the hallmarks of SLAPPs and the imposition of sanctions on plaintiffs for abusing the judicial system.
- Apply human rights standards in their decision-making process, for instance, the UN [Guiding Principles on Business and Human Rights](#) (UNGPs) and its [seminal interpretation](#) on ensuring respect for human rights defenders.
- Arrange training sessions to educate on recognizing SLAPP cases, understanding their nature and impact on human rights defenders.
- Issue clear and reasoned decisions when dismissing SLAPPs to help set precedents and provide guidance for other courts and litigants.

### **Companies should:**

- Adopt and implement public policy commitments, accompanied by implementation guidance and plans, which recognises the valuable role of human rights defenders, reference specific risks to human rights defenders, ensures effective engagement and consultation with human rights defenders at all stages of the due diligence process, and commits to zero-tolerance for attacks throughout the company's

operations, supply chains and business relationships. This includes committing to not use SLAPPs or other forms of judicial harassment against people engaged in public participation and advocacy.

- Communicate expectations for their business partners, suppliers, and contractors to not bring SLAPPs with the intention of silencing critics, continuously monitor their use and act consistently on their findings.
- Engage in and report on the results of human rights and environmental due diligence that integrates a gender perspective throughout and ensure effective access to remedy for those harmed by business activity, in accordance with the UNGPs, the UN Working Group's guidance on ensuring respect for human rights defenders, and the UN Working Group's gender guidance.
- Recognise Indigenous defenders are disproportionately at risk and create and implement public commitments to respect Indigenous Peoples' rights, grounded in their rights to self-determination (lands, territories, and resources), and right to free, prior and informed consent (FPIC), including their right to define the process by which FPIC is achieved and to withhold consent (more detailed recommendations available [here](#)).
- Publicly commit to remedy adverse impacts on human rights defenders it has caused or contributed to and to work with suppliers to remedy adverse impacts directly linked to its operations, products and services. This includes establishing and adequately resourcing safe, effective and accessible UNGP-aligned grievance and accountability mechanisms that include protections for human rights defenders and whistle-blowers, handle third party complaints and provide robust follow-up to address and provide redress for grievances.

### **Investors should:**

- Publish a human rights policy which recognizes the valuable role of human rights defenders in identifying risks associated with business activities and commits to a zero-tolerance approach to attacks against them. Clearly communicate the human rights expectations included in this policy to portfolio companies, including that companies:
  - Disclose human rights and environment-related risks;
  - engage in ongoing consultation with communities, workers, and human rights defenders;
  - have policies and processes to respect Indigenous Peoples' rights;
  - respect the rights of human rights defenders;
  - ensure effective access to remedy when harm occurs.
- Undertake rigorous human rights and environmental due diligence that integrates a gender perspective throughout and review potential investees for any past involvement with retaliation, including SLAPPs. This includes consulting with rightsholders and not relying on company self-disclosure as to whether Indigenous Peoples' right to free, prior and informed consent was respected.
- Avoid investing in companies with a history of human rights and environmental harms and retaliation against human rights defenders, including SLAPPs.

- Asset owners should incorporate human rights expectations, which “include respecting the rights of defenders and refraining from bringing SLAPPs”, in their investment policy statements to guide asset managers in their investment decision-making.
- 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.
- Use leverage with investee companies which cause, contribute to or are directly linked to human rights and environmental harms, including attacks on human rights defenders, so the company mitigates negative impacts and provides access to remedy to those affected.