



UNITED NATIONS  
**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER

# The impact of SLAPPs on human rights & how to respond

## — WHAT ARE SLAPPS?

**Strategic Lawsuits Against Participation** (SLAPPs) refer to lawsuits or threats of legal action which use abusive litigation tactics with the aim or effect of suppressing public participation and critical reporting on public interest matters.

SLAPPs are used in all parts of the world, irrespective of legal traditions and judicial systems, either by State or non-State actors. Business actors initiate a significant portion of SLAPPs. Most often, SLAPPs target activists, journalists, environmental campaigners, human rights

defenders, academics, and non-governmental and media organizations.

Both civil and criminal laws may be instrumentalized to suppress public participation on matters of public interest. In many instances, criminal defamation and blasphemy laws have been used to intimidate and harass civil society actors with pre-trial detention, often imposed as a result of unfair trials. Under civil law, cases relating to defamation, breach of privacy, trespass, and copyright infringements have been regularly reported.

## — SLAPPS ARE CHARACTERIZED BY THREE ELEMENTS:

### IMBALANCE OF POWER

SLAPPs exploit imbalances in financial, political or societal power to convert matters of public interest into a private dispute. Where claimants are well-resourced, they typically do not need to win the case to have the effect of suppressing public participation on matters of public interest. Instead, well-resourced claimants can turn the proceedings into a punishment itself by protracting litigation and exhausting the defenders' resources. At times, the mere threat of litigation may be sufficient to silence potential defenders.

### MATTERS OF PUBLIC INTEREST

SLAPPs are used to silence persons or entities vocal or active in relation to information on matters of public interest – i.e. matters affecting the public or parts of it and in which the public might legitimately take an interest, including alleged human rights violations, climate change, corporate accountability, corruption, and financial crimes.

### ABUSIVE LEGAL TACTICS

They include exaggerated or disproportionate claims of damages, targeting individuals rather than the organizations they represent, multiple lawsuits (possibly in different countries), frequently amendment of pleadings, or excessive requests for disclosure, often with a view to intimidating and ultimately silencing those individuals.

1

- **Claimant or Pursuer:** an economically or politically powerful state or non state actor.
- **Defendant or Target:** a person or organization raising awareness on a public interest issue, including activists, human rights defenders, environmental campaigners or journalists.

2

- **Public participation:** any statement or activity by a natural or legal person expressed or carried out in the exercise of the right to freedom of expression or assembly relating to information on a matter of public interest.
- **A matter of public interest:** a matter which affects the public and in which the public might legitimately take an interest in.

3

- **Disproportionate, excessive or unreasonable claims.**
- **Targeting individuals** rather than the organizations they represent.
- **Multiple proceedings** including multiple and coordinated cross-border legal actions.
- **Delayed proceedings, amended pleadings, excessive discovery requests, etc.**

## — HOW DO SLAPPS IMPACT HUMAN RIGHTS?

By targeting journalists, human rights defenders and other civil society actors who contribute to public interest matters, SLAPPs undermine a wide range of their rights, including their rights to freedoms of expression, assembly and association and their right to public participation, all enshrined in the [Universal Declaration of Human Rights](#) (articles 19, 20 and 21) and the [International Covenant on Civil and Political Rights](#) (articles 19, 21, 22 and 25).

Freedoms of expression, assembly and association can be subjected to restrictions, only if they are:

- Prescribed by law;
- Necessary for the respect of the rights or reputation of others in the case of freedom of expression; and in other cases, for the protection of national security, public safety, public order, public health or morals;
- Proportionate to the aim pursued, and
- Non-discriminatory.

SLAPPs do not meet these criteria. In particular, as highlighted by international jurisprudence, restrictions to freedoms of opinion and expression, peaceful assembly and association must not be aimed at discouraging their exercise, which is the very purpose of SLAPPs. Additionally, restrictions to freedom of expression to protect the rights and reputation of others may be limited where the person alleging a breach of privacy is one whose activities attract legitimate public interest.

International jurisprudence has also underscored that the penalties which can be inflicted to persons exceeding the limits of the rights to freedom of opinion and expression and freedom of peaceful assembly and association must be proportionate. In this regard, UN Human Rights and other international human rights mechanisms consider that [the criminalization of defamation and blasphemy constitute disproportionate restrictions of freedom of expression and other human rights](#).

Similarly, instances of [pre-trial detention](#) being used in a way that infringes upon the right to a fair trial have been acknowledged as having a chilling effect on freedom of expression and assembly.



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## — HOW TO RESPOND TO SLAPPS?

In international law, States assume the duties to respect, to protect and to fulfil human rights. [Under those obligations, States shall not only refrain from engaging in abusive lawsuits, but also take positive measures](#) to ensure that third parties do not use SLAPPs as tools to silence those exerting legitimately their rights to freedom of opinion and expression as well as freedom of peaceful assembly and association. Such measures include:

- [Decriminalizing defamation, blasphemy and other offences that may impose disproportionate penalties](#) on those exerting their rights to freedom of opinion and expression as well as freedom of peaceful assembly and association;

- **Adopting anti-SLAPPs laws;**

So far, anti-SLAPP laws have been adopted in common law, civil law and mixed legal systems, including the United States, Canada, Australia, Indonesia, the Philippines and Thailand. In addition, the European Union Parliament has agreed the final text of an anti-SLAPP Directive which is expected to be adopted in 2024 and the Council of Europe has produced a draft recommendation on SLAPPs.

Experience has shown that **effective anti-SLAPPs legislation** should:

- **Be broad in scope** and capture all claims relating to public participation on matters of public interest;

That approach was adopted so far by the European Union, the Council of Europe, as well as the Ontario, British Columbia, New York, and California states in Canada and the United States.



- **Empower courts to dismiss abusive court proceedings** on their own initiative or upon application by the SLAPP target, if the court finds that proceedings are abusive;

In Quebec, not only does the defendant not bear the burden, but the court may act on its own initiative to dismiss a case which arises from a communication on a matter of public interest and is unfounded, vexatious, quarrelsome, or consists of excessive or unreasonable use of procedure.

- **Ensure an accelerated procedure for hearing the application to dismiss**, during which the main proceedings should be stayed;

- **Compensate the victim** and impose effective, proportionate and dissuasive **penalties** on the SLAPP pursuer; and

California’s anti-SLAPP law presumptively entitles the successful defendant to costs and allows the defendant to file a “SLAPP-back” lawsuit to recover damages for abuse of process. Oklahoma’s anti-SLAPP law includes a presumptive entitlement to costs and award of damages for the prevailing defendant and the court will also impose sanctions on the claimant in a manner deemed necessary to deter the claimant from initiating SLAPPs in the future.

- **Empower courts to deter and remedy the use of multiple and coordinated cross-border legal actions.**

The European Union anti-SLAPP Directive contains two provisions which are designed to deter the abuse of private international law rules. The Directive provides procedural safeguards against third country judgments, requiring a Member State court to refuse recognition and enforcement on public policy grounds where the judgment was obtained in abusive court proceedings against public participation. The Directive further requires Member States to make provision for natural or legal persons domiciled in a Member State to apply for compensation for damages or costs incurred in connection to abusive court proceedings initiated in a third country

- In the absence of such legislation, **ensuring at least that courts can dismiss SLAPPs through abuse of process provisions.**

For instance, in South Africa, the Constitutional Court accepted that they had the common law power and constitutional authority to dismiss SLAPPs as an abuse of process. In such instances, the defendant would have to establish that the action: (a) was an abuse of process; (b) was not brought to vindicate a right; (c) amounted to the use of court process to achieve an improper end and to use litigation to silence the defendant; and (d) violated, or was likely to violate, the right to freedom of expression in a material way.

Similarly, in India, the High Courts of Delhi and Bombay have dismissed defamation proceedings for failing to make out the elements for a defamation action. In *M/S Corp Care Federation of India v. Rajasthan Patrika (PVT) LTD*, the Court opined that the case was an attempt to stifle debate on a matter of public concern. In *NSE v. Moneywise Media Private Limited*, the Court said the proceedings were a “gross abuse of process” and ordered the plaintiffs to pay damages to the defendants and approximately 57,503 USD in damages to public causes.

In June 2020, two Colombian journalists who published allegations of sexual harassment against the film director, *Ciro Guerra*, were the subject of a complaint for criminal defamation, a civil action for 875,000 USD, and a constitutional claim for breach of good name, honour and presumption of innocence. The Constitutional Court of Colombia held that expression on matters of public interest, including gender-based violence, was a special category of protected speech. The court set out the following criteria for identifying judicial harassment: the purpose of the case is to silence expression on matters of public interest through abuse of the judicial system, the harasser has abundant resources to pay for judicial representation and to cover legal expenses, there is an imbalance of power between the parties, and there are excessive claims for damages.

- Adopting **complementary measures** to:
  - Monitor and raise awareness on SLAPPs;
  - Financially and psychologically support victims of SLAPPs, including by providing legal aid;
  - Train judges, prosecutors and lawyers to identify and deter SLAPPs.



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The [United Nations Guiding Principles on Business and Human Rights](#) (UNGPs) also articulate business actors’ responsibilities to respect human rights. Engaging in SLAPPs is contrary to their responsibilities to neither cause nor contribute to human rights violations in their supply chain. **Business actors should**, therefore:

- > **Refrain from SLAPPs, develop clear protocols to deal with SLAPPs and develop grievance mechanisms** that address risks throughout the supply chain;
- > **Exercise human rights due diligence to identify and prevent the use of SLAPPs** throughout their supply chain and within corporate groups;

Where they are aware of SLAPPs in their supply chains, use their leverage to encourage the perpetrator to discontinue such actions or consider exiting the business relationship.

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