



Business & Human Rights
Resource Centre



SLAPPs in Latin America

STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION
IN THE CONTEXT OF BUSINESS AND HUMAN RIGHTS

FEBRUARY 2022

Introduction

Since 2015, the [Business and Human Rights Resource Centre](#) (the Resource Centre) has identified over [3,685 attacks](#) worldwide against human rights defenders (HRDs) working on business-related issues. Latin America is the most dangerous region in the world for business-related HRDs, with around 1,569 attacks recorded. The most frequently recorded types of attacks are killings (30.9%), intimidation and threats (28.1%), and judicial harassment (26.4%).

Judicial harassment can take the form of criminal complaints and civil lawsuits, arbitrary arrests, summonses to appear in court, and fabricated charges by governments and corporate actors. Likewise, Strategic Lawsuits Against Public Participation (SLAPPs) are a tactic used directly by business actors who abuse the judicial system through civil lawsuits or criminal complaints in order to harass and intimidate defenders of human rights, territory and environment. Latin America is one of the regions most affected in the world by the use of SLAPPs: of the 385 cases identified globally by the Resource Centre between January 2015 and December 2021, 149 took place in the region.

The use of SLAPPs has been identified as one of the main threats to the defence of human rights in business contexts by the various organisations participating in the Latin American Network of Strategic Litigation on Business and Human Rights, coordinated by the Resource Centre. This report focuses on legal actions which bear the hallmarks of SLAPPs in Latin America. It is intended to provide organisations and individuals facing SLAPPs with practical tools and strategies to identify and resist their use. For this purpose, we have analysed criminal and civil actions initiated by business actors against individuals or groups involved in the defence of human rights and/or the environment in the region from 2015 to December 2021 (see global report on the use of SLAPPs [here](#)).



1,569 attacks

recorded in Latin America against human rights defenders working on business since 2015



1/4 attacks

in the region constitute judicial harassment



149 cases

which bear the hallmarks of SLAPPs recorded in the region



What is a SLAPP?

In the context of business and human rights, SLAPPs are judicial tactics directly initiated by business actors against human rights defenders working on business-related impacts on human rights, land and environment. According to research published by the Resource Centre in June 2021, SLAPPs include criminal complaints and civil lawsuits filed directly by companies. SLAPPs masquerade as ordinary lawsuits, but in essence constitute an abuse of the legal system.

Characteristics of SLAPPs

Some of the characteristic hallmarks of SLAPPs include:

- ➔ The legal action is brought or initiated by a private actor (a company, its owner or its employees).
- ➔ The legal action targets acts of public participation related to (but not limited to) human rights, social justice and environmental protection, including public criticism or opposition campaigns. Public participation can incorporate a variety of activities ranging from peaceful protest to the publication of critical opinion, assuming that the latter is done in the public interest.
- ➔ The legal action is filed after the defenders and/or organisations express criticism regarding the complainant or plaintiff's economic activities; for having published a report, disseminated information on social media, participated in an event or an interview, launched a campaign, organised a demonstration and/or other peaceful activities.
- ➔ Defenders and/or organisations have been targeted with other forms of attacks related to their work defending human rights.

Additionally, the intention behind a legal action can indicate a SLAPP case. In general terms, the main objective of business actors in SLAPP cases is not to win in court, but to intimidate and silence HRDs. Although intent is difficult to prove, the Resource Centre has taken into account a series of criteria developed by several organisations including Greenpeace International to identify the intent of a judicial action and thus characterise cases which bear the hallmark of SLAPPs. These criteria include:

- ➔ The economic claims on the part of the complainant and/or plaintiff are aggressive and disproportionate to the alleged conduct that motivates the case. Claims are disproportionate, and the forfeits are severe (e.g., large amounts of money for damages or prison sentences).
- ➔ There are manoeuvres during judicial processes that could lead to delays in the normal course of the process.
- ➔ The complainant or plaintiff appears to be exploiting their economic advantage to pressure the person or organisation facing the legal action.
- ➔ The legal action targets not only an individual, but an array of people, and even involves the organisations for which they work.
- ➔ The arguments presented by the plaintiff have no foundation and are not based on facts which merit being addressed by the judicial system.
- ➔ The court action appears to be part of a broader strategy designed by the business actor for retaliation, harassment or intimidation against the defendant.
- ➔ The plaintiff has a track record of SLAPPs and/or legal intimidation, or other forms of attacks against HRDs.



Consequences of SLAPPs for defenders

SLAPPs have adverse effects on those working in the public interest, and have the potential to deter their activism and deplete their resources. SLAPPs can have personal and collective consequences, weakening the work of human rights organisations. These legal cases can create a “chilling effect” on the freedom of speech, whereby others are afraid to denounce or make visible the impacts of business activities due to fears they could be sued or face judicial harassment. Some of the groups most likely to face such attacks are Indigenous communities, environmental defenders and community leaders. Moreover, defenders who face judicial processes of this nature frequently exhaust their economic resources in their legal defence before courts, limiting - in many cases - the possibility of using such resources for their human rights work.

Another adverse effect is the enormous psychological impact that comes with facing a judicial process. With regard to this, the Inter-American Commission on Human Rights (IACHR) has stressed that the improper use of the judicial system against defenders can negatively impact their interpersonal relationships, given that in some circumstances they are forced to separate from their families, change their place of residence or otherwise alter their lives significantly.¹ In a significant number of cases in Latin America, defenders are held in pre-trial detention while awaiting criminal proceedings. These pre-trial detentions can go on for long periods with unjustified delays, and sometimes fail to respect standards established by international human rights organisations.² As a consequence, HRDs facing SLAPPs may see their personal freedom and judicial guarantees damaged. This has been further exacerbated in the context of the COVID-19 crisis as judicial systems around the world, and particularly in Latin America, have implemented various measures to address the pandemic.³ It is worth mentioning, for example, the suspension of legal deadlines, rescheduling of hearings, temporary closures of courts, and prioritisation of cases, among other actions, which have placed additional burdens on defenders facing SLAPPs. See examples in [Guatemala](#), [Venezuela](#), [Panama](#), [Colombia](#), [Peru](#).⁴

The use of SLAPPs also puts enormous pressure on public resources and causes judicial systems to waste time on superfluous legal processes. When judicial systems fail to take steps to fight the practice of SLAPPs, these prosecutions can be framed as a legitimate use of the legal and judicial system.



Challenges documenting SLAPPs

There are multiple challenges for the documentation of cases which bear the hallmarks of SLAPPs. Some of them are:

- ➔ Differences in legal and judicial systems.
- ➔ Connection with the broader context of criminalisation and judicial harassment where the State has a preponderant role, making it difficult to identify the direct role played by the business actor in the filing of the case.
- ➔ Lack of public information on legal actions brought by business actors against defenders. There is limited access to information about processes in progress.
- ➔ The intimidating effect of facing a judicial process, which can lead those facing SLAPPs to choose to avoid visibility.
- ➔ Some SLAPPs occur in geographical territories far from defenders' homes, which limits the possibility of knowing details of the cases.



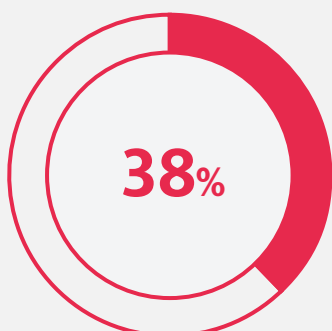
SLAPPs in Latin America

Although SLAPPs are considered a global phenomenon occurring in all major regions of the world, Latin America is the most affected region according to research conducted by the Resource Centre. Of the 385 cases identified from January 2015 to December 2021, 149 took place in this region. Honduras, Peru, Guatemala and Mexico⁵ are the countries where most cases were identified. However, there have also been cases in other countries in the region such as Ecuador, Colombia, Panama and Nicaragua. Some of these cases are available in our public database available [here](#).

Garifuna women leaders facing criminal charges in Honduras

On 31 July 2017, four Garifuna women leaders, [Miriam Miranda](#), [Madeline Martina David](#), [Neny Heydy Ávila](#) and [Lety Bernáñez](#), were charged with defamation and slander by a businessman who owns a tourism and hotel company. These leaders are members of the Honduran Black Fraternal Organization (OFRANEH) which works to defend the ancestral Garifuna land from the impacts of tourism projects.

Of all the cases recorded in Latin America, 139 include criminal complaints, most for defamation and other charges of slander and incitement to commit a crime. Criminal charges commonly used by business actors in Latin America are land usurpation, damage and instigation to strike. In Honduras, for example, companies have used “forced displacement” to denounce defenders’ protest. Additionally, a significant number of cases combine multiple criminal charges which could lead to long prison sentences. The Resource Centre recognises that in criminal proceedings -particularly in the context of Latin America- it can be difficult to determine the participation of a business actor in the use of SLAPPs. This is mainly because, in many cases, business actors do not admit having initiated the criminal process; there is no clear documentation regarding their participation or the close relationship between the business actor and state entities, and cases are initiated directly by state entities. Thus, civil society groups frequently argue that criminal cases brought by prosecutors’ offices are in fact initiated by businesses. The IACHR has recognised private interests can unduly influence the justice system or even abuse criminal law.⁶



149 cases (38%) which bear the hallmarks of SLAPPs in our database took place in Latin America



Honduras, Peru, Guatemala and Mexico are the countries where most cases were identified in the region

Seven environmental activists sued by a poultry company in Honduras

On 29 March 2021, [seven environmental defenders](#) and members of the organisation Alternativa de Reclamación Comunitaria y Ambientalista de Honduras (ARCAH) were arrested and charged with “forced displacement” following a lawsuit filed by poultry company El Cortijo. The group protested outside the company’s offices to express concern about the company’s activities and alleged links to the pollution of a local river. On 30 March 2021, the defenders were released and placed under house arrest. As of May 2021, they were still under arrest, awaiting trial. We invited El Cortijo to comment; the company did not respond. We will publish the company’s response in future if one is provided.



Photo by: ARCAH

While the majority of cases recorded in Latin America are of a criminal nature, at least 10 cases have been identified involving civil lawsuits which include aggressive and disproportionate claims for compensation.

Afro-descendant leaders sued by a palm oil company in Ecuador

In September 2020, the oil palm company Energy & Palma filed a lawsuit for damages against community leaders and human rights defenders [José Teodoro Pachito Bennett](#), [Antonio Olivero Mina Caicedo](#), [Luis Fernando Quintero Mina](#), [Julio Javier Caveza Quintero](#), [Andrés Humberto Arce Quintero](#), and [Nestor Javier Caicedo Caicedo](#), members of the community of Barranquilla de San Javier located in the canton of San Lorenzo, Esmeraldas province, Ecuador. The company demanded compensation of approximately US\$320,000 for the alleged violation of private property. This case is related to peaceful resistance carried out by the community to demand the company withdraw from communal territories and remedy abuse of Rights of Nature caused by felling of the Chocó Forest and the pollution of the land, rivers and air generated both by the palm plantation and by an oil extractor, which has allegedly affected their rights to a dignified life, to water, and to food sovereignty. In August 2021, the case was still open. We contacted the company in September 2021 about this case and their response is available [here](#).

The majority of individuals and groups facing SLAPPs in Latin America raised concerns about projects in three sectors: mining (62), agriculture and livestock (26), and palm oil (15). The prevalence of these sectors reveals a worrying pattern of SLAPPs related to industries which are highly dependent on natural resources.

Mining company accuses 19 social leaders in Peru

MMG Limitada Las Bambas is a copper mining company located in Cotabambas in the Apurimac region of Peru. In 2015, the company charged 19 social leaders in Apurimac with conspiracy to commit a crime, aggravated damages, riots and illegal possession of weapons and explosives. According to the Peruvian Penal Code, the penalties for these crimes range from 11 to 17 years in prison. The criminal case was brought after demonstrations in September 2015 by members of the local community against the company's mining project. In March 2020, a Cotabambas court exonerated all 19 leaders due to lack of sufficient evidence. We invited Las Bambas to comment; the company did not respond. We will publish the company's response in future if one is provided.

Business actors in Latin America filed SLAPPs against defenders expressing concerns about their activities. Many SLAPPs are filed against community leaders, social activists, journalists, Indigenous leaders and environmental defenders.

Environmental defender targeted by mining company

In August 2015 [Milton Sánchez Cubas](#), an environmental defender and secretary general of the Celendina Interinstitutional Platform (PIC), was criminally charged with rioting by the Yanacocha mining company with operations in Peru. In July 2015, Milton Sánchez and other community leaders demonstrated against the Conga Mining Project developed by Minera Yanacocha (partly owned by Newmont), as they considered this project a threat to water rights, life, agriculture and the environment. On 26 May 2019, the first Criminal Appeals Chamber of the Superior Court of Justice of Cajamarca acquitted Milton Sánchez Cubas of the charges. We invited Minera Yanacocha to comment; the company did not respond. We will publish the company's response in future if one is provided.



SLAPPs are often filed after defenders criticise business operations, for example, after they participate in a protest or public demonstration, publish a report regarding economic activity, publish criticism on social media, participate in an event or an interview, or launch a campaign or judicial action denouncing impacts related to business activities or human rights claims. This clearly represents a violation of the rights to freedom of speech, assembly and association, restricts the possibility of participation in matters of public interest and can lead to violations of freedom and personal integrity and guarantees of due process.

Human rights standards to protect defenders from the use of SLAPPs

International law asserts that States have an obligation to protect and respect human rights. The UN Special Rapporteur on the Right to Freedom of Peaceful Assembly and Association has recognised States have a positive obligation to facilitate the exercise of the rights to freedom of speech, peaceful assembly and association without fear of being subject to threats. In this framework, States must maintain an environment in which criticism is part of public debate and civil society can work freely.

The UN [Guiding Principles](#) on Business and Human Rights clearly state that business actors have a responsibility to respect human rights and refrain from infringing the rights of others. In this regard, the UN Working Group for Business and Human Rights (Working Group) has addressed the critical role played by defenders to make visible the impacts related to business activities and has reaffirmed that companies must identify, prevent and mitigate the risks against them. Additionally, in its [guide](#) on ensuring respect for human rights defenders published in June 2021, the Working Group recognises SLAPPs can lead to self-censorship and prevent defenders from carrying out their work. The Working Group therefore establishes States must carry out legislative reform to prevent laws on defamation or slander from being used against defenders. Further, it calls for the introduction of anti-SLAPP legislation to allow the identification of such cases in the early stages of judicial proceedings and bring penalties for business actors for abuse of the judicial system. The UN Office of the Special Rapporteur for Human Rights Defenders has established that SLAPPs affect the rights to freedom of expression and participation in public affairs.



In the context of Latin America, the IACHR has established that the work of defenders is a pillar for the strengthening and consolidation of democracies, “since the purpose that motivates the work they carry out is incumbent to society in general, and seeks its benefit. Therefore, when a person is prevented from defending human rights, the rest of society is directly affected.”⁷ Moreover, the IACHR and the Inter-American Court have mentioned that States are obliged to guarantee the necessary conditions for human rights defenders to carry out their work (“the right to defend rights”). When defenders have adequate spaces in which no pressure is exerted against them, they can freely seek the protection of human rights.⁸

The IACHR and its Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) have on several occasions rejected the abuse of the justice system against human rights defenders by companies. Consequently, they have recognised the threat this represents to the rights of defenders, as well as the protection of human rights in general given the intimidating and hostile environment that is created against those who defend our rights.⁹

Similarly, the IACHR report on “[Business and Human Rights, Inter-American Standards](#)” highlights that the work of human rights defenders to make visible commercial practices which violate rights and seek accountability is essential not only for the effective realisation of human rights but also for the consolidation of democracy, sustainable development and the rule of law. In this context, States should establish a clear legal framework which provides for sanctions against companies which use SLAPPs. The Inter-American Court established SLAPPs “constitute an abusive use of judicial mechanisms that must be regulated and controlled by States, with the aim of allowing the effective exercise of freedom of expression”¹⁰ and urges that measures be taken in this regard.



Strategies to combat the use of SLAPPs

Prevention and protection against the use of SLAPPs involves an active role for civil society. Judicial harassment against defenders has been evident in Latin America for years, largely linked to action by States and their institutions. There is a need to reveal the direct and active role of business actors in abuse of the judicial system to intimidate and silence defenders.

In view of the above, some useful steps for civil society organisations to combat the use of SLAPPs in Latin America include:

- ➔ Raising awareness about the use of SLAPPs by business actors and the negative impacts of such legal actions on the work carried out by human rights defenders. It is important to promote training and awareness among the legal community and the judicial system on the subject of SLAPPs. For example, in the context of the launch of the working group [on human rights defenders](#), reference was made to the use of SLAPPs in Latin America. The Cyrus R. Vance Centre for International Justice held a [webinar](#) in November 2021 where the role of the legal community and bar associations was explored, including actions lawyers and legal advocates could take to mitigate the use of SLAPPs. Another useful strategy is to involve investors related to companies accused of using SLAPPs and seek their support against their use. The Investor Alliance for Human Rights [published a statement](#) on the use of SLAPPs in June 2021.
- ➔ Publicising cases which bear the hallmarks of SLAPPs wherever possible, provided doing so does not represent an additional risk for defenders. [The Resource Centre's public database](#) on SLAPPs can be a useful tool for this.



- ⑤ Collaborating to ensure private actors understand that SLAPPs will unite (rather than divide) civil society. In this sense, it is vital to promote an exchange of good practices and success stories in the defence from SLAPPs that can be replicated in cases of a similar nature. The Latin American Network of Strategic Litigation on Business and Human Rights can provide an appropriate platform to seek support, exchange defence strategies against SLAPPs and design strategies for the development of protection standards in the region. In other regions of the world, specific coalitions have been created to combat the use of SLAPPs, such as the [Asina Loyko: United Against Corporate Harassment](#) campaign in South Africa, and [Protect the Protest](#), a coalition of non-profit organisations working to protect freedom of speech in the United States. In Europe, the [Coalition Against SLAPPs in Europe](#) (CASE) is a coalition of NGOs working to tackle the threat posed by SLAPPs.
- ⑤ Promoting the modification of laws which criminalise freedom of expression, association and assembly and participation in matters of public interest, or the modification of legislation on human rights defenders to include SLAPPs as a form of threat and judicial harassment. Likewise, in countries with mechanisms for the protection of human rights defenders, adapting the sources of risk and protection measures to include *ad hoc* measures against SLAPPs and other attacks by business entities.
- ⑤ Reviewing the codes of criminal procedure to regulate preliminary or control hearings as an early response mechanism to combat SLAPPs.
- ⑤ Promoting the implementation of anti-SLAPP laws which allow for the dismissal of judicial processes at an early stage of proceedings and sanction the use of SLAPPs. For example, CASE has [called](#) for the implementation of an anti-SLAPPs Directive in the European Union. Similarly, an anti-SLAPP group in the UK has [pushed for](#) the implementation of legislation on this issue.
- ⑤ Conducting analysis on potential defamation risks or any other risk of a judicial nature on dissemination materials, campaigns and any other relevant materials with the aim of designing strategies to reduce these risks.
- ⑤ Seeking partnerships with law firms which provide *pro-bono* support against SLAPP risks, and discussing possible strategies such as counter-demand and the use of evidence of the work of the defender in preliminary or control hearings to demonstrate abuse of the judicial system..

Endnotes

- 1 IACHR. Criminalization of the work of human rights defenders. OEA/Ser.L/V/II.Doc. 49/15. 31 December 2015.Para. 217.
- 2 IACHR. Criminalization of the work of human rights defenders. OEA/Ser.L/V/II.Doc. 49/15. December 31, 2015, para. 195.
- 3 The Special Rapporteur on the independence of United Nations judges and lawyers, Diego García-Sayán, referred to the impacts and challenges for an independent justice in the context of the coronavirus disease (Covid-19) pandemic in report [A/HRC/47/35](#) of April 2021.
- 4 For information on measures in other countries, see: [Measures, agreements and resolutions against the coronavirus epidemic in the Courts, Chambers and Courts of the Ibero-American Conference on Constitutional Justice.](#)
- 5 In this research, we consider each person or organisation sued as a “case” when the name is available to the public. For example, if a lawsuit is brought against seven people, but only one person’s name is shared in public sources, we have counted it only as a “case”.
- 6 IACHR-REDESCA, Report ‘Business and Human Rights: Inter-American Standards,2019. Para. 323.
- 7 IACHR. Second Report on the Situation of Human Rights Defenders in the Americas.OEA/Ser.L/V/II.Doc.66/11. December 31, 2011. Para. 13
- 8 Inter-American Court. Case of Escaleras Mejía et al. v. Honduras. Judgment of September 26, 2018. Series C No. 361. Para. 60.
- 9 IACHR. Business and Human Rights Report: Inter-American Standards, November 1, 219. Para. 323.
- 10 Inter-American Court. Case of Palacio Urrutia et al. v. Ecuador, judgment of 24 November 2021 (Merits, Reparations and Costs), para. 95.



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FEBRUARY 2022

Business & Human Rights Resource Centre is an international NGO which tracks the human rights impacts of over 10,000 companies in over 180 countries, making information available on our 10-language website.

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We are very grateful to the individuals, organisations, and coalitions who shared their stories, expertise, and insights as part of this research.